

RSA-1103-2015 (O&M)

2025:PHHC:116940



RSA-1691-2015 (O&M)

111 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 28.07.2025

RSA-1103-2015 (O&M)

Akvinder Kaur

..... Appellant

Versus

Dalip Singh

..... Respondent

RSA-1691-2015 (O&M)

Dalip Singh

..... Appellant

Versus

Akvinder Kaur

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Rajesh Narang, Advocate
for the appellant- **RSA-1103-2015**
for the respondent- **RSA-1691-2015**

Mr. Raj Kumar Kakkar, Advocate
for the appellant- **RSA-1691-2015**
for the respondent- **RSA-1103-2015**
(through V.C.).

PANKAJ JAIN, J. (ORAL)

1 This order shall dispose off above mentioned two appeals.

2 These cross-appeals are directed against judgment and decree
dated 18.11.2014 passed by Additional District Judge Fazilka, whereby the



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suit filed by the plaintiff has been allowed for alternate relief of recovery of Rs.1,00,000/- along with interest @ 6% per annum from the date of execution of agreement till the date of actual realization.

3 Plaintiff filed a suit seeking possession by way of specific performance of the agreement to sell dated 23.11.2005. As per plaintiff, defendant agreed to sell her land measuring 07 Kanals 17 marlas as detailed out in the head note of the plaint, in his favor for a consideration of Rs.3,00,000/-. Defendant received an amount of Rs.1,00,000/- as earnest money. Parties agreed to get the sale deed executed on or before 25.05.2006. On the agreed date, the plaintiff remained present with the balance sale consideration and registration charges in the office of Sub Registrar, Fazilka. However, the defendant failed to turn up to perform her part. Plaintiff got his presence marked through Notary Public, Fazilka. Thereafter, the plaintiff served a legal notice dated 03.06.2006 upon the defendant calling her to come present before the Sub Registrar to perform her part. Defendant neglected the legal notice. Plaintiff thus filed suit seeking possession of the suit land by way of specific performance of agreement to sell dated 23.11.2005 claiming that he always remained ready and willing to perform his part. Suit was instituted on 15.06.2006.

4 Defendant appeared and contested the suit by filing written statement. She denied execution of agreement to sell and receipt of earnest money.



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5 Suit filed by the plaintiff was put to trial by the Court of the First Instance framing following issues :-

“1. Whether the defendant executed an agreement to sell dated 23.11.2005 in favour of the plaintiff for an amount of Rs.3,00,000/- and received Rs.1,00,000/- as earnest money? OPP

2. Whether the suit is within limitation? OPP.

3. Whether in the alternative plaintiff is entitled to recover an amount of Rs.3,00,000/- alongwith interest at the rate of 24% per annum? OPP.

4. Whether plaintiff is entitled to the permanent injunction prayed for? OPP.

5. Whether plaintiff has no cause of action or locus standi to file the present suit? OPP

6. Relief.”

6 Deciding issues No.1, 3 & 4, the Court of the First Instance held that, apart from his sole testimony, the plaintiff failed to produce any evidence to prove execution of agreement to sell. None of the attesting witnesses was examined. Plaintiff claims that legal notice was served upon defendant on 03.06.2006, however, without waiting the present suit was filed merely after 12 days of the same. The Trial Court further found that there is a close relationship between the parties. Defendant is wife of real brother of the plaintiff. Doubting the execution of agreement to sell and payment of earnest money in the light of the fact that the plaintiff failed to examine any attesting witness to the agreement to sell to prove valid execution thereof, Trial Court dismissed the suit filed by the plaintiff.



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7 Unsuccessful plaintiff preferred appeal. Along with the appeal an application was filed under Order XLI Rule 27 CPC, seeking permission to lead additional evidence. It was pleaded that since the suit has been dismissed only on the ground that the plaintiff failed to prove execution of the agreement to sell, the plaintiff be granted opportunity to examine attesting witness. It was further claimed that the attesting witness could not be examined as he was out of the reach of the appellant, having migrated to Madhya Pradesh. Application was allowed vide order dated 15.09.2014. Appellant was granted permission to examine one of the attesting witnesses, namely, Khushal Singh, by way of additional evidence.

8 Reappreciating the evidence on record and after going through testimony of the attesting witness, Khushal Singh, the Lower Appellate Court reversed the findings recorded by the Trial Court *qua* execution of the agreement to sell. The Lower Appellate Court held that the plaintiff proved the execution of agreement to sell and payment of earnest money. However, the Lower Appellate Court relying upon the close relationship between the parties held that there was no intent to sell the land and the agreement was executed to safeguard the money and decreed the suit filed by the plaintiff, not for the main relief of possession by way of specific performance, but for the recovery of Rs.1,00,000/- along with interest @ 6% per annum.

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9 Both the parties have assailed the findings recorded by the Lower Appellate Court. The defendant, along with the appeal, has filed an application under Order XLI Rule 27 CPC, seeking permission to lead additional evidence to prove documents Annexure A-2 and A-3 i.e. copies of the compromise affected between the parties on 23.11.2005 and 08.05.2006. He claims that after plaintiff failed to examine any of the attesting witnesses in his affirmative evidence, counsel for the defendant appearing for them in the Court of First Instance advised them not to bring the said documents in evidence even though the same were part of pleadings. He further submits that there was a dispute between families of two brothers which was resolved by way of Panchayati compromise, with the intervention of respectables of the village. The defendant appellant be granted an opportunity to prove the said compromise deeds dated 23.11.2005 and 08.05.2006. He submits that from the compromise Annexure A-3, it is evident that Rs.1,00,000/- was received by the plaintiff on 08.05.2006, and it was agreed between the parties that there is no dispute left between them.

10 Mr. Rajesh Narang, Advocate has further assailed order dated 15.09.2014, passed by Additional District Judge, Fazilka, allowing the plaintiff to lead additional evidence at the appellate stage invoking Order XLI Rule 27 CPC. It has been contended that, as per settled law, Order XLI Rule 27 CPC cannot be resorted to allow a party to fill lacunae. In order to successfully invoke the provision, applicant is required to prove that, despite

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his due diligence, he could not bring the evidence on record before the Trial Court. He thus submits that the findings recorded by the Lower Appellate Court holding that the plaintiff successfully proved execution of agreement to sell, cannot be sustained and deserve to be reversed. Suit filed by the plaintiff needs to be dismissed.

11 *Per contra*, Mr. Raj Kumar Kakkar, Advocate for the plaintiff-appellant in RSA No. 1691 of 2015, submits that the Lower Appellate Court erred in denying main relief to the plaintiff despite holding that the plaintiff successfully proved the execution of agreement to sell on the basis of which suit was filed. He submits that agreement to sell having been proved and there being specific averment to the effect that the plaintiff always remained ready and willing to perform his part, the Court ought to have decreed the suit filed by the plaintiff *qua* main relief.

12 I have heard learned counsel for the parties and have gone through the records of the case.

13 Close relation between the parties is not disputed. Husband of defendant and plaintiff are real brothers. Plaintiff failed to prove execution of agreement to sell before the Court of the First Instance, as he could not examine any of the attesting witnesses or the scribe of the agreement to sell. Defendant disputes execution of agreement to sell. It is only at the appellate stage that one of the attesting witnesses could be examined. Relying upon the testimony of an attesting witness, the Lower Appellate Court held that

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the execution of agreement to sell stood proved. Defendant has sought permission of this court to lead additional evidence at the appellate stage, in form of a compromise dated 23.11.2005 and a compromise deed dated 08.05.2006 (Annexure A-3). From the perusal of Annexure A-3 which is though an unexhibited document, but having come from the possession of the defendant, it is evident that there was a transaction of Rs.1,00,000/-, which defendant claims to have paid back to the plaintiff on 08.05.2006. The application seeking permission to lead additional evidence is without merit. The evidence sought to be produced in second appeal ought to have been produced in rebuttal to the additional evidence produced by plaintiff before First Appellate Court. Defendant having failed to do so despite having been granted opportunity cannot be allowed to fill lacunae at this stage.

14 In view thereof, this Court does not find any reason to upset the finding recorded by the Lower Appellate Court with respect to execution of the agreement to sell and the payment of Rs.1,00,000/- as earnest money. However, keeping in view the fact that the plaintiff did not even bother to file reply to the application filed under Order XLI Rule 27 CPC, filed by the defendant along with Regular Second appeal, and the close relationship between the parties, this Court is of the considered opinion that the issue between the parties is more of a monetary transaction than sale of immovable property.

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15 In view thereof, this Court does not find any reason to interfere in the judgment and decree passed by the Lower Appellate Court.

16 Finding no merits in the present appeals, the same are ordered to be dismissed.

17 Pending miscellaneous application, if any, also stands disposed off.

18 Photocopy of this order be placed on the connected file.

28.07.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No