



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

106

RSA-5476-2019 (O&M)

Date of Decision : 12.03.2025

AJIT SINGH

.... Appellant

VERSUS

WARYAM SINGH

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Pushpinder Kaushal, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 18.08.2015 passed by the Trial Court and the judgment and decree dated 11.03.2019 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant – Ajit Singh – filed a suit for possession as owner (although it was claimed that the plaintiff-appellant was already in possession of the suit property) by way of specific performance of agreement to sell dated 11.06.2003 in respect of land measuring 0 Kanals 10 Marlas fully described in the plaint as full and final sale consideration of ₹50,000 (rupees fifty thousand) had been received qua 10 Marlas. It was averred in the plaint that the defendant-respondent is a Khewatdar of Village Karoran, Tehsil Kharar, District Mohali and owner of the suit land as per jamabandi for the year 2006-07. It was the case set up by the plaintiff-appellant that the defendant-

respondent entered into an agreement to sell with the plaintiff-appellant and one Pal Singh son of Banarsi Dass resident of Village Nada, Tehsil Kharar, District Mohali on 11.06.2003 in respect of suit land for a total sale consideration of ₹1,00,000 (rupees one lakh). It was further averred that the plaintiff-appellant and Pal Singh had already paid the amount of ₹1,00,000 (rupees one lakh) in the presence of witnesses and no amount was due. It was further the case that Pal Singh had not joined the plaintiff-appellant in filing the present suit and therefore the plaintiff-appellant is only claiming his share of the land as per the agreement to sell dated 11.06.2003. It was further averred in the plaint that a General Power of Attorney (GPA) and a Will was also executed in favour of the plaintiff-appellant and Pal Singh on the same date in respect of the suit land. It was further claimed that possession of 1 Kanal was also delivered to the plaintiff-appellant and Pal Singh in the presence of witnesses. However, in violation of the agreement to sell dated 11.06.2003, the defendant-respondent had cancelled the GPA dated 11.06.2003 in favour of the plaintiff-appellant vide cancellation deed dated 22.02.2013.

3. On notice the defendant-respondent did not appear and was proceeded against *ex parte* vide order dated 18.02.2015.

4. The Trial Court framed the following points for determination :

1. Whether the plaintiff is entitled to relief of possession as owner by way of specific performance of agreement to sell dated 11.06.2003 as prayed for ?

2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for ?

3. Relief.

5. The Trial Court vide judgment and decree dated 18.08.2015 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 11.03.2019. Hence, the present regular second appeal by the plaintiff-appellant.

6. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing his suit. It is urged that the agreement to sell in question was duly proved by leading cogent evidence and that one of the witnesses, namely, Sher Singh stepped into the witness box as PW-2 and proved the agreement to sell as well as the payment of the sale consideration and therefore the suit deserved to be decreed.

7. Heard.

8. In the present case both the Courts concerned have found various discrepancies in the agreement to sell which discrepancies remained unexplained. The alleged agreement to sell (Ex.P-2) has some writing in Urdu on the first page which has not been explained. Even today learned counsel for the plaintiff-appellant has not been able to explain the writing in the right margin in Urdu. Further still, though the case set up was that the agreement to sell was executed by the defendant-respondent in favour of the plaintiff-appellant and Pal Singh and that an amount of ₹1,00,000 (rupees one lakh) had been paid, however, the signatures of Pal Singh are not

appended on the alleged agreement to sell dated 11.06.2003. Pal Singh did not even join the plaintiff-appellant in filing the present suit.

9. Both the Courts have further found that though the entire agreement to sell was a typed copy however the amount of ₹1,00,000 (rupees one lakh) was written by hand. Also, the agreement to sell though ends short of middle of the page, however, the signatures of the vendee and the thumb impression of the vendor are at the bottom of the page and those of the witnesses have been mentioned prior to the thumb impression of the vendor and the signatures of the vendee. As noticed above, Pal Singh has not even signed the alleged agreement to sell. There is no cogent evidence regarding the payment of amount of ₹50,000 (rupees fifty thousand) by the plaintiff-appellant. In absence of any evidence in this regard, the plaintiff-appellant is not entitled to the relief prayed for. In the face of the findings recorded by both the fact finding Courts, there is no scope for any interference by this Court. No credible and reliable evidence has been highlighted by the counsel for the plaintiff-appellant for this Court to take a contrary view from the one taken by both the Courts. In view thereof, no fault can be found with the findings returned by both the Courts concerned. No other point was argued.

10. In view of the above, I do not find any merit in the present regular second appeal. No question of law, much less any substantial question of law, arises for determination in the present case. The appeal being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

12.03.2025

Aman Jain

NOTE:

Whether speaking/non-speaking: Speaking

Whether reportable: Yes/No

(ALKA SARIN)

JUDGE