

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

2025:PHHC:006176



126

CR-89-2025 (O&M)

Date of Decision: 16.01.2025

Raj Kumar

...Petitioner.

Versus

Kuldip Singh and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Daljeet Singh Virk, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 04.11.2023 (Annexure P-2) passed by trial Court, vide which application filed by the petitioner under Order 39 Rules 1 and 2 read with Section 151 of CPC was dismissed and further the petitioner has challenged order dated 09.09.2024 (Annexure P-1) passed by the First Appellate Court, vide which the appeal preferred by the petitioner against order dated 04.11.2023 has been dismissed.

2. The relevant facts for adjudication of the present revision petition are that the petitioner filed a suit for possession as owner by way of specific performance to agreement to sell dated 18.06.2020 thereby directing defendant No.1 to execute sale deed in equal share regarding 4B/14B in favour of the plaintiff and defendant No.2, situated at village

Sahauran, HB No.95, Tehsil Kharar, District S.A.S. Nagar for total sum of Rs.1,46,87,500/- and also sought consequential relief of permanent injunction against the respondents restraining them from alienating the suit property in any manner to anybody else except the plaintiff and respondent No.2 or his nominee. It was alleged that believing the representation of defendant No.1, plaintiff agreed to purchase the above said land from defendant No.1 and as plaintiff and defendant No.2 were jointly doing business, both agreed to purchase the above said land jointly, however entire earnest money was to be paid by the plaintiff. The terms of bargain were reduced into writing vide a written agreement to sell dated 18.06.2020 which was executed by defendant No.1 in favour of the plaintiff and defendant No.2 in the presence of witnesses. As per said agreement, total sale consideration was Rs.1,46,87,500/-. Defendant No.1 received an amount of Rs.15,00,000/- i.e. Rs.10,00,000/- by way of two cheques and Rs.5,00,000/- by way of cash as earnest money from the plaintiff and executed separate receipts in favour of the plaintiff and defendant No.2 on the backside of first page of the agreement to sell dated 18.06.2020 in the presence of the witnesses. As per this agreement to sell dated 18.06.2020, defendant No.1 was to redeem the land before execution and registration of sale deed in favour of the plaintiff and last date for execution of sale deed was fixed on or before 18.02.2021. It was also provided that sale deed regarding suit land could be executed by way of three separate sale deeds i.e. first sale deed regarding area measuring 1 bigha 11.1/3 biswa was to be executed on 18.09.2020, second on 18.12.2020 regarding area measuring 1 bigha 11.1/3 biswa and third on 18.02.2021 regarding area measuring 1

bigha 11.1/3 biswa, after adjustment of Rs.5,00,000/- from the earnest money already received by defendant No.1, at the time of execution and registration of each sale deed in favour of the plaintiff. It is alleged that on 18.09.2020 defendant No.1 expressed his inability to redeem the land and promised to execute sale deed regarding entire suit land on 18.02.2021. On 18.02.2021 plaintiff kept waiting for defendant No.1 along with remaining sale consideration, but defendant No.1 as well as defendant No.2 did not come present. The plaintiff got his presence marked by duly sworn affidavit as he was ready and willing to perform his part of the contract and is ready with the balance sale consideration. To initiate legal proceedings against defendant No.1, plaintiff requested defendant No.2 to hand over the original agreement to sell dated 18.06.2020, to which he refused and on inquiring it was found that defendants inter-se had reached at an understanding and were planning to sell the suit land to a third party at a higher price to frustrate agreement to sell dated 18.06.2020. Hence, the present suit was filed.

3. Upon notice, written statement was filed by defendant No.1 while denying the execution of alleged agreement to sell dated 18.06.2020 and alleged that the original agreement dated 18.06.2020 had not been produced on record. It was denied that Rs.10,00,000/- was paid as earnest money and alleged that rather it was paid for some other transaction and all the other material averments of the plaint were denied.

4. Defendant No.2 also filed written statement alleging that he had always been ready to perform his part of contract and defendant No.1 did not come present on the stipulated date to perform his part of the contract.

5. Alongwith the suit, the petitioner also moved an application under Order 39 Rules 1 and 2 CPC for restraining the respondents from alienating the suit land during the pendency of the suit, reply to which was also filed by defendants/ respondents.

6. After hearing the parties and going through the record, the trial Court had dismissed the application under Order 39 Rules 1 and 2 CPC filed by the petitioner/plaintiff vide order dated 04.11.2023. The appeal preferred against the same before the First Appellate Court was also dismissed vide order dated 09.09.2024. Hence the present revision petition has been filed by the revision petitioner before this Court.

7. Learned counsel for the revision petitioner has contended that the Courts below have failed to consider the material facts while passing impugned orders under revision. The observations in the impugned orders with respect to agreement to sell in question are misconceived and have been rendered without any basis, which would shadow the legality and validity of the said agreement. Courts below have wrongly ignored that out of the earnest money, Rs.10,00,000/- had been paid through cheques and Rs.5,00,000/- had been paid in cash, regarding which endorsement was made on the back of the agreement which is also duly signed by defendant No.1. It has also not been considered that respondent No.1 was to redeem the land in question before the date of the sale deed but he showed his inability to redeem the land and promised to execute the sale deed regarding the entire suit land on 18.02.2021. However, on 18.02.2021, he did not turn up to perform his part of the contract. So, it has been wrongly held that only on the date for execution of last sale deed, plaintiff got his presence marked

in the office of Sub-Registrar, though the sale deeds were to be executed in three parts on different dates. He has contended that impugned orders are wrong, illegal and perverse and has prayed that the same be set aside and the application of the petitioner under Order 39 Rules 1 and 2 CPC may be allowed.

8. I have heard learned counsel for the petitioner and have gone through the relevant record.

9. Admittedly, the original agreement to sell dated 18.06.2020 has not been placed on record and as per the plaintiff, the original agreement to sell is in possession of defendant No.2. Though defendant No.2 has already appeared in the civil suit but he has also not brought on record the original agreement to sell and rather stated that it has been misplaced. No reason has been assigned that as to why the original agreement to sell was handed over to defendant No.2. It has also not been explained that why defendant No.2 was made one of the purchasers when the entire sale consideration was to be paid only by the plaintiff. Defendant No.1 has specifically denied the execution of said agreement to sell. So, at this stage, it creates doubt regarding genuineness of the agreement to sell dated 18.06.2020.

10. It is also to be taken note of that three dates were fixed for registration of the three sale deeds in parts, but only on the date fixed for execution of last sale deed the plaintiff claimed to be present in the Office of Sub-Registrar. Nothing has been brought on record from which it could be made out that the dates for execution of the earlier sale deeds were extended by the parties by way of any writing. Courts below have thus rightly come to the conclusion that at this stage, no prima facie case is made out in favour of

the plaintiff when the basic document i.e. agreement to sell dated 18.06.2020 has not been placed on record.

11. Thus, there being no illegality or infirmity in the impugned order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

12. All pending applications, if any, also stand disposed of accordingly.

13. Nothing expressed hereinabove shall be construed as an opinion on the merit of the case.

(SUKHVINDER KAUR)
JUDGE

16.01.2025

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No