

**In the Court of Sh. Sham Lal, Addl. District Judge, Sangrur.
(UID No.PB0123).**

CA No.	68 of 16.10.2017.
CNR No.	PBSG01-008339-2017.
Reg. No.	440-2017.
Decided on	26.08.2019.

1. Mohinder Singh son of Piara Singh son of Sobha Singh resident of village Khanpur, Tehsil Malerkotla (deceased), now represented by his legal heirs (i) Balraj Singh aged about 26 years, (ii) Navjot Singh aged about 24 years sons of Late Swaran Singh son of Mohinder Singh, (iii) Harbhajan Singh aged about 52 years son of Mohinder Singh, all residents of village Khanpur, Tehsil Malerkotla, District Sangrur.

....Defendant/appellants.

Versus

1. Avtar Singh son of Gurmail Singh resident of village Satta Bazaar, Malerkotla.

2. Rampreet Singh son of Jagmail Singh resident of village Khanpur, Tehsil Malerkotla (deceased) now represented by his legal heir Jagmail Singh son of Mohinder Singh resident of village Khanpur, Tehsil Malerkotla, District Sangrur.

...Plaintiff/respondents.

3. Jaljit Kaur daughter of Mohinder Singh, resident of village Khanpur, Tehsil Malekrkotla, District Sangrur.

..Defendant/respondent.

Appeal against judgment and decree dated 13.09.2017 passed by the Court of Ms. Preeti Sukhija, PCS, Additional Civil Judge (Sr. Divn.), Malerkotla, whereby suit of plaintiffs was decreed with costs.

Present: Shri B.K.Goyal Advocate, counsel for appellants/defendant.
Shri Ajay Aggarwal Advocate, counsel for respondents No.1 and 2.
Respondent No. 3 exparte.

JUDGMENT

1. Appellant/defendant Mohinder Singh since deceased through his legal representatives has filed present appeal against judgment and decree dated 13.09.2017 passed by the Court of Ms. Preeti Sukhija, PCS, Additional Civil Judge (Sr. Divn.), Malerkotla, whereby suit of respondent/plaintiffs was decreed, with a request to set-aside the impugned judgment and decree and suit of the plaintiffs be dismissed with costs.

2. Consequent upon notice, plaintiffs/respondents No. 1 and 2 appeared through their counsel and contested the appeal, whereas defendant/respondent No. 3 was proceeded against exparte vide order dated 27.11.2017.

3. Record of learned Court below was requisitioned.

4. Brief facts of the case are that respondent/Plaintiffs Avtar Singh and Ram Preet Singh have filed a suit for possession by way of specific performance of agreement to sell dated 01.07.2013 along with alternative relief of recovery of ₹ 60,00,000/- and suit for permanent injunction against defendant Mohinder Singh for restraining him from alienating the suit land in any manner to anyone, on the ground that defendant Mohinder Singh being owner in possession of suit land

measuring 17 Bigha out of land measuring 21 Bigha 8 Biswas, comprised in khasra No. 355/7-10, 356/7-10, 57/6-8 situated in the revenue estate of village Khanpur, Tehsil Malerkotla, executed an agreement to sell dated 01.07.2013 for consideration of ₹2,30,000/- per Bigha after receiving a sum of ₹30,00,000/- as an earnest money in the presence of witnesses and sale deed was agreed to be executed upto 13.08.2013. Plaintiff has always been ready and willing to perform his part of agreement to sell dated 01.07.2013 and he is still ready and willing to perform the same. Plaintiff by tendering the remaining consideration and other amount to meet with the expenses of execution of registration of sale deed requested the defendant number of times to execute the sale deed of the suit land in their favour and deliver the possession of the land to them as per agreement to sell dated 01.07.2013, but the defendant has been putting up the matter on one pretext or the other. Plaintiffs went to the office of Sub Registrar Malerkotla on 13.08.2013 along with the remaining consideration amount and the expenses to be incurred on the registration of the sale deed to get the sale deed executed and registered, but the defendant did not turn up to execute registered sale deed in favour of plaintiffs and plaintiffs got their presence marked by swearing an affidavit in this regard before Executive Magistrate/Sub Registrar, Malerkotla on 13.08.2013. Plaintiffs are entitled to get the relief of specific performance of agreement to sell dated 01.07.2013 as the defendant did not execute registered sale deed in favour of plaintiff despite their readiness and willingness. It is further averred that in case the Hon'ble

Court comes to the conclusion that relief of specific performance of agreement to sell could not be granted to the plaintiffs then the plaintiffs are entitled to get the alternative relief of recovery of ₹ 60,00,000/- i.e. 30,00,000/- as an earnest money paid by them to the defendants and ₹30,00,000/- as damages from the defendant along with pendentelite and future interest @ 2% per month from the date of filing the suit till its realization. Plaintiffs requested the defendants number of times to execute registered sale deed in their favour and to deliver the possession of the suit land to them, but the defendant has not given any heed to it and rather gave a threat to alienate the suit property which he has no right to do so. Hence this suit.

5. Upon notice, defendant appeared and contested the suit by filing written statement, in which he has averred that he is neither executed agreement to sell for the sale of the suit land in favour of the plaintiffs nor he has received any earnest money from them. He has not made any representation to the plaintiffs. As such, question of readiness of the plaintiffs to purchase the suit land as alleged does not arise. The alleged signatures on the agreement to sell are not of the defendant rather the disputed signatures on the alleged agreement to sell dated 01.07.2013 is a clear cut piece of copied forgery as opined by the handwriting and finger print expert who had compared the disputed signatures on the agreement to sell with the standard signatures of defendant appearing on the mortgage deed No. 3621 dated 15.03.2013 and vakalatnama filed by the defendant in this case after getting the permission of the court. Plaintiff in connivance with the marginal

witnesses who are their own persons have created a false agreement to sell just to grab the suit land of the defendant. When the agreement to sell was not executed in favour of plaintiffs then the question of readiness and willingness does not arise. Defendant is owner in possession of the suit property and he has every right to deal with it in any manner he likes. Plaintiffs have no concern whatsoever with the suit property. Rest all the allegations of the plaint were denied to be incorrect and it was prayed that suit of the plaintiffs may kindly be dismissed with costs.

6. Replication was filed in which all the averments of the written statement have been denied and those of the plaint have been reiterated. Out of the pleadings of the parties, following issues were framed by the learned Court below on 08.08.2016 :-

1. Whether the plaintiffs are entitled to possession by way of specific performance of agreement to sell dated 01.07.2013 as prayed for? OPP
2. Whether the plaintiffs were and ready and willing and they are still ready and willing to perform their part of contract? OPP
3. Whether the plaintiffs are entitled to the relief of permanent prohibitory injunction as prayed for? OPP
4. Whether the suit is not legally maintainable? OPD
5. Whether the agreement to sell dated 01.07.2013 is forged and fabricated document? OPD
6. Relief.

7. To prove the case, plaintiffs examined attesting witness Ranvir Singh as PW-1, Shri Navdeep Gupta, Handwriting and finger print expert as PW-2, Harpreet Sharma, Registry Clerk as PW-4, attesting witness Darshan Singh as PW-5 and plaintiff Avtar Singh came into the witness box as PW-3. Thereafter, learned counsel for the plaintiffs closed the evidence by producing copy of Jamabandi for the year 2009-10 Ex.P7 and statement of account dated 08.08.2013 to 14.08.2013 Ex.P8.

8. During the pendency of the suit, plaintiff No.2 Ramanpreet Singh died and his legal representative Jagmail Singh was brought on record vide order dated 19.02.2015. Defendant Mohinder Singh has also expired and his legal representatives were brought on record vide order dated 02.12.2015.

9. Against this, one of the legal representative Harbhajan Singh himself came into the witness box as DW-1 and examined Dr. Vikram Raj Singh Chauhan as DW-2 and thereafter learned counsel for the legal representatives of deceased defendant closed the evidence after producing the certified copy of Judgment dated 19.01.2011 Ex.D1 and certified copy of decree sheet dated 19.01.2011 Ex.D2.

10. After hearing learned counsels for both the parties and going through the evidence and documents on the file, learned Court below decreed the suit of the plaintiffs for Specific Performance of agreement to sell vide Judgment and decree dated 13.09.2017.

11. Feeling aggrieved by the aforesaid judgment and decree dated 13.09.2017, legal representatives of deceased defendant Mohinder Singh filed the present appeal.

12. I have heard learned counsels for both the parties and have also gone through the record of Ld. Court below.

13. Learned counsel for appellant/defendant has argued with stress that learned court below has not appreciated the evidence and legal proposition properly and committed an error while passing the decree for Specific Performance of agreement to sell on the basis of surmises and conjectures despite the fact that execution of the said agreement to sell dated 01.07.2013 by defendant Mohinder Singh since deceased in favour of plaintiffs has not been got proved by plaintiffs by leading cogent and convincing evidence on the file. The alleged agreement to sell is forged and fabricated document, got prepared by the plaintiffs in connivance with the attesting witnesses by forging the signatures of the defendant as according to the opinion of hand writing and finger print expert Dr. Vikramraj Singh Chauhan DW-2, it is a case of copied forgery as the disputed signatures of Mohinder Singh in urdu on the agreement to sell dated 01.07.2013 marked as Q1 is not corresponding with the standard signatures of Mohinder Singh on the vakalatnama in favour of Shri Kuljit Singh Waraich dated 05.09.2013 marked as S1 and on the mortgage deed dated 15.03.2013 marked as S2 and S3. He has further submitted that agreement to sell was not scribed by the regular deed writer and the scribe was not got examined by the plaintiffs to prove its execution. It is further contended by him

that both the attesting witnesses are close friends of plaintiffs and both of them hail from different village than that of the village where the suit land is situated and the plaintiffs and defendant hail. Therefore, no reliance can be placed on the testimony of said attesting witnesses PW-1 Ranvir Singh and PW-5 Darshan Singh. He has also argued that agreement to sell was not scribed on the stamp paper and both the attesting witnesses made contradictory statements with regard to the execution of the said agreement to sell. Therefore, when the execution of the agreement to sell has not been proved, then the question of readiness and willingness does not arise and the defendant Mohinder Singh since deceased through his LRs cannot be held liable to execute registered sale deed in favour of plaintiffs on the basis of said agreement to sell. Therefore, it is prayed, that appeal filed by the appellant/defendant may kindly be allowed with costs and suit of the plaintiffs be dismissed throughout. He has also placed reliance upon Richhpal Singh Vs. Sandhura Singh 2013(3) CCC 242 (P&H), Bhajan Singh Vs. Kartar Singh 2018(2) RCR(Civil) 300 (P&H) and Mugla (since deceased) through LRs and O' Vs. Ram Narain son of Shri Shivdhan & Anr. 2014(Suppl) CCC 277 (P&H).

14. On the other hand, learned counsel for the respondent/plaintiffs has argued that learned court below has rightly and legally decreed the suit of the plaintiffs by appreciating the evidence and legal prepositions properly. Defendant Mohinder Singh since deceased himself had executed an agreement to sell dated

01.07.2013 for the sale of the land measuring 17 Bigha out of land measuring 21 Bigha 8 Biswas situated in the revenue estate of village Khanpur at the rate of ₹2,30,000/- per Bigha after receiving a sum of ₹30,00,000/- as an earnest money and sale deed was agreed to be executed and registered up to 13.08.2013, but the defendant did not execute registered sale deed in favour of plaintiffs despite their readiness and willingness as proved by plaintiffs on the file by examining attesting witnesses Ranvir Singh PW-1, Darshan Singh PW-5, Shri Navdeep Gupta, Handwriting and Finger Print expert PW-2 and plaintiff Avtar Singh PW-3. The earnest money was paid by the plaintiffs to the defendant in the house after arranging by way of selling their land vide registered sale deed dated 24.06.2013 Ex.P4 proved on file by the registration clerk Harpreet Sharma PW-4. It is further contended by him that plaintiffs were always ready and willing and they are still ready and willing to perform their part of contract. The remaining consideration amount was available with the plaintiffs as per statement of account of plaintiff Avtar Singh w.e.f. 08.08.2013 to 14.08.2013 Ex.P8. There is no illegality in the Judgment and decree in question passed by the learned court below and as such appeal filed by the appellant/defendant may kindly be dismissed with costs as it is not the requirement of the law that the scribe should be examined to prove the execution of agreement to sell or that the scribe should be examined to prove the execution of the agreement to sell or that the attesting witnesses of the agreement to sell should have hailed from the same village from which the parties hail and the suit land is situated. In this

regard he has placed reliance upon Kuljeet Singh Versus Lakhvir Singh 2011(1) Land.L.R. 660 (P&H), Madan Lal Versus Om Parkash 2011(1) Law Herald 652 (P&H), Surjeet Singh Versus Kuljeet Kaur 2016(3) RCR(Civil) 906, Jamaluddin versus Ram Avtar and Anr. 2011(2) Law Herald 1275 (P&H), Balbir Singh Versus Sham Singh and Ors. 2015(4) PLR 586 (P&H), Satnam Singh and Anr. Versus Rachpal Singh and Ors. 2018(1) RCR(Civil) 101.

15. Respondent/plaintiffs Avtar Singh and Rampreet Singh sought the relief of possession by way of specific performance of agreement to sell dated 01.07.2013 for the sale of land measuring 17 Bigha out of the land measuring 21 Bigha 8 Biswas comprised in Khasra Nos. 355/7-10, 356/7-10, 357/6-8 situated in the revenue estate of village Khanpur by defendant Mohinder Singh (since deceased) in their favour @ 2,30,000/- per Bigha after receiving a sum of ₹30,00,000/- as an earnest money by filing the present suit on the ground that defendant did not execute registered sale deed in their favour despite their readiness and willingness to get executed the sale deed in their favour as per agreement to sell dated 01.07.2013. Defendant denied the execution of the agreement to sell by alleging that it is a forged and fabricated document got prepared by the plaintiffs with the connivance of attesting witnesses and no earnest money was paid to the defendant by the plaintiffs under the said agreement by alleging that the agreement to sell does not bear the signatures of the defendant and the alleged signatures of the defendant on the agreement

to sell is copied forgery as per opinion of the handwriting and finger print expert Dr.Vikram Raj Singh Chauhan.

16. In order to prove the execution of agreement to sell dated 01.07.2014, plaintiffs examined both of its attesting witnesses namely Ranvir Singh PW-1 and Darshan Singh PW-5. Both of them are consistent in their statements regarding date, time, place and the manner in which agreement to sell was executed by the defendant in favour of plaintiffs for the sale of land measuring 17 Bigha at the rate of ₹2,30,000/- per Bigha after receiving a sum of ₹30,00,000/- as earnest money in their presence. The discrepancies in the statements of above named attesting witnesses by the counsel for the appellant/defendant brought to my notice with regard to the presence of plaintiff Avtar Singh alongwith Mohinder Singh defendant at the time of getting the agreement to sell scribed and the copy of the said agreement to sell attested from Tehsildar as PW-1 Ranvir Singh stated that agreement to sell was got scribed by Mohinder Singh and Avtar Singh from Malerkotla courts whereas PW-5 has stated that Mohinder Singh got scribed the agreement to sell and Avtar Singh was present in the house at that time and PW-1 has nowhere stated about getting of said agreement to sell attested from Tehsildar, whereas PW-2 has stated that said agreement to sell was got attested from Tehsildar, are not sufficient to discard their entire testimony, as such type of discrepancies being minor in nature are bound to occur with the passage of time. Agreement to sell was scribed on 01.07.2013 whereas statements of PW-1 and PW-5 were recorded on 22.11.2016 and

21.4.2017 respectively. The human memory is very short and it can not be expected from a person to depose at verbatim about a fact after such a long period of about four years.

17. It is correct that plaintiff has not examined scribe from whom the said agreement to sell was got scribed by Mohinder Singh and the name of the scribe has not been mentioned on the said agreement to sell but it is not the requirement of the law that the agreement to sell should be got scribed from the regular deed writer and the name of the scribe should have been mentioned underneath the said agreement to sell. It is also not the requirement of the law that in order to prove the execution of the agreement to sell, its scribe or stamp vendor from whom the stamp papers to execute the agreement to sell were purchased should have been examined. In this regard reliance can be placed upon the Judgment of our own Hon'ble Punjab & Haryana High Court reported in **2011(1) Land .L.R. 660 titled as Kuljeet Singh Versus Lakhvir Singh** wherein Hon'ble High Court has held that evidence of witness cannot be rejected merely because he happens to be relation or associated with party. There is no such requirement in law, that stamp vendor or scribe is also required to be examined to prove the agreement, once the agreement is proved by the attesting witnesses, who stood the test of cross examination. In **Balbir Singh Versus Sham Singh and o ₹ 2015(4) PLR 586**, Hon'ble Punjab & Haryana High Court has also held that even non-examination of the scribe of the agreement to sell would not be vital once the appellant-defendant No.1 has failed to lead any evidence to disprove the thumb

impression on the agreement. In Satnam Singh & Anr. Versus Rachpal Singh and O ₹ 2018(1)RCR(Civil) 101, Hon'ble Punjab and Haryana High Court has also held that the objection that the scribe of the deed was not registered deed-writer and name of stamp vendor was not mentioned on the agreement to sell, held to be totally irrelevant and it is also totally immaterial that the attesting witness was an interested witness.

Thus as per the ratio of the above said Judgments, mere non examination of the scribe and non mentioning the name of the scribe and stamp vendor underneath the agreement itself is no ground to discard the testimony of attesting witnesses who have categorically proved the execution of the agreement to sell executed by defendant Mohinder Singh in favour of plaintiffs in their presence by identifying the signatures of Mohinder Singh and plaintiff Avtar Singh and Ram preet Singh on the agreement to sell dated 01.07.2013. No doubt the agreement to sell was got scribed by Mohinder Singh in their absence as according to the statement of PW-1 and PW-5, the said agreement to sell was got scribed by Mohinder Singh from Malerkotla courts, but they have categorically stated in their statements on oath that Mohinder Singh appended his signatures on the agreement to sell in their presence and the earnest money was also paid by plaintiffs to Mohinder Singh in their presence. It is correct that both the attesting witnesses hail from different villages than that of the village of plaintiffs and defendant as the plaintiffs and defendant are resident of village Khanpur, whereas attesting witnesses are resident of Hakimpura and

the suit land is also situated at village Khanpur, but it itself does not cast any cloud of suspicion upon the execution of the agreement to sell as it is nowhere prescribed that the attested witness has to be a person belonging to the same village from where parties hail and the suit land is situated. Our own Hon'ble Punjab & Haryana High Court in **Satnam Singh's case (supra)** has held that the argument of learned counsel for the appellants that the attesting witness was an interested witness, is also to be noticed only to be rejected. In a case of agreement to sell, it is nowhere prescribed that the attesting witness has to be a person not interested in favour of the person in whose favour the agreement has been executed. The plaintiff can examine only that witness in the Court who has attested the agreement as attesting witness. Therefore, it is totally immaterial for the proof of the agreement to sell that a witness was interested witness. Such a witness comes to the court not as a representative of the plaintiff but as a witness who had put his signatures on the agreement as a mark of witnessing the factum of execution of the agreement. Therefore, testimony of the attesting witness cannot be excluded simply on the ground that the witness was an interested witness.

18. The facts of **Richhpal Singh's case (supra)** and **Bhajan Singh's case (surpa)** on which appellant/defendant placed reliance are not applicable to the facts of the present case as in the present case both the attesting witnesses have categorically proved the execution of the agreement to sell executed by defendant in favour of the plaintiffs by receiving a sum of ₹ 30,00,000/- as an earnest money for the sale of the

suit land @ Rs2,30,000/- per Bigha in their presence as discussed above and as such the non examination of the scribe by the plaintiffs is not fatal to the case of the plaintiffs as held in Kuljeet Singh 's case (supra) referred to above.

19. Defendant though alleged that agreement to sell does not bear his signatures and his signatures on the agreement to sell is copied forgery as observed by Handwriting and Finger print expert by getting compared the disputed signatures of Mohinder Singh on the agreement to sell with his standard signatures on vakalatnama dated 05.09.2013 and mortgage deed dated 15.03.2013, but the defendant has failed to prove the said mortgage deed dated 15.03.2013 from where the signatures of defendant Mohinder Singh marked as S2 and S3 were obtained by handwriting and finger print expert Dr.Vikram Raj Singh Chauhan for comparison with disputed signatures of Mohinder Singh on agreement to sell dated 01.07.2013 and as such, when the standard signatures of Mohinder Singh mark S2 and S3 with which the disputed signatures of Mohinder Singh on agreement to sell dated 01.07.2013 was compared by handwriting and finger print expert Dr. Vikram Raj Singh Chauhan DW-2 has been got proved by the defendant on the file then no reliance can be placed on the report of handwriting and finger print expert Ex.DW2/A got examined by the defendant as DW-2. Moreover, handwriting and finger print expert DW-2 has admitted in his cross examination that he has not taken any standard signatures from written statement, affidavit, reply, applications present in the judicial file and the natural variation are bound to occur in the

signatures of genuine person if written at once and the same time. He has also stated that there are no overwriting, indentation mark, carbon of pencil particles in the strokes of the disputed signatures Q1. He has also failed to point out unnecessary pen lifts, careful joining, hesitation, careful re-touchings, unused pen pauses in any letter of the name of Mohinder Singh in disputed signatures of agreement to sell dated 01.07.2013 Ex.P2 in his report. Generally while copying the signatures of other person, the person who copied the signatures of some other person leave symptoms of re-touching, unused pen pauses, careful joining and hesitation. Thus when there is no such symptom of forgery as observed by the handwriting and finger print expert DW-2 while comparing the signatures of Mohinder Singh on agreement to sell dated 01.07.2013 with his standard signatures on vakalatnama dated 05.09.2013, then it cannot be said that disputed signatures Q1 on agreement to sell is copied forged signatures of Mohinder Singh. Plaintiffs examined hand writing and finger print expert Shri Navdeep Gupta, PW-2 who has compared the disputed signatures of Mohinder Singh dated 01.07.2013 marked as Q1 with his standard signatures already marked as S1 on vakalatnama dated 05.09.2013 in favour of Shri Kuljit Singh Warraich Advocate and also with the standard signatures marked as A1,A2 on the written statement dated 12.02.2014, A3, A4 on the affidavit dated 06.01.2014 to written statement, A5, A6 on the reply dated 12.02.2014 and A7 on the application dated 01.11.2013 and found that the disputed signature marked as Q1 and

the standard signatures marked as S1 and A1 to A7 are of the same person Mohinder Singh.

20. Further more, when both the attesting witnesses PW-1 and PW-5 in whose presence the agreement to sell was executed by Mohinder Singh in favour of plaintiffs have categorically stated in their statements on oath that Mohinder Singh appended his signatures on the agreement to sell in their presence after admitting the same to be correct and the defendant has failed to shelter their testimony despite cross examination them, then it cannot be said on the basis of the report of handwriting and finger print expert Shri VikramRaj Singh Chauhan DW-2 that the signatures of Mohinder Singh on the agreement to sell dated 01.07.2013 is copied forged signatures.

21. Defendant Harbhajan Singh has admitted in his cross examination that he has no enmity with attesting witness Darshan Singh and Ranvir Singh. Thus when the defendant was having no enmity with attesting witnesses, then it cannot be believed that attesting witnesses gave evidence in favour of plaintiffs in order to harass the defendant and to grab his property.

22. So far as the availability of earnest money with the plaintiffs on 01.07.2013 is concerned, plaintiffs have proved on file sale deed dated 24.06.2013 whereby their father Jagmail Singh and Gurmail Singh sons of Mohinder Singh residents of village Khanpur sold land measuring 5 Bigha to M/s G. N. Agro Foods Village Khanpur for consideration of ₹14,37,500/- by examining registration clerk PW-4 Harpreet Sharma. Avtar Singh plaintiff PW-3 though stated that they

have not withdrawn any amount from the bank, but he has categorically stated that amount was arranged by them as their father sold land and the defendant DW-1 Harbhajan Singh has also admitted in his cross examination that his brothers Gurmail Singh and Jagmail Singh were having 8½ Bigha at village Khanpur which they have sold to the sheller. So it cannot be said that plaintiffs were not having earnest money to pay the same to the defendant at the time of execution of agreement to sell dated 01.07.2013 Ex.P2. Thus it cannot be said the agreement to sell Ex.P2 was not executed by Mohinder Singh defendant since deceased himself in favour of plaintiff for a sale of his land measuring 17 Bigha out of land measuring 21 Bigha 8 Biswas by receiving the sum of ₹30,00,000/- as an earnest money.

23. Plaintiffs have also proved their readiness and willingness to get executed registered sale deed in their favour on the basis of agreement to sell dated 01.07.2013 by getting affidavit dated 13.08.2013 Ex.P5 sworn by them before Executive Magistrate Malerkotla in which they have categorically mentioned that they came to the office of Sub Registrar Malerkotla to get the sale deed executed in their favour as per agreement to sell dated 01.07.2013 alongwith remaining sale consideration and the expenses to be incurred on the execution of the registered sale deed, but the defendant did not turn up to execute the registered sale deed in their favour. The said affidavit was got proved by plaintiffs by examining Avtar Singh plaintiff PW-3 and attesting witness Darshan Singh PW-5. Plaintiffs have also produced on file statement of bank account of Avtar Singh w.e.f.

08.08.2013 to 14.08.2013 Ex.P8 to prove that the remaining consideration amount was available with the plaintiffs at the time of execution of the registered sale deed as his account was having ₹9,94,731/- on 13.08.2013. It is correct that Gurmeet Singh and Jagga Singh filed a suit for permanent injunction against Mohinder Singh and Swaran Singh on 25.08.2008 which was dismissed for want of prosecution when Gurmeet Singh and Jagga Singh had failed to lead evidence as is apparent from copy of Judgment dated 19.01.2011 and copy of decree sheet Ex.D1 and Ex.D2, but the filing of the said suit by the father of plaintiffs against Mohinder Singh and another for restraining the defendant from alienating the land measuring 28 Bigha 18 Biswas including the suit land itself is not sufficient to presume that the agreement to sell dated 01.07.2013 was not executed by defendant Mohinder Singh himself in favour of the plaintiffs, as the said civil suit is not sufficient to prove that the relations of Mohinder Singh with the father of plaintiffs was so strained that Mohinder Singh could not execute agreement to sell for the sale of his land measuring 17 Bigha in favour of the plaintiffs. Hence I do not find any force in this contention of learned counsel for the appellant/defendant.

24. It is correct that our Hon'ble Punjab & Haryana High Court in Mugla's case (supra) on which appellant/defendant placed reliance has held that it shall not be possible to grant a decree merely because it is lawful to do so. Court is entitled to look into the contract of parties. Truth of the contentions of plaintiff and balance of equities obtained greater relevance in suit for specific performance. In

the present case, plaintiffs have proved the execution of the agreement to sell dated 01.07.2013 executed by defendant (since deceased) in their favour after receiving a sum of ₹ 30,00,000/- as an earnest money and their readiness and willingness to get execute the registered sale deed in their favour as per agreement to sell dated 01.07.2013 as discussed above. Therefore, plaintiffs are entitled to get the relief of specific performance of agreement to sell as the defendant being owner in possession of the suit land measuring 17 Bigha as per copy of jamabandi Ex.P7 himself had executed an agreement to sell in favour of the plaintiffs for sale of the said land.

25. In view of my above discussion, there is no illegality in the well reasoned Judgment and decree dated 13.09.2017 passed by the learned court below which requires interference of this Court and as such, appeal filed by the appellant/defendant is dismissed with costs. Decree sheet be prepared accordingly. Record of Court below be sent back along with copy of this judgment and file of this appeal be consigned to record room.

Pronounced in open Court:
Dated: 26.08.2019.

shama stenographer II

(Sham Lal)
Addl. District Judge,
Sangrur.
(UID No.PB0123).

Mohinder Singh Vs. Avtar Singh

Present: Shri B.K.Goyal Advocate, counsel for appellant/defendant.
Shri Ajay Aggarwal Advocate, counsel for respondents No.1
and 2.
Respondents No. 3 exparte.

Arguments heard. Vide my separate detailed Judgment of even
date, appeal filed by the appellant/defendant is dismissed with costs.
Decree sheet be prepared accordingly. Record of Court below be sent
back along with copy of this judgment and file of this appeal be
consigned to record room.

Pronounced in open Court:
Dated: 26.08.2019.

shama stenographer II

(Sham Lal)
Addl. District Judge,
Sangrur.
(UID No.PB0123).