

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

225(2)

**Reserved on: 03.09.2025
Pronounced on: 09.09.2025**

RSA-1129-2013(O&M)

Smt. Raj Kaur

...Appellant(s)

Vs.

Sukhwinder Singh

...Respondent(s)

RSA-1486-2013(O&M)

Sukhwinder Singh

...Appellant(s)

Vs.

Smt. Raj Kaur

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

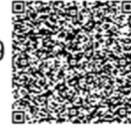
Argued by:- Ms. Ojaswini Gagneja, Advocate
for the appellant (in RSA-1129-2013) and
for the respondent (in RSA-1486-2013).

Mr. S.K. Arora, Advocate
for the appellant (in RSA-1486-2013) and
for the respondent (in RSA-1129-2013).

NIDHI GUPTA, J.

RSA-1129-2013

Present Second Appeal has been filed by the defendant against the judgment and decree dated 18.12.2012 passed by learned Additional District Judge, Ferozepur whereby the appeal filed by the plaintiff/respondent against the dismissal of his suit for specific performance, has been partly allowed and money decree has been granted;

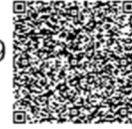


and suit of plaintiff has been partly decreed for recovery of Rs.2,75,000/- along with interest @ 9% per annum from the date of payment till date of actual realisation.

RSA-1486-2013

Present Second Appeal has been filed by the plaintiff against the judgments and decrees of the learned Courts below whereby the suit filed by the plaintiff for specific performance was dismissed by the learned Civil Judge (Senior Division), Ferozepur vide judgment and decree dated 23.10.2010; and against the judgment and decree dated 18.12.2012 passed by learned Additional District Judge, Ferozepur whereby the appeal filed by the plaintiff has been partly allowed and suit of plaintiff has been partly decreed for recovery of Rs.2,75,000/- along with interest @ 9% per annum from the date of payment till date of actual realisation.

Both the above-said Second Appeals are being disposed of by this common order as they both arise out of common impugned judgment and decree dated 18.12.2012 passed by the learned Additional District Judge, Ferozepur, emanating from one suit; and as facts, issues and parties in both the appeals are the same. For the sake of brevity, facts are being taken from RSA-1129-2013 titled as "Smt. Raj Kaur Vs. Sukhwinder Singh" filed by the defendant. The parties shall be referred to as per their status before the learned trial Court i.e. Sukhwinder Singh as 'plaintiff' and Raj Kaur as 'defendant'.



2. Brief facts of the case are that the plaintiff had filed suit seeking specific performance of Agreement to Sell dated 07.10.2002 executed by the defendant in favour of the plaintiff with regard to the suit land measuring 26 kanal 19 marla for total sale consideration of Rs.4,51,625/-. It was pleaded in the plaint that plaintiff had executed the above-said Agreement dated 07.10.2002 and defendant had received Rs.2,75,000/- by way of earnest money in the presence of marginal witnesses at the time of execution of the Agreement. Target date was fixed for 07.05.2004. It is further pleaded that possession of the suit land was already with the plaintiff as he used to cultivate the land in dispute on payment of lease money to the defendant. However, on 07.10.2002, the defendant had executed the Agreement of Sale in favour of the plaintiff with regard to the suit land, the possession of the suit land was already with the plaintiff; and as such, the plaintiff filed the application for correction of khasra girdawari with regard to the suit land before the Assistant Collector, IIInd Grade, Mamdot, who after following the proper procedure of law, after verifying the possession of the suit land, corrected the entries, in the khasra girdawari in the name of plaintiff vide its order dated 15.09.2003. It was further pleaded that the plaintiff had always been ready and willing to perform the Agreement. The plaintiff had even approached the defendant on 07.05.2004 to accompany him to the Tehsil Office for execution and registration of the Sale Deed on receipt of balance sale consideration and



other expenses. The plaintiff had waited for the defendant at the Tehsil Office from 9 am to 5 pm but the defendant did not turn up. As such, the plaintiff had got marked his presence in the office of Joint Sub-Registrar after submitting an Affidavit. It was pleaded that the plaintiff had again approached the defendant on 11.05.2004 to accompany him to Tehsil Office for execution of Sale Deed but defendant had refused to accede to the request of the plaintiff. Hence, the plaintiff was compelled to file the present suit on 13.05.2004 seeking specific performance of the agreement dated 7.10.2002. By way of alternative relief decree for recovery of Rs.4,51,625/- was prayed for as refund of earnest money as well as compensation and damages thereon.

3. Upon notice, the defendant had appeared and filed written statement resisting the suit by denying the Agreement in question. It was averred that the plaintiff had intentionally given a wrong address of the defendant in order to procure ex-parte decree in the present case. The defendant has never resided in Basti Gobind Nagari, Ferozepur City, so the plaintiff, being guilty of mis-statement cannot be allowed to proceed with the instant suit and the same is liable to be dismissed. It was further averred that the suit is completely false and frivolous and the same has been filed to unnecessarily harass the defendant and to usurp her immovable property, situated in village Phullarwan, Tehsil Ferozepur.



4. It was further averred that defendant had never entered into any alleged Agreement to Sell in favour of the plaintiff qua the land in question. Thus, the question of execution of any alleged Agreement to Sell in favour of the plaintiff does not arise. No alleged sale consideration was ever received by the defendant from the plaintiff as earnest money and the alleged Agreement to Sell is a false, fabricated documents prepared by the plaintiff in connivance with the marginal witnesses as well as Scribe of the same. One of the marginal witnesses Jagtar Singh is real brother of the plaintiff, while the other marginal witness Bohar Singh son of Kirpal Singh is a close relative i.e. brother-in-law of the plaintiff. The defendant never sent to the alleged Scribe Arvinder Pal Singh, Document Writer, Tehsil Compound, Ferozepur for the execution of alleged Agreement to Sell dated 07.10.2002 at any time and she never signed in any register of the alleged Scribe. Similarly, the defendant never purchased the stamp papers of the alleged Agreement. Under the law, the Agreement to Sell required stamp papers worth Rs.300/- but the alleged Agreement to Sell is upon a plain paper, upon which adhesive stamps worth Rs.25/- only have been affixed, so it being not properly stamped, is inadmissible under the law. It was further averred that the alleged Agreement to Sell is a clear case of fraud, played by the plaintiff upon the defendant in order to usurp her entire land, in connivance with the marginal witnesses and Scribe thereof.



5. It was further stated that the defendant had purchased the land in question through registered Sale Deed from Niranjan Singh son of Mehtab Singh in 1990 along with an electric connection of 3 HP motor installed therein and all other allied rights of the said land. Smelling some foul play at the hands of the present plaintiff qua the transfer of said electric connection from the Punjab State Electricity Board officials, the answering defendant contacted and engaged Sh. Balkar Singh Virk, Advocate, Ferozepur for the said purpose. The said Advocate had procured the signatures of the defendant on 4-5 blank papers with the pretext that he requires the same for preparing the suit and stay application and other relevant papers from time to time and will do so at his own as the defendant is living at a far off place i.e. Chandigarh and will not be easily available. The defendant believed his representation and signed the blank papers on his assurance. Instead of filing the desired suit, in spite of request, it came to notice that Balkar Singh had colluded with the plaintiff and he might have passed on the said papers to the plaintiff and the plaintiff in turn, might have converted the same into the alleged Agreement to Sell. The plaintiff is a very clever person with a positive intention to cheat while the defendant is a simple widow household lady and is not aware of the legal implication and, thus, suit deserves to be dismissed. The defendant had further averred that market price of the land in question at the alleged time was not less than Rs.3-4 lakhs per killa and therefore, it was not believable that the same



would be sold to the plaintiff at the rate of Rs.1,40,000/- per acre. Moreover, there was no reason for postponing the execution and registration of the Sale Deed for a period of about two years. It is further alleged that the plaintiff procured an ex parte order dated 15.09.2003 from the Assistant Collector, IInd Grade, Mamdot qua the correct entry in Khasra Girdawari of the land in question, which is in complete violation of the settled instructions of the Financial Commissioner. Apart from that, entire facts as mentioned in the plaint were categorically denied and lastly submitted that the suit of the plaintiff without merits, the same is liable to be dismissed.

6. Replication was filed by the plaintiff denying the averments made in the written statement and reiterating those made in the plaint.

7. From the pleadings of the parties, following issues were framed on 26.05.2005:-

"1. Whether defendant executed an agreement to sell regarding the suit land in favour of the plaintiff at the rate of Rs.4,51,625/- after receiving Rs.2,75,000/- as earnest money?OPP.

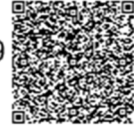
2. Whether the plaintiff is entitled to specific performance of the agreement to sell?OPP

3. Whether the plaintiff remained ready and willing to perform his part of agreement?OPP

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

5. If, issue no.2 is not proved, whether the plaintiff is entitled to recover Rs.4,51,625/- from the defendant, as alternative relief?OPP

6. Whether the alleged agreement is false and fabricated one and is without consideration?OPD



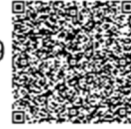
7. Relief.”

8. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned trial Court had dismissed the suit of the plaintiff vide judgment and decree dated 23.10.2010. The appeal filed by the plaintiff was partly accepted by the Additional District Judge, Ferozpur vide judgment and decree dated 18.12.2012 in the following manner:-

“18...Thus, keeping in view all these facts, I am of the view that appropriate relief in this case is to grant money decree instead of decree for specific performance. Therefore, I partly accept the present appeal with costs and the suit of the plaintiff is decreed for recovery of Rs.2,75,000/- along with interest at the rate of 9% per annum from the date of payment till the date of actual realization...”

9. Hence, the above-said present Second Appeals by both, the defendant as well as the plaintiff.

10. It is inter alia submitted by learned counsel for the defendant that it was the clear pleaded case of the defendant that she had never entered into such an Agreement with the plaintiff. The alleged Agreement to Sell is clear-cut case of fraud being played by the plaintiff upon the defendant in order to usurp her entire land in collusion with marginal witnesses and Scribe. Even no alleged Lease Deed was entered into with the plaintiff qua the suit land. No sale consideration was received by her. It is submitted that it had been alleged by the plaintiff that Agreement was scribed by the Deed Writer in the premises of the Tehsil Office, however,



defendant had never accompanied the plaintiff to the Tehsil Office, yet the learned lower Appellate Court has passed money decree against the defendant. Moreover, lower Appellate Court gave no reasons for the same.

11. It is contended that learned lower Appellate Court failed to consider that the disputed signatures of the defendant did not belong to her. This is evident from a bare perusal of the said signatures that the same have been forged. Even no reasoning has been given by the learned lower Appellate Court in drawing the conclusion that the disputed signatures belonged to her. Even no reasons have been given as to how the statements of attesting witnesses were proved. No reasons have been given for overturning the clear, cogent findings of the learned trial Court. Nothing has been commented in respect of the observation of the learned trial Court that Lambardar or any respectable of the village had not been called at the time of executing Agreement to Sell. Rather, the plaintiff had arranged his own persons as marginal witnesses viz his own brother Jagtar Singh and his brother-in-law Bohar Singh. However, these facts have been overlooked by the learned lower Appellate Court.

12. It is further submitted that the Ld. Lower Appellate Court had held that the defendant had miserably failed to prove the plea of the fraud. It is argued that the defendant has been able to prove her version by corroborating many facts and circumstances. Firstly, the alleged Agreement to Sell is on simple papers, not on the stamp papers as is the general Rule



and practice when both parties consent to an Agreement. Secondly, stamps of Rs. 300/- are required for such like Agreement but in the case in hand, stamps of Rs. 25/- were affixed. Moreover, these were adhesive stamps that were affixed later on, on simple papers. Thirdly, the plaintiff himself purchased the said stamps, which fact has been admitted by the plaintiff as well as the attesting witness in his cross-examination. Fourthly, as mentioned above the disputed signatures on Ex. D3 could not be proved, which shows that the defendant never signed in the said register. Fifthly, the conduct of the plaintiff is proved from the fact that criminal cases are pending against him for getting executed fake and false sale deeds by other persons. The documentary evidence regarding the same is on the file i.e. FIR Ex. D6 and D7. The reprehensible conduct of the plaintiff is further evident from the fact that the plaintiff has got an ex-parte order in an application for correction of Khasra Girdawari by giving wrong address of the defendant. The plaintiff also tried to get an ex-parte decree in the present plaint also by giving wrong address. The plaintiff as well as the attesting witness have admitted in their cross examination that the defendant is not residing on the given address. All these facts clearly corroborate the version put forth by the defendant and prove that the impugned agreement to sell is forged and fabricated.

13. Ld. Counsel for the defendant further ably argues that the Ld. Appellate Court has not considered the deposition of DW3 Manohar Lal,



Registration Clerk, who has categorically deposed in his examination-in-chief that no document was registered in the office of Sub Registrar from 05.10.2002 to 07.10.2002 as per record brought by him in the court. It has also been observed by the Ld. Trial Court that if no document was got registered in the office of Sub Registrar during the said period then how and where from plaintiff got scribed an Agreement to Sell because there was a holiday in the Tehsil office from 05.10.2002 to 07.10.2002 and no deed writers were available in the office. As such, it proves that this Agreement was got prepared by the plaintiff in connivance of the Deed Writer Arvinder Pal Singh at his home just to create a false and frivolous document.

14. Apart from the above factors, it is clear from the cross-examination of the plaintiff that his financial condition at that relevant time was not sound because he was not having any cash in his hand, then how would he have purchased 26 kanals and 19 marlas of land. Furthermore, there is no evidence to the effect that plaintiff paid the earnest money to defendant at the time of execution of Agreement to Sell. The Ld. Appellate Court has erred in law as well as facts to grant the alternative relief of recovery of amount of Rs. 2,75,000/- along with interest at the rate of 9 % per annum without even considering the fact that it was neither the case of plaintiff nor the case set up by defendant that the Agreement to Sell was actually a money transaction. It is submitted that positive case set up by the



defendant is that the Agreement to Sell is a forged and fabricated document which is proved from the facts enumerated above.

15. Learned counsel for the defendant accordingly prays that the present appeal be allowed and suit of the plaintiff be dismissed.

16. Per contra, learned counsel for the plaintiff vehemently opposes the submissions of the defendant and submits that the judgments of the learned Courts below suffer from material errors of fact and law. It is submitted that the plaintiff had proved the Agreement to Sell by examining the attesting witnesses, as also the Deed Writer. It is submitted that one of the attesting witnesses had expired after submitting his Affidavit-in-Chief (Ex.PW3/A). So, he could not be cross-examined. However, the other Attesting Witness has duly proven the Agreement. The plaintiff has also proved his presence in the Tehsil Office on target date of 07.05.2004 by way his Affidavit of Attendance (Ex.P2). It is accordingly submitted that therefore, in view of the above facts, it is clear that the plaintiff was entitled to grant of decree of specific performance of the Agreement to Sell dated 07.10.2002. However, the same has been denied to the plaintiff for untenable reasons. Learned counsel accordingly prays that his appeal be allowed and the suit be decreed.

17. No other argument is made on behalf of the parties.

18. I have heard Id. counsel and perused the case file in detail. I find no merit whatsoever in the submissions made on behalf of the plaintiff.



19. The Agreement has been totally denied by the defendant. Before the learned trial Court also the plaintiff has failed to prove the Agreement dated 7.10.2002. In fact, it is the clear and categoric finding of the learned trial Court that the Agreement to Sell itself is false and fake document. The defence taken by the defendant in this respect is that her signatures were obtained by Balkar Singh Virk, Advocate for filing suit in regard to changing of electricity connection. As per the defendant, her signatures were obtained on blank papers, not on stamp papers. So, Agreement to Sell is also on a simple paper not on stamp paper. Also, only adhesive stamps of Rs.25/- have been affixed on Agreement to Sell which shows that it was affixed later on. Moreover, stamp paper was purchased by plaintiff himself not by defendant, and that too seven days prior to date of execution of Agreement. These facts have been admitted by plaintiff in cross-examination as well as by Jagtar Singh. Further, even from the naked eye it is visible that the disputed signature Q3 on the register of Deed Writer allegedly of the defendant do not match with the standard signatures marked Q1 and Q2 as, in the disputed signatures handwriting expression the word 'A' is missing in the word 'Kaur'. This clearly means that the Register of Deed Writer wherein entry of said Agreement was made, was never signed by the defendant. Also, Lambardar where property falls, was not called at time of execution of Agreement. Rather, the plaintiff arrayed his own persons as marginal witnesses i.e. his brother Jagtar Singh, and his



brother-in-law Bohar Singh. Relevant findings of trial Court in this regard are in Para 33 of the judgment dated 23.10.2010, which reads as follows:-

“33. Further, I am very impressive with the arguments put forth by the learned counsel for the defendant that the agreement to sell itself is a false and fake document, being reason the story taken in defence by the defendant is that her signatures were obtained by one Sh. Balkar Singh Virk Advocate, for filing a suit in regard to changing of electricity connection. As per version of the defendant, her signatures were obtained on blank papers, not on stamp papers so, accordingly, the agreement to sell is also on a simple papers, not on stamp papers, as a general phenomena when both the parties with consent are going to execute an agreement to sell, then it has to be got scribed on a prescribed stamp papers, which were required worth Rs.300/- at that time but only adhesive stamps of Rs.25/- have been affixed on the agreement to sell, which shows that it was affixed later-on and it was also purchased by the plaintiff himself, not by defendant Raj Kaur and these factor has also admitted by plaintiff Sukhwinder Singh in his cross-examination as well as by Jagtar Singh in his cross-examination and even it was purchased seven days prior to the date of execution of the said agreement. I, think, as per settled rules, the stamp papers are required to be purchased on the name of person who execute in favour of the other. So, in this case if Raj Kaur defendant going to execute agreement to sell in favour of the plaintiff, then the stamp papers must be purchased by Raj Kaur but why plaintiff Sukhwinder Singh purchased the stamp papers. So, it means that the agreement to sell is prepared on a plain papers, whereon Sh.Balkar Singh Virk, Advocate got the signatures of the defendant. This factor can be corroborated from third disputed signatures of defendant Raj Kaur i.e. on the register of the deed writer Ex.D3. Both the parties got examined their respective expert witnesses i.e. PW6 Varun Gagneja examined by plaintiff and defendant examined DW1 Sanjiv Sharma. I, have gone through the respective reports of both these experts and find that usually the expert witness gives a report in favour of the party



who has engaged him and whenever diversion opinions are came of both the experts, then it is required to the court to form to its own opinion, after going through the observations given by both the expert witnesses. So, accordingly, I, find that if we see with a naked eye the disputed signatures Q3 on the register of the deed writer and find that the said signatures are not of the same person, who signed disputed signatures marked Q1 and Q2, apparently in that signatures, the handwriting expression and the word 'A' is missing in the word 'Kaur'. So, it means that the register of the deed writer, wherein the entry of the said agreement to sell was made, never signed by Raj Kaur defendant and if so, then the version of the defendant is fully established that the agreement to sell was got scribed on the blank papers whereon her signatures were obtained by Sh.Balkar Singh Virk, Advocate. Further more, what is the reason why the lambardar or any respectable person of the village where property falls not called at the time of agreement to sell, rather with the mala-fide intention, the plaintiff arrange his own persons as a marginal witnesses i.e. one his brother Jagtar Singh and hone his brother-in-law Bohar Singh. So, these factors show the conduct of the plaintiff how he managed or procured the fake and false agreement to sell."

20. From the above comprehensive discussion, it is clear that the Agreement was a fake document.

21. However, a perusal of the judgment dated 18.12.2012 of the first Appellate Court shows that none of the above said voluminous facts and findings have even been referred to, considered, let alone discussed or distinguished. In fact, the lower Appellate Court has totally ignored all the above said facts and findings; and granted money decree only on the ground that defendant had 'admitted' her signatures on the blank papers given by her to Balkar Singh Advocate; which implied that she had admitted



her signatures upon the Agreement. Reasoning of the first Appellate Court in this regard is as under: -

“16. The plea taken by the defendant that her signatures were procured on 4/5 blank papers by Balkar Singh Virk Advocate on the pretext of filing civil suit and said Advocate might have passed the said blank papers bearing the signatures of the defendant to the plaintiff and the plaintiff might have converted the same into impugned agreement to sell is not acceptable at all. No motive has been attributed to Balkar Singh Virk Advocate for joining the hands of the plaintiff in preparing a valuable document against the defendant. Moreover, had Balkar Singh Virk Advocate, been handed over the blank papers bearing the signatures of the defendant to the plaintiff and said blank papers were used for fabricating the impugned agreement to sell, the defendant would have never sit silent at home. Rather she would have approached the higher authorities including Bar Council for cancellation of the licence of the said Advocate. It is generally seen that parties entering into agreement to sell or contract are approaching the court taking the dishonest pleas just to frustrate the performance of the contract. If a person admits his signatures on some document, then the onus shifts on that person to prove that it was obtained on blank papers. However, there is nothing on the record showing that the signatures of the defendant were obtained on blank papers by Balkar Singh Virk, Advocate on the pretext of filing civil suit with regard to the motor installed in the suit property...”

22. It is my considered view that the above said reasoning of the learned first Appellate Court is conjectural and cannot be sustained. Especially as the first Appellate Court has totally failed to consider the above noted facts and findings on record and also given in the judgment of the trial court. Moreover, the first Appellate Court has simultaneously contradicted itself by observing in Para 17 of the impugned judgment dated



18.12.2012 that: "17....There is nothing on the record showing that signatures of the defendant were ever obtained on blank papers by Sh. Balkar Singh Virk, Advocate...". Thus, it is established that the Agreement to Sell was not a valid document as required under law.

23. Furthermore, refund of earnest money could not have been granted to the plaintiff in view of the fact that, in the first place the plaintiff has even been unable to prove payment of the earnest money itself. This has been admitted by the plaintiff in his cross-examination. The relevant extract of the cross-examination of plaintiff Sukhwinder Singh as PW1 (at page 89-101 of the LCR) is as follows: -

"...I went to Tehsil complex at 11 AM on the day of agreement. It is correct that Jagtar Singh and Bohar Singh witnesses were also with me and accompanied to me in the Tehsil complex. It is correct that Tehsil office was kept open and in working day in the Tehsil and number of document writer and large number of people were present on that day. I purchased the stamp paper for the agreement in question 7 days prior thereto from stamp vendor in the Tehsil Ferozepur. The said stamp vendor was lady whose name i do not know. Said lady is still working and is doing the work of sale of stamps paper in tehsil complex Ferozepur till today. The said stamp paper was worth of Rs. 25/- it is correct that at the time of purchased stamp paper a stamp worth of Rs. 300 was required for executing the said agreement. Volunteered said that stamp paper worth of Rs.25 has been purchased at the instance of defendant who had told me that both of us being related to each other a stamp worth of Rs.25/0 will suffice. It is correct that if the persons in whose name the stamp paper is purchased his presence at the time of purchases thereof, his name is recorded in the register of stamp vendor where he put the signature. Volunteered Raj Kaur herself told me purchase the stamp paper accordingly I



purchased the stamp paper and I waited to her at 3 PM but she did not turn up. It is correct that agreement to sell could not have been scribed before the arrival of Raj Kaur. Raj Kaur had reach the tehsil complex on the day I purchased the stamp paper. It is correct that none of the said witnesses i.e. Jagtar Singh and Bohar Singh was either numberdar or sarpanch or member panchayat of my village or any of other village. It is incorrect that at I and Jagtar singh my brother have been and residing together in the same residential haveli in village Basti Mohmad ali sha during the last seven years. As i had to arrange the balance sale consideration the said time gape about 1-1/2 years was fixed for execution of sale deed. I got the amount of earnest money from my Commission agent as sale proceeds of my paddy crops. No form J was issued to me by the said commission agent qua the sale of said paddy crop at the commission agency. I took Rs. 2 lakhs from my other commission agent at Faridkot 2/3 days prior but I do not know the name of the said commission agent. I sold the paddy crop with the said commission agent during the said crop at that time. I only went to that commission agent once and have not sold any crop thereafter in the said commission agent. I do not know if at the time of sale deed dt. 4.6.90 by Niranjn Singh infavour of Raj Kaur present defendant, an electric connection of 3 HP was also sold by said Niranjn Singh in our favour. Volunteered my brother Jagtar Singh had purchased the said electric connection from said Niranjn Singh. I cannot tell the date month and year when Jagtar Singh had purchased the said connection from Niranjn Singh. It is correct that Raj Kaur has filed a suit for permanent injunction against me qua the shifting or transfer of said connection and same remained pending earlier in this court and now same has been transferred to the court of Sh. Rupinderjit Singh, CJD, Ferozepur volunteered Raj kaur has filed said suit after filing of my present suit. I do not know if Raj kaur has engaged Sh. BS Virk Advocate to file the said suit on her behalf. It is correct that Raj kaur was a permanent resident of Chandigarh during the life time of her husband as he was employee of Mandi Board at Chandigarh. I do not



know if said BS Virk Advocate procured the signature of Raj kaur from her own blank papers as well as on the power of attorney on the pretext that she is permanent r/o Chandigarh...”
(Emphasis added)

24. Thus, in the admitted situation that the plaintiff was unable to prove the source of the earnest money, refund of the same could not have been ordered by the learned first Appellate Court. In passing the impugned judgment the learned first Appellate Court has also ignored the financial condition of plaintiff. It is proven on record that the plaintiff was not having any cash amount in hand with which he could have purchased 26 kanal 19 marla of land. Plaintiff failed to bring on record any evidence to prove that he was selling crop and if he was selling, he should have brought on record the J forms. However, none of these factors have been considered by the learned first Appellate Court in passing the impugned judgment.

25. In directing refund of earnest money, the learned first Appellate Court also lost sight of the fact that the plaintiff had failed to prove his readiness and willingness to perform the contract. The Hon'ble Supreme Court in '**R. Shama Naik vs. G. Srinivasiah**' **Law Finder Doc Id # 2670489**, has held that in order to establish readiness and willingness, two specific ingredients are required to be fulfilled: (a) presence in the Tehsil office; and (b) demonstrate availability of funds in time.

26. In the present case, although the plaintiff has produced Affidavit (Ex.P2) to prove his attendance in the Tehsil Office on 07.05.2004, however, not much credence can be given to the same as no one was



summoned from the Office of the Sub-Registrar to prove the said Affidavit of Attendance. The plaintiff has also been unable to prove availability of balance sale consideration. It has been candidly admitted by learned counsel for the plaintiff that the plaintiff had failed to prove his readiness and willingness to perform the contract.

27. In this situation, it would be apposite to refer to judgment of the Hon'ble Supreme Court in case titled as **Satish Batra vs Sudhir Rawal; 2013 (1) SCC 345**, wherein the Hon'ble Apex Court has held that when fault of the purchaser is proved, seller is entitled to forfeit earnest money. Similar view has been taken by this Court in case of **Gurjinder Singh vs. Paramjit Kaur and another (P&H), Law Finder Doc Id # 735945**, wherein in para-No. 9 of the judgment following questions were framed: –

“9. In the cross-objection, learned counsel for the cross objector has also framed substantial questions of law in the following manner:-

“i) Whether once the Courts have come to the conclusion that plaintiff is not ready and willing to perform his part of contract then, can the plaintiff be granted relief of recovery of earnest money?

ii) Whether clause in the agreement of the sale that if the purchaser fails to perform his part of the contract, the entire earnest money would stand forfeited, would come into play thereby dis-entitling the plaintiff from recovery of earnest money?

iii) Whether the Ld. Courts below erred in not ordering for registration of FIR against the appellant/plaintiff once it is proved that he has made interpolations in the



agreement of sale and signatures on Ex.P1 and Ex.P2 are different?" (Emphasis added)

28. The relevant question no. (ii) was answered in para 19 of the judgment as follows: –

"19. Since the plaintiff himself has violated terms and conditions of the agreement and was not found ready and willing to perform his part of contract, therefore, as per terms and conditions of agreement to sell the amount was liable to be forfeited and for that no separate notice was required to be served upon the plaintiff. Terms and conditions of the agreement to sell are applicable only after admitting the terms and conditions of the agreement to be in operation between the parties."

29. It is my considered view that in this proven circumstance, learned lower Appellate Court is in error in holding the plaintiff entitled to refund of earnest money. Reasoning of the learned lower Appellate Court in this regard is untenable also in view of the recent judgment of Hon'ble Supreme Court passed in ***Civil Appeal No. 3334 of 2023*** titled as ***Godrej Projects Development Limited v. Anil Karlekar, (SC): Law Finder Doc Id # 2690777, decided on 03.02.2025.***

30. Reference may also be made to recent judgment of the Hon'ble Supreme Court in ***Civil Appeal No.5822 of 2025*** titled as ***K.R.Suresh vs. R.Poornima, (SC), Law Finder Doc Id # 2725902, decided on 02.05.2025.***

The relevant paras of the said judgment are as under: -

"37. From the above exposition of law, it becomes amply clear that the amount of Rs. 20,00,000/- termed as "advance money" in the ATS, was essentially "earnest money". In other words, it was in the nature of a guarantee for the due



performance of the contract. In a fashion akin to earnest money, the said amount was paid at the very execution of the ATS. It was meant to be adjusted against the total sale consideration of Rs. 55,50,000/- if the transaction was carried out, which is evident from the ATS clause that states the balance sale consideration to be as Rs. 35,50,000/-. Further, it was liable to be forfeited in the event that the transaction fell through by reason of the default on part of the purchaser. Consequently, when the appellant purchaser failed to comply with the contractual stipulation of paying the balance sale consideration within a period of four months from the date of the agreement, the respondent nos. 1-4 (vendors) were justified in forfeiting the advance money.

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51. On a conspectus of the aforementioned authorities, it is evident that a clause for the forfeiture of earnest money is not penal in the ordinary sense, rendering Section 74 of the 1872 Act, inapplicable. In the present case, the stipulated amount under the ATS was in the nature of an earnest money deposit and thus, Section 74 of the 1872 Act cannot apply to the same. Further, the forfeiture clause was fair and equitable rather than one-sided and unconscionable, as it imposed liabilities on both the appellant purchaser and respondent-sellers, wherein the seller was obligated to pay twice the advance amount paid by the buyer in case of his default.

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64. For all the foregoing reasons, we have reached the conclusion that the forfeiture of advance money by the respondent nos. 1-4 was justified. In such circumstances, we are not inclined to grant the relief of refund of advance money to the appellant.”

31. Reference is also made to judgment passed by a Coordinate Bench of this Court in **“Narinder Kaur v. Jagmeet Singh, (Punjab And Haryana): Law Finder Doc Id # 2540183”**; wherein it is held that *“Earnest*



money paid at the time of execution of an agreement to sell can be forfeited if the buyer fails to prove readiness and willingness to perform his part of the contract.” The relevant paras of the said judgment are as under: -

“11. The trial Court dismissed the suit. The plaintiff filed first appeal. The First Appellate Court on re-appreciation of evidence came to a conclusion that the plaintiff has failed to prove that he remained ready and willing to perform his part of the contract, however, the First Appellate Court held that the plaintiff is entitled to claim refund of earnest money of Rs.2,00,000/-. The correctness of decree passed by the First Appellate Court is challenged in this appeal.

XXX XXX XXX

13. The learned counsel representing the appellant submits that the Appellate Court has erred in ordering refund of earnest money after recording finding that the plaintiff was not ready and willing to perform his part of the contract. He submits that it is not necessary in the agreement to sell to recite that if the plaintiff fails to perform his part of the contract, the amount of earnest money shall stand forfeited. He submits that this is inherent in the agreement to sell.

XXX XXX XXX

16. The earnest money at the time of execution of agreement to sell is paid to ensure that the parties perform their part of the contract. Such earnest money is a payment towards security for performance of the contract on the part of the proposed buyer. Once, the buyer fails to prove that he was ready and willing to perform his part of the contract, the amount of earnest money is liable to be forfeited.

*17. In fact, this issue has been examined in detail by this Court in **RSA-4920-2014, titled as "Ran Singh and others v. M/s C a pex Projects Pvt. Ltd.", decided on 28.03.2019** and in **RSA-1915-2016, titled as "Satnam Singh (since deceased) through his legal representative v. Paramjit Singh and others", decided on 19.04.2022.***

*18. A Larger Bench of the Supreme Court in **Maula Bux v. Union of India (1969) 2 SCC 554**, held that the earnest money is liable*



to be forfeited for breach of contract because it is the amount of penalty, which the buyer undertakes to forego once he fails to perform his part of contract.

19. Keeping in view the aforesaid discussion, the appeal is allowed. The judgment and decree passed by the First Appellate Court ordering refund of earnest money along with the interest is not sustainable. Hence, the same is set aside.”

32. Clearly, therefore, in view of the factual and legal position noted above, money decree could not have been granted in favour of the plaintiff.

33. It can also not be ignored that both the Courts below have drawn an adverse inference against the plaintiff in giving wrong address of the defendant in the proceedings before the Revenue Court for correction of the Khasra Girdawari. It can also not be ignored that undisputedly, FIRs (Ex.D6 and Ex.D7) have been registered against the plaintiff and other persons for getting fake and false Sale Deeds executed. Adverse inference has been drawn by the learned trial Court against the plaintiff in the following manner: -

“32...Further more, how the plaintiff is committed fraud with defendant Raj Kaur widow lady, Sukhwinder Singh filed an application for correction of khasra girdawari by mentioning the address of defendant Raj Kaur i.e. Basti Mohamad Shah Wali Dakhli Bhawara Azam Shah, whereas admittedly, she is not residing in the village nor at Ferozepur and these factum has been obviously admitted by Sukhwinder Singh as well as his brother Jagtar Singh in their respective cross-examination. Not so, the plaintiff again tried to commit a fraud with the defendant by giving her wrong address in the instant plaint i.e. Basti Gobind Nagari, Ferozepur City, where she is not residing



and plaintiff trying to get ex-parte decree just to usurp the property of the defendant. So, from this angle, the defendant has able to prove on the file that the plaintiff has committed a fraud with the plaintiff by procuring agreement to sell, which was never signed by the defendant.”.

34. From the above, it would not be far-fetched to infer that it was the clear intent of the plaintiff to dupe the defendant, and the Agreement was procured fraudulently.

35. It is further the case of the plaintiff that the Agreement to Sell was executed in the Tehsil Office and was scribed by the Deed Writer. However, the signature of the defendant on the Agreement to Sell (Ex.P1 - at page 246 of the LCR) do not tally with the signature of the defendant on the Register of the Deed Writer (Ex.P3 - at page 257 of the LCR). It has been correctly observed by the learned trial Court in this regard that a perusal of the said signatures shows that the disparity between the said signatures is visible to the naked eye. This would lend credence to the version of the defendant that she did not go to the Tehsil Office at all.

36. It is to be noted that even possession of the plaintiff over the suit property was not proven. It was the case of the plaintiff that he is in possession as a lessee on disputed property, prior to execution of Agreement to Sell. However, it has been admitted by the plaintiff in his evidence. that he has no writing in question for taking land on lease from defendant. He admitted FIR was got registered against him. The



documentary evidence reflected possession of plaintiff as Khasra Girdawari was wrongly got changed by plaintiff without notice to the defendant as plaintiff had deliberately given her wrong address. Further, plaintiff has admitted that stamp paper was purchased 7 days prior. Stamp papers worth Rs.300/- were required. In this regard cross-examination of PW4 (Document Writer) Arvinder Pal Singh is important. At page 4 of his cross-examination, he has deposed that before execution he told parties that stamp paper of worth Rs.300/- was required to be affixed but the party told him that it is their family matter and it hardly matters as to on lesser stamp paper of Rs.25/-. It is admitted that marginal witnesses of Agreement in question were neither Lambardar nor member of Panchayat or Sarpanch. Thus, the said Agreement to Sell was got prepared by plaintiff with connivance of Deed Writer Arvinder Pal. DW3 Manohar Singh, Registration Clerk deposed in his examination-in-chief that no document was registered in office of Sub-Registrar from 05.10.2002 to 07.10.2002 as per record brought by him, because there were holidays in Tehsil Office from 05.10.2002 to 07.10.2002 and no Deed Writers were available in office.

37. The Learned lower Appellate Court partly accepted the appeal filed by the appellant/plaintiff on the ground that scribing of impugned Agreement to Sell on simple paper and fixing of period of one-and-a-half year for execution of Sale Deed draws inference that said Agreement was not executed with an intention to sell land. Rather, it appears to have been



executed for some money transaction. So, appropriate relief in this case is for grant of money decree. Due execution of impugned Agreement to Sell has been proved by plaintiff – attesting witness as well as Scribe and there is nothing on record to discard their testimonies. The defendant failed to show that impugned Agreement to Sell (Ex.P1) was forged and fabricated and on blank paper bearing her signatures. However, as amply demonstrated above, the said reasoning of the learned first Appellate Court is faulty and conjectural and has been given without referring to the material facts, relevant evidence and law in this regard.

38. In view of the above discussion, RSA-1129-2013 titled as “Raj Kaur Vs. Sukhwinder Singh” filed by the defendant is **allowed**; and RSA-1486-2013 titled as “Sukhwinder Singh Vs. Raj Kaur” filed by the plaintiff is **dismissed**.

39. Pending application(s) if any also stand(s) disposed of.

09.09.2025

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No