



RSA-1830-1999 (O&M)

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

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**RSA-1830-1999 (O&M)
Reserved on:-27.08.2025
Date of Decision : 02.09.2025**

Nihal Kaur and Others

...Appellants

VERSUS

Gurdev Singh and Others

...Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Kanwal Goyal, Advocate for the appellants.

Mr. F.S.Virk, Advocate for respondent no.1.

Respondents No.2 to 7 service dispensed with
(proforma respondents)

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MANDEEP PANNU,J.

1. This Regular Second Appeal is directed against the judgment and decree dated 24.12.1988 passed by the learned Sub Judge 1st Class, Sunam, decreeing the suit of the plaintiff Gurdev Singh for possession by way of specific performance of agreement to sell dated 29.05.1986, as affirmed by the learned Additional District Judge, Sangrur on 26.08.1998, dismissing the defendant's appeal.

Brief Facts

2. The plaintiff pleaded that defendants Gurchand Singh and Gurbax Singh, being owners in possession of agricultural land measuring 10 kanals 17 marlas, entered into an agreement to sell the said land to him on 29.05.1986 for a total consideration of ₹28,481.25/- (₹2100/- per killa). A sum of ₹10,000/- was



paid as earnest money at the time of execution. The agreement, Ex.P1, was scribed by Kulwant Rai and attested by Sadha Ram and Harchand Singh. The sale deed was to be executed on or before 10.06.1986. The plaintiff claimed that he remained present on the appointed date in the office of the Sub Registrar, Lehra, along with the balance consideration of ₹25,000/- and the attesting witnesses, but defendants failed to appear. He prayed for a decree for possession by way of specific performance, or in the alternative, recovery of double earnest money.

3. The defendants contested the suit, denying execution of any agreement and asserting that Ex.P1 was a forged and fabricated document. They further claimed that the land was coparcenary/ancestral property, incapable of alienation without necessity, and that the sons of the defendants were necessary parties. Other objections of locus standi, valuation, under-stamping, and non-joinder of parties were also raised.

4. Replication was filed by the plaintiff reiterating his stand.

5. From the pleadings, the learned trial Court framed the following issues:-

- 1) Whether the defendants No.1 and 2 have executed an agreement dated 29.05.86 in favour of Gurdev Singh on receipt of Rs.10,000/- as earnest money? OPP
- 2) Whether the plaintiff was ready and willing and still ready and willing to perform his part of the contract? OPP
- 3) Whether the plaintiff is entitled to a decree for the specific performance of the contract dated 29.5.86 on in the alternative a decree for the recovery of Rs.20,000/-? OPP



- 4) Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
 - 5) Whether the suit is not maintainable in the present form? OPD
 - 6) Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD
 7. Whether the suit is bad for non-joinder of necessary party? OPD
 8. Whether there are material alteration in the agreement dated 29.05.86 and the same is forged and fabricated document? OPD
 9. Relief.
6. In order to prove his case, the plaintiff examined the following witnesses:-
- i) PW1 Gurdev Singh (plaintiff) deposed that defendants executed agreement Ex.P1 after receiving ₹10,000 earnest money. Agreement was scribed by Kulwant Rai and attested by Sadha Ram and Harchand Singh. He reiterated his readiness and willingness, including presence before Sub Registrar with balance money.
 - ii) PW2 Sadha Ram (attesting witness) supported plaintiff's version and confirmed thumb impressions of defendants on Ex.P1.
 - iii) PW3 Harchand Singh (attesting witness) corroborated the execution and receipt of consideration.
 - iv) PW4 Varinder Bhushan Bhatnagar (Handwriting and Fingerprint Expert) compared three thumb impressions on Ex.P1 (Q1, Q2, Q3) with specimen impressions S1 and S2 of defendant Gurchand Singh. He opined that Q1 and Q3 were identical with S1. As regards



Q2, he noted that due to heavy ink impression, it was blurred and thus no definite opinion could be given. Nonetheless, he categorically concluded that two of the disputed impressions matched with the specimen, proving execution by Gurchand Singh-defendant.

7. On the other hand, the defendants examined the following witnesses:-
- i) DW1 Jiwan Lal deposed that he had been writing documents for 30 years without licence, and denied execution.
 - ii) DW2 Gurchand Singh (defendant) denied execution, alleged forgery, and claimed land to be ancestral.
 - iii) DW3 Chanan Singh deposed that land was owned by Gurdev Singh, not defendants.
 - iv) DW4 Siri Ram Ahlmad appeared with record and claimed that a photocopy of agreement did not show scribe's signature.

Findings of Trial Court

8. The learned trial Court held that execution of Ex.P1 stood proved by consistent testimony of plaintiff and two attesting witnesses, supported by expert opinion. The payment of earnest money of ₹10,000 was established. The Court observed that stray answers of illiterate/rustic witnesses in cross-examination regarding dates or times were immaterial, as their core testimony remained intact. The burden shifted upon defendants to prove forgery or blank paper theory, which they failed to discharge.

9. The plaintiff's readiness and willingness was proved by his presence before Sub Registrar with balance money and attesting witnesses. The objections of locus standi, valuation, non-joinder, and ancestral nature were rejected. The suit was decreed on 24.12.1988.

**Findings of Appellate Court**

10. The learned lower Appellate Court concurred, noting that the application of defendants to frame issue regarding coparcenary property was dismissed by trial Court on 30.08.1988 and was never challenged. It held that defendants failed to prove the land was coparcenary. Execution of agreement stood established through attesting witnesses and expert opinion. Defendants' bare denials could not outweigh such cogent proof. Plaintiff's readiness and willingness was also proved. The appeal was dismissed on 26.08.1998, granting plaintiff two months to deposit balance sale consideration.

11. Feeling aggrieved, Nihal Kaur widow of Gurchand Singh, Balwant Singh and Harbans Singh, sons of Gurchand Singh-defendant, being his legal heirs have preferred the Regular Second Appeal.

12. Upon notice, respondent No.1/plaintiff-Gurdev Singh chose to contest the present appeal. So far as respondents No.2 to 7 are concerned, they being proforma respondents, their service was dispensed with.

Arguments of Appellants

13. Learned counsel for the appellants argued that Ex.P1 was forged and fabricated and PW1 and PW2 admitted in their cross-examination that they did not recall date/time of execution, the scribe Kulwant Rai never appeared to depose regarding scribing of agreement to sell, DW4 showed photocopy lacked scribe's signature, and payment of earnest money not proved since alleged commission agent Girdhari Lal, from whom plaintiff alleges to have borrowed money, was not examined. It was further contended that land was coparcenary, sons of defendants were co-sharers, and defendants could not alienate without necessity. Applications to prove coparcenary nature were wrongly dismissed. Learned counsel further



argued that the plaintiff failed to prove readiness and willingness, and decree for specific performance could not be sustained.

Arguments of Respondents

14. Learned counsel for respondents supported concurrent findings and argued that execution was proved by testimony of attesting witnesses and expert opinion. Once execution was established, burden shifted on defendants to prove alleged forgery or fraud, which they failed. Objection regarding coparcenary was concluded by dismissal of application to prove the same by framing of additional issue, which attained finality. Defendants were competent to alienate their share. He further submitted that other objections lacked substance and the judgments relied upon by appellants were distinguishable and not applicable to the case in hand.

Findings of this Court

15. Having considered rival submissions, I find no merit in this appeal. The concurrent findings of both courts below are based on sound appreciation of evidence and do not warrant interference.

16. The execution of agreement Ex.P1 has been established beyond doubt. Plaintiffs PW1, PW2 and PW3 attesting witnesses consistently testified that defendants executed agreement in their presence and received ₹10,000 earnest money. Their testimony has not been discredited in cross-examination. The only objection raised by counsel for the plaintiff is that they failed to recall exact date and month of agreement to sell and its contents, however, Court cannot lose sight of the fact that they admitted being illiterate. Thus, rustic witnesses may not recall exact dates or formal details, but the material fact that defendants executed Ex.P1 and affixed thumb impressions in their presence remains consistent.



17. It also deserves to be noticed that the non-examination of the scribe Kulwant Rai do not in any manner weaken the plaintiff's case. The law is well settled that once the attesting witnesses have been examined and they have consistently proved the execution of the agreement to sell in the presence of the parties, the absence of the scribe in the witness box is not fatal. The scribe is only a formal writer of the document and the essential requirement is the testimony of attesting witnesses who have directly witnessed the execution. In the present case, both PW2 Sadhu Ram and PW3 Harchand Singh have unequivocally supported the plaintiff's version, thereby proving the due execution of Ex. P1.

18. Crucially, PW4 handwriting and fingerprint expert compared three thumb impressions of defendant Gurchand Singh on Ex.P1 with his specimen impressions S1 and S2. He categorically opined that impressions Q1 and Q3 were identical with specimen S1. Only Q2 could not yield definite opinion due to heavy ink, which blurred its ridges. However, this circumstance does not shake the expert's conclusion, since two impressions positively matched. Once two clear and identical matches are found, the non-comparability of one impression because of excess ink does not discredit the document. On the contrary, it strengthens the inference that Ex.P1 bears genuine thumb impressions of defendant Gurchand Singh.

19. Thus, execution of Ex.P1 stands duly proved. Once execution is established, the burden shifts upon defendants to prove their plea of forgery or blank papers. No such evidence has been brought on record. Mere denials by DW2 cannot outweigh expert's testimony and evidence of attesting witnesses.

20. Coming to the readiness and willingness of plaintiff, the same has also been proved. Plaintiff has categorically stated that he remained present before the



Sub Registrar with balance sale consideration and witnesses on the date fixed, but defendants were never present and thereby defaulted. Hence, requirement of Section 16(c) of Specific Relief Act, 1963 is fully satisfied.

21. The reliance placed by learned counsel for the appellants on the judgment of this Court in *Gurmail Singh and another v. Jagdish Pal Singh*[2018(3) RCR (Civil) 658] is also misplaced. In para 8 of the said judgment, the Hon'ble Coordinate Bench observed that the plaintiff therein had not pleaded any positive step taken by him in order to show his readiness and willingness, and it was held that the plaintiff must assert and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. It was further emphasized that merely because the defendant had denied execution of the agreement to sell would not absolve the plaintiff of his duty to assert and prove his own readiness and willingness, and that the conduct of the defendants could only be considered once the plaintiff had first been able to establish his case. The said decision, however, is clearly distinguishable from the facts of the present case. Here, the plaintiff not only pleaded but also proved his readiness and willingness by producing cogent evidence. On the stipulated date i.e. 10.06.1986, the plaintiff went to the office of the Sub-Registrar and moved application Ex.P3 to mark his presence. He also proved on record affidavit Ex. P2, wherein he specifically stated that he had already paid Rs.10,000/- as earnest money and 10.06.1986 was fixed for payment of the balance sale consideration. He further proved vide Ex.P3 that he was present on that day with the balance sale consideration for execution of the sale deed. This evidence clearly establishes his readiness and willingness, and, thus the ratio of *Gurmail Singh's case (supra)* does not apply to the present case.



22. The plea of coparcenary property is an afterthought. Application for framing issue to prove coparcenary property was dismissed by trial court on 30.08.1988. No appeal was filed, and order attained finality meaning thereby nature of property being coparcenary remains unproved on record. Law permits a co-sharer to alienate his undivided share, and even if specific khasra numbers are mentioned, transfer operates as to his share, subject to adjustment in partition. Defendants No.1 and 2 were therefore competent to sell their share.

23. Objections of valuation, non-joinder, and locus standi have been concurrently rejected and rightly so.

Conclusion

24. In view of the above, I find no illegality or perversity in the concurrent findings of the courts below.

25. The Regular Second Appeal is dismissed. Judgments and decrees dated 24.12.1988 and 26.08.1998 of the courts below are affirmed.

26. Pending application(s), if any, also stands disposed off.

September 02, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.