

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****127****RSA-1284-2025 (O&M)****Date of decision: 15.09.2025****Saroj Rani and others****...Appellant(s)****Vs.****Lakhwinder Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Gourav Goel, Advocate for the appellants.

Mr. Vaibhav Sehgal, Advocate for the respondent.

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**NIDHI GUPTA, J.**

Present second appeal has been filed by the defendants against the concurrent judgments and decrees of the learned Courts below; whereby the suit for recovery of Rs.18 lacs alongwith interest @ 12% p.a. has been decreed by both the Courts below holding the plaintiff entitled to recover amount of Rs. 18 lacs from defendants alongwith interest @ 6% p.a.

2. It is *inter alia* submitted by learned counsel for the appellants that the respondent had failed to deposit the Court fee as required to be paid on the total sale consideration value of the Agreement to Sell. As such, suit of the plaintiff could not have been agreed. Moreover, plaintiff had never gone to the office of Registrar on the target date; whereas defendants were always ready and willing to get the Sale Deed registered and even had gone to the Registrar to get the Sale Deed executed.



Respondent has also failed to prove any fraud as alleged. It is accordingly prayed that the suit of the respondent could not have been decreed.

3. *Per contra*, learned counsel for the respondent appearing on caveat counters submissions made on behalf of the appellants and submits that the impugned judgments and decrees suffer from no error; and that the present Second Appeal is a misuse of the due process of law and, therefore, deserves to be dismissed.

4. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the defendants.

5. Brief facts of the case are that the parties had entered into an Agreement to Sell dated 04.04.2011 in respect of the property in question, as per which, target date for execution of Sale Deed was set for 30.08.2011. It was the case of the plaintiff that at the time of execution of Agreement to Sale, the defendants had committed fraud by incorrectly making known to the plaintiff that the property in question is a built up kothi; that the husband of defendant No.1 has already expired and therefore, she is the legal heir of her husband; and that before the date of execution of Sale Deed, she would get the mutation sanctioned regarding the share of her husband. The defendants had also issued a notice dated 16.03.2012 to the plaintiff to get the Sale Deed executed from the defendants within 7 days. However, even in the said notice, it has been wrongly mentioned that defendant No.1 is the absolute owner of the suit property in the share of her husband Vinod Kumar; whereas the



defendant No.1 was not absolute owner of the property in question. It was pleaded by the plaintiff that as the defendants had received Rs.18 lacs as earnest money, the same be refunded to him.

6. Upon appraisal of oral and documentary evidence led by the parties, the learned Courts below have returned a positive finding that on the target date of 30.08.2011, mutation was not sanctioned in favour of defendant No.1. It has also been found that the mutation was sanctioned 2 years after the target date; and the defendants have already sold the suit property to a third party. The relevant findings of the learned first Appellate Court as contained in para 15 of the impugned judgment dated 09.12.2024 passed by the learned District Judge, Rupnagar are as under: -

*“15. Since, agreement to sell Ex.P1 is not in dispute and receipt of earnest money of Rs. 18,50,000/- by the defendants from the plaintiff is also not disputed, so the only point which was to be determined was that on failure of which of the party, the agreement to sell Ex.P1 could not be executed on or before 30.08.2011 or whether the suit for recovery is maintainable. Undisputedly, Vinod Kumar was one of the co-sharer in the suit property, which was agreed to be sold vide Ex.P1. One of the recital of agreement Ex.P1 is that Vinod Kumar son of Gian Chand had died and Saroj Rani is his legal heir and she will get the mutation sanctioned in her favour before getting the sale deed executed. Thus, it was incumbent upon Saroj Rani to get the mutation of estate of Vinod Kumar sanctioned, but un-disputedly no mutation of inheritance of Vinod Kumar was sanctioned on or before 30.08.2011. i.e. the date fixed for execution of sale deed in terms of agreement Ex.P1. Therefore, the agreement Ex.P1 could not be honoured*



*because of negligence on the part of defendants. The defendants cannot take the plea that plaintiff was not having sufficient amount to get the sale deed executed. Thus, the first condition to be fulfilled by the defendants was for getting the mutation of inheritance of Vinod Kumar regarding the property over which disputed house is constructed, sanctioned from the Revenue Authorities. Undisputedly, Saroj Rani was not the sole legal heir of Vinod Kumar, her husband. Her children i.e. two sons and one daughter were also co-sharers. Meaning thereby Saroj Rani alone was not competent to get the agreement Ex.P1 executed regarding sale of entire share of her husband and the plaintiff has specifically pleaded that agreement Ex.P1 is result of fraud, therefore, the plaintiff was not required to file a suit for declaration to declare that agreement to sell as null and void therefore, suit for recovery of earnest amount is maintainable. It is conceded during the course of arguments that mutation of inheritance of Vinod Kumar was effected after expiry of date fixed for execution of sale deed i.e. 30.8.2011 and after filing of suit, the disputed house has since been sold by the defendants, the plaintiff is competent to file suit for recovery of earnest amount along with interest and the learned Trial Court rightly appreciated the facts and evidence and decreed the suit for recovery of earnest amount of Rs.18,50,000/- along with interest at the rate of 6% per annum and the suit in the form of recovery of earnest money along with interest is maintainable in view of the specific pleadings in the plaint corroborated by affidavit Ex.PW1/A of the plaintiff that agreement Ex.P1 is result of fraud. No act and conduct is attributed to the plaintiff from it can be said that plaintiff is estopped from filing the suit and has not approached the Court with clean hands. On the other*



*hand, the defendants failed to get the mutation of estate of Vinod Kumar sanctioned before 30.8.2011 necessitating the plaintiff to file the suit for recovery of earnest amount because the defendants cannot be allowed to take advantage of their own wrong for not getting mutation of inheritance of Vinod Kumar sanctioned before the stipulated date and also to retain the earnest amount. Accordingly, issue No. 1 is decided in favour of plaintiff and against the defendants and issues No. 2, 3 and 4 are decided against the defendants and in favour of plaintiff. The findings of learned Trial Court on all these issues are upheld.”*

7. In these circumstances, reference may be made to a judgment passed by a Coordinate Bench of this Court in **Sanjeev Kumar v. Anil Kumar, (Punjab And Haryana) : Law Finder Doc Id # 1634092;** wherein it is held that:-

***“Suit for recovery - Refund of earnest money - Seller found responsible in executing an agreement to sell which was clearly unenforceable - Suit for recovery maintainable.***

*Specific Relief Act, 1963 Sections 22 and 34 Civil suit - Suit for recovery - Agreement to sell - Refund to earnest money - Seller is proved on record to be responsible in executing an agreement to sell which was clearly unenforceable - Thus, he is not entitled to retain the amount of earnest money with him - There is no bar as per Section 22 of the Specific Relief Act to claim the refund of the earnest money paid by a party who is not at fault for the failure of the transaction - Suit for recovery maintainable - Non-filing of suit for specific performance is inconsequential - Directions issued.”*



8. Learned counsel for the appellants is unable to controvert or dispute the above said factual and legal position as noted above.
9. Hence, present Regular Second Appeal is hereby **dismissed**.
10. Pending applications, if any, stand disposed of.

**15.09.2025**

Divyanshi

**(NIDHI GUPTA)  
JUDGE**

<b>Whether speaking/reasoned:</b>	<b>Yes/No</b>
<b>Whether reportable:</b>	<b>Yes/No</b>