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

RSA-1065-1993 (O&M)

Date of Decision : 11.02.2025

Samundar Singh ... Appellant(s)

Versus

Nagar Singh & Anr. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. A.K. Khunger, Advocate for the appellant.

Mr. G.C. Dhuriwala, Advocate and
Mr. Sachit Jaiswal, Advocate for respondent No.1.

Service of respondent No.2 dispensed with
vide order dated 10.01.1994.

ALKA SARIN, J. (Oral)

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 04.02.1993 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a suit for specific performance of an agreement to sell dated 08.01.1987 regarding suit land measuring 21 kanals 7 marlas situated within the revenue limits of village Kuharianwali, Tehsil and District Fazilka and in the alternative for a decree of recovery of ₹56,000/-. It was averred in the plaint that the defendant-respondent No.1 had entered into an agreement to sell dated 08.01.1987 qua land measuring 21 kanals 7 marlas for a total sale consideration of ₹64,500/- and he had received ₹28,000/- as earnest money. The target date was fixed as 06.04.1987. On 06.04.1987 the plaintiff-appellant came to the office of the Sub-Registrar, Fazilka with the

requisite money but the sale deed could not be executed since the defendant-respondent No.1 failed to turn up. It was further averred that the plaintiff-appellant was always ready and willing to perform his part of the contract. The suit was contested by the defendant-respondent No.1 *inter alia* raising the plea that the plaintiff-appellant was a money lender and was in the habit of procuring agreements to sell from his debtors to ensure the repayment of the amount advanced to them. It was further averred that a loan had been taken on 29.09.1983 and in this regard, the plaintiff-appellant procured an agreement on that day. After adding interest to that loan amount, the plaintiff-appellant also obtained another agreement to sell dated 29.05.1985 which was got written from Vinod Kumar Chhabra, Advocate, Fazilka. Even thereafter, the loan could not be repaid and the plaintiff-appellant fabricated the impugned agreement to sell. Replication was filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the defendant executed the agreement to sell on 8.1.1987 and received an amount of ₹28000/- as earnest money ? OPP
2. Whether the defendant took ₹28000/- as a loan and the plaintiff got his signatures in this connection on papers, if so to what effect ? OPD
3. Whether the suit is bad for non-joinder of the owner of the suit property ? OPD
4. Whether the plaintiff has been ready and willing to perform his part of the contract ? OPP
5. Whether the plaintiff is entitled to a decree for specific performance of the contract of agreement to sell in question ? OPP

5-A. If the relief of specific performance is declined, whether the plaintiff is entitled to recover any amount, if so, its quantum ? OPP

6. Whether the plaintiff is entitled to a decree for injunction restraining the defendant from alienating the suit property in favour of any body except the plaintiff ?
OPP

7. Relief.

3. The Trial Court vide judgment and decree dated 30.10.1990 dismissed the suit filed by the plaintiff-appellant. Aggrieved by the same, an appeal was preferred by the plaintiff-appellant before the First Appellate Court which appeal was partly allowed granting the alternative relief of recovery of ₹56,000/- vide judgment and decree dated 04.02.1993. Hence, the present regular second appeal by the plaintiff-appellant.

4. Learned counsel for the plaintiff-appellant states that the First Appellate Court had upheld the agreement to sell, however, instead of decreeing the suit for specific performance, decreed it only for recovery of ₹56,000/-. The learned counsel further states that the reason for granting a decree of recovery was that it was observed by the First Appellate Court that the counsel had abandoned the claim regarding specific performance. It is further the contention of the learned counsel that a specific ground has been raised in the grounds of appeal that an application for review of the judgment was filed before the learned District Judge for deletion of the said observations from the judgment.

5. *Per contra* the learned counsel for respondent No.1 has contended that the relief was granted as per the statement made by the learned counsel for the plaintiff-appellant before the First Appellate Court.

6. I have heard the learned counsel for the parties.

7. In the present case the argument of the learned counsel for the plaintiff-appellant that the suit was decreed only for alternative relief on the basis of an alleged statement which was never made by the counsel for abandoning the claim deserves to be rejected. A specific ground taken in the grounds of appeal is that a review application had been filed before the learned District Judge qua the deletion of those observations. A perusal of the original record which has been requisitioned from the Trial Court and the First Appellate Court reveals that no such application was filed before the First Appellate Court. There is no other ground/reason argued by the learned counsel for the plaintiff-appellant for disbelieving the statement made before the First Appellate Court.

8. In view of the above, no fault can be found with the judgment and decree passed by the First Appellate Court. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off. Original record be remitted to the Court concerned after retaining a scanned copy.

11.02.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO