

RSA-5776-2019(O&M)

2025.PHHC:106296



113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5776-2019 (O&M)
Date of decision : 23.07.2025

Gurmukh Singh & anr.

..... Appellants

Versus

Harbhajan Kaur

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Anurag Chopra, Advocate
for the appellants.

Mr. Vikas Gupta, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

1 Defendants are in second appeal. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellants as defendants and the respondent as plaintiff.

2 Plaintiff filed suit seeking decree of possession by way of specific performance of agreement to sell dated 19.08.2009. As per the case of the plaintiff, the defendants agreed to sell 10 marlas of land as detailed out in the plaint in her favour at the rate of Rs.40,000/- per marla. The agreement to sell was reduced to writing. An amount of Rs.2,36,000/- was paid by the plaintiff to the defendants as earnest money at the time of execution of agreement to sell. Parties agreed to get the sale deed executed and registered on or before 19.02.2010. On the said date, defendants approached plaintiff and sought extension of the date of execution of sale



deed on the pretext that they were to attend last rites of their relative in Uttar Pradesh. On request made by defendants date of execution of sale was extended to 19.08.2010. On 19.08.2010, again defendants sought extension of the date of execution of sale deed and requested plaintiff to pay Rs.1,00,000/-. Plaintiff paid Rs.1,00,000/-. Date of registration of sale deed was extended till 18.08.2011.

3 The plaintiff claims that on stipulated date, i.e. 18.08.2011, she remained present in the office of Joint Sub-Registrar from 9.00 AM to 5.00 PM. However, the defendants failed to execute the sale deed in her favour. After waiting for the defendants for whole day, she got an affidavit attested from the Executive Magistrate, Bhikhiwind, claiming that the defendants are in breach of the agreement, despite the fact that she always remained ready and willing to perform her part of the contract. Accordingly, the plaintiff prays for a decree of specific performance of the agreement to sell dated 19.08.2009.

4 Defendants contested the suit. Apart from raising objections, defendants claimed that they were in dire need of money of Rs.2,00,000/-. They approached the plaintiff in the year 2008 and requested her to lend money. Plaintiff agreed to pay the same to the defendants as a friendly loan. At the time of paying the said amount, defendants got their signatures on blank papers to secure the loan amount. It is those blank papers which have been now misused by creating agreement to sell in the month of June 2009. The defendants returned the money to the plaintiff in the presence of witnesses. Plaintiff, however, did not return the blank stamp papers



claiming that the same are not traceable. Defendants though denied execution of agreement to sell, but admitted signatures.

5 The suit filed by the plaintiff was put to trial by the Court of the First Instance, framing the following issues :-

“1. Whether the defendants executed legal and valid agreement dated 19.8.2009 to sell property in dispute in favour of plaintiff? OPP.

2. If issue no.1 is proved, whether plaintiff is entitled to possession of property in dispute dated 19.8.2009 by way of specific performance of agreement to sell? OPP.

3. Whether the plaintiff is entitled to consequential relief of permanent injunction, as prayed in the plaint? OPP.

4. Whether the agreement to sell in dispute dated 19.8.2009 is illegal, null and void, forged and fabricated document as alleged ? OPD.

5. Whether the present suit is not maintainable? OPD.

6. Whether the suit of plaintiff is not properly valued for the purpose of court fees and jurisdiction? OPD.

7. Whether the plaintiff has not come to the court with clean hands and suppressed material facts from this court? OPD.

8. Whether suit is bad for mis-joinder and non-joinder of the necessary parties? OPD.

9. Relief.”

6 Plaintiff tendered original agreement to sell dated 19.08.2009 in evidence as Ex.P1, original agreement/receipt dated 19.02.2010 Ex.P2, original agreement/receipt dated 19.08.2010 as Ex.P3. Attesting witness to the agreement to sell namely Ranbir Singh was examined as PW2. Defendants examined Gursewak Singh as DW1 and Sukhjinder Singh as DW2. The Court of First Instance decided Issues No. 1 to 4 together. After



analyzing the evidence on record, the Trial Court found that the defendants had examined DW2, a handwriting expert, who in his report opined that the signatures on the agreement to sell dated 19.08.2009 were not that of defendants. However, the said evidence is at variance with the stand taken by the defendants in the written statement and found that the plaintiff had successfully proved the execution of agreement to sell and agreement *qua* extensions in the date of execution of sale deed. The Trial Court further found that the plaintiff, having proved her readiness and willingness to perform her part of the agreement in question, is entitled for decree of specific performance.

7 Dissatisfied defendants preferred appeal. The Lower Appellate Court has affirmed the findings recorded by the Trial Court.

8 Mr. Anurag Chopra, learned counsel for the defendants, has assailed the findings recorded by the courts below. He submits that even if the execution of the agreement to sell is held to be proved, the endorsements regarding extensions of the date for execution of the sale deed remained unproved. In the absence of any cogent evidence on record to establish these extensions, the courts below erred in decreeing the suit filed by the plaintiff.

9 *Per contra*, counsel for the plaintiff submits that a concurrent finding of fact has been returned by both Courts regarding the execution of the agreement to sell and the readiness and willingness of the plaintiff to perform her part, after analyzing the evidence on record threadbare. He contends that re-appreciation of evidence is beyond the scope of a second appeal. He submits that the defendants have raised half hearted plea denying



execution of the agreement to sell even though they admitted their signatures on the document. No evidence was led by the defendants to prove their defence. Thus, the courts below rightly decreed the suit filed by the plaintiff.

10 I have heard learned counsel for the parties and have gone through the records of the case.

11 The plaintiff has propounded agreement to sell dated 19.08.2009. The plaintiff claims extensions in the date of execution of sale deed from 19.02.2010 to 19.08.2010, and thereafter from 19.08.2010 to 18.08.2011. Plaintiff further claims to have paid an earnest money of Rs.2,36,000/- at the time of execution of agreement to sell out of total sale, consideration of Rs.4,00,000/- and thereafter another amount of Rs.1,00,000/- on 19.08.2010, when the date was extended to 18.08.2011.

12 The defendants claimed that they borrowed a sum of Rs.2,00,000/- from the plaintiff and, at the time of lending the said amount plaintiff procured their signatures on blank papers, which have now been misused to propound the agreement to sell. Onus to prove execution of agreement to sell is on the plaintiff. Plaintiff tendered original agreement to sell Ex.P1 and proved the same by examining an attesting witness thereof. Defendants in order to prove their defence examined handwriting expert as DW2. As per the report of handwriting expert, DW2/A, the agreement to sell does not bear signatures of defendants. The said evidence is at variance with stand taken by the defendants in the written statement. Thus in the present case, the plaintiff proved execution of agreement to sell successfully whereas defendants failed to prove defence pleaded and could not dislodge



the evidence brought on record by the plaintiff.

13 Faced with the situation counsel for the defendants claims that the plaintiff was required to prove source of funds and her capacity to pay a sum of Rs.2,36,000/- as claimed at the time of execution of agreement to sell. There being no evidence to prove the source of funds, the findings recorded by the Court below cannot be sustained. The plea raised is against record. Once defendants themselves pleaded of having borrowed a sum of Rs.2,00,000/- from the plaintiff, they cannot be allowed to question her capacity to pay a sum of Rs.2,36,000/- in the regular second appeal.

14 Plaintiff successfully proved execution of agreement to sell and the extension of date for execution of sale deed up to 18.08.2011. She has also proved her willingness to perform her part by proving affidavit Ex.P4 demonstrating her presence in the Office of Joint Sub-Registrar on the target date. The present suit was instituted on 02.01.2012. Out of total sale consideration of Rs.4,00,000/- major amount of Rs.3,36,000/- already stand paid. In view of aforesaid facts and circumstances, no fault can be found with the findings recorded by Courts below regarding readiness and willingness of the plaintiff.

15 As a sequel of discussion held hereinabove, this Court finds that the Courts below rightly decreed the suit filed by the plaintiff, granting her the main relief of specific performance of agreement to sell dated 19.08.2009. Finding no merit in the present appeal, the same is ordered to be dismissed.

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16 Pending miscellaneous application, if any, also stands disposed off.

23.07.2025

Pooja Sharma-I

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No