IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230

RSA-15-2014(O&M)
Date of decision: 11.05.2026

Surat Singh

...Appellant(s)

Vs.

Smt. Manwati & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. R. Kartikeya, Advocate
Ms. R. Akanksha, Advocate
for the appellant.

Mr. Salil Devi Singh Bali, Advocate with
Mr. Sandeep Dhanda, Advocate
for the respondents.

***

NIDHI GUPTA, J.

The plaintiff is in Second Appeal against the judgment of reversal whereby Suit filed by the appellant for specific performance of Contract dated 02.07.2001 although decreed by the learned trial Court, has been set aside in appeal filed by the respondents/defendants; and relief has been modified only for recovery of Rs.2,65,000/- along with interest @ 12% per annum as return of loan amount.

2. It was the pleaded case of the appellant in the plaint that defendant is owner in possession of suit land measuring 17 kanal 12 marla. Vide Agreement to Sell dated 02.07.2001, the defendant had agreed to sell the

said land to the plaintiff for total sale consideration of Rs.4 lakh. Agreement to Sell was duly executed and registered in the Office of Sub-Registrar, Jhajjar vide serial No.1182 dated 02.07.2001. The plaintiff had paid an amount of Rs.2,65,000/- at the time of execution of Agreement as earnest money in the presence of witnesses. The plaintiff had therefore paid a substantial amount of the total sale consideration as part payment. As per the Agreement, Sale Deed was required to be executed on or before 01.07.2002 after receiving remaining consideration. It was pleaded in the plaint that the plaintiff was always ready and willing to perform his part of the contract and is still ready and willing to perform. The plaintiff had gone to the defendant on 01.07.2002 with remaining sale consideration. However, the defendant did not turn up. So, Sale Deed could not be executed. It was alleged that plaintiff had asked the defendant many times to execute the Sale Deed, but defendant had failed to execute the same. Hence, present Suit was filed on 07.04.2005.

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the ld. Civil Judge (Senior Division), Jhajjar had decreed suit of the plaintiff vide judgment and decree dated 02.04.2011, as follows: -

> *"12. Keeping in view the above discussion on the issues, the plaintiff's suit for possession by way of decree for specific performance is established and the same is hereby decreed with costs. The defendant are directed to get the sale deed executed within 60 days from the date of this judgment as per the terms*

and conditions agreed by the parties. Decree-sheet be drawn according. File be consigned to the records after due compliance."

4. However, Civil Appeal filed by the defendant was accepted by the ld. District Judge, Jhajjar vide judgment and decree dated 09.12.2013 as follows:-

"23. The question which arises for consideration is, " To what relief the respondent is entitled to?". Admittedly, the respondent had paid a sum of Rs. 2,65,000/- to Sajjan Singh on 1.7.2002. Surat Singh (DW1), in his testimony, has admitted that it was settled that respondent would pay interest on the same at the rate at which the Bank advances the money. Even at the time of argument, Mr. Udai Bhan, counsel for the appellants submitted that the Appellants are prepared to pay interest to the Respondent. Appellants have utilised the money of the Respondents from 2.7.2001. More than twelve years have expired since then. In these circumstances, I hereby order that the appellants would pay interest @ 12% per annum with yearly rests on the sum of Rs. 2,65,000/- to the respondent from 2.7.2001 till the date of payment. Respondent would also be entitled to the cost of the suit as well as of the appeal. The appeal is allowed. Decree sheet be prepared accordingly. The records of the Trial Court with a copy of this judgment be sent to the quarter concerned. Appeal filed be consigned to the record room after due compliance."

5. Hence, present second appeal by the plaintiff.

2026:PHHC:073699

6. It is inter-alia submitted by learned counsel for the appellant that First Appellate Court was in patent error in not granting relief of specific performance to the appellant as defendant in his written statement has admitted the Agreement dated 2.7.2001, and has also admitted that he had received earnest amount of Rs.2,65,000/-. It is submitted that these facts have been noted by the learned First Appellate Court in the impugned judgment. However, have been ignored for spurious reasons.

7. Learned counsel for the appellant submits that the target date for execution of Agreement was set for 01.07.2002. The appellant had duly served legal notice dated 12.03.2004. Yet, an adverse inference has been drawn by the learned First Appellate Court against the appellant that legal notice has been served after two years. Learned counsel contends that the said reason constitutes no ground for non-suiting the appellant.

8. It is further submitted that in his written statement, the respondent had admitted the Agreement as well as receipt of earnest money, however, in the Grounds of Appeal filed by the respondent before the learned First Appellate Court, the respondent has taken a somersault and has now contended that the amount of Rs.2,65,000/- paid by the appellant to the respondent was a loan transaction. Learned First Appellate Court has given the finding that the amount of Rs.2,65,000/- paid by the plaintiff to the respondent was by way of loan. Learned counsel contends that in view of the fact that the respondent had not taken any such plea before the learned trial Court, no issue

was framed in this regard by the learned trial Court. Learned counsel argues that as no issue was framed in this regard, the appellant was not granted an opportunity to lead evidence to show that the said transaction was not a loan transaction. Moreover, if the said transaction was a loan transaction, then why did the respondent appear before the Sub-Registrar. Therefore, as no evidence was led on this issue, learned District Judge has chosen an absolutely illegal path for reversing the judgment of the learned trial Court. It is contended that the respondent cannot be permitted to set up a totally new case in first appeal, which is contrary to the case set up by the respondent in their written statement; and contrary also to the evidence led by them. It is trite law that no new plea can be taken up in the appeal. Evidence has not been led before the learned trial Court in the form of pleadings and evidence in support of it.

9. It is further submitted that the learned District Judge failed to take note of a glaring contradiction by the respondents, wherein, before the trial Court, on one hand they admitted their father entering into the Agreement dated 02.07.2001 with the plaintiff; while before the Appellate Court on the other hand, the respondents set up a case that the said Agreement to Sell dated 02.07.2001 was not with an intention to sell the suit land, but was entered into solely for the purposes of a loan transaction. The impugned judgment dated 09.12.2013 is thus, liable to be set aside on this ground alone, as the respondents did not approach the trial Court as well as the Appellate Court with clean hands and in fact blew hot and cold in the same breath.

10. It is further submitted that the District Judge failed to appreciate that once the Agreement to Sell dated 02.07.2001 was admitted, hence proved, then as a general principle, the relief of Specific Performance ought to have been granted to the appellant. Thus, the impugned judgment dated 09.12.2013 deserves to be set aside.

11. Moreover, the finding of the learned first Appellate Court that the suit has been filed after an unreasonable delay and therefore the plaintiff is disentitled to the relief of Specific Performance, is completely unfounded and baseless. The Suit has been filed well within limitation. A period of 1 year from the date of refusal, under no circumstances can be said to be 'Unreasonable'. The finding of the District Judge to the effect that the Agreement to Sell dated 02.07.2001 is not an agreement but a loan transaction is wholly unsustainable in the facts of the present case on the sole ground that the respondents herein have themselves admitted the execution of the said Agreement to Sell dated 02.07.2001 by their father and receipt of the earnest money by him. Further, the said Agreement is a registered document. Even otherwise, the said finding cannot be upheld when it is not even the case of the respondents that the said Agreement to Sell dated 02.07.2001 is a loan agreement.

12. It is accordingly prayed that the impugned judgment and decree dated 09.12.2013 passed by learned Appellate Court be set aside.

13. Per contra, learned counsel for the respondents opposes the submissions advanced on behalf of the appellant and submits that the

impugned judgment and decree of the learned First Appellate Court suffers from no error. It is contended that the learned First Appellate Court has correctly observed that the respondent was not barred from raising the plea in appeal that the amount of Rs.2,65,000/- received by the respondent from the plaintiff on 02.07.2001 was by way of loan. It is further submitted that the learned First Appellate Court has correctly held that the Suit of the plaintiff was also barred by limitation as legal notice had been issued by the appellant at the fag end of limitation. It is accordingly prayed that the present appeal being meritless be dismissed as such.

14. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the record in detail. I find merit in the submissions advanced on behalf of the appellant.

15. The appellant had filed the present Suit seeking specific performance of the Agreement to Sell dated 02.07.2001 whereby the defendant/respondent had sold land measuring 17K 12M to the appellant for total sale consideration of Rs.4,00,000/-; of which earnest amount of Rs.2,65,000/- was received by the defendant from the plaintiff on 02.07.2001 itself. Target date for execution of Agreement to Sell was set as 01.07.2002. In the plaint, the plaintiff/appellant had made the following averments: –

> *"1. That the defendant agreed to sell land comprised in Khewat no. 113 Khata no. 153 measuring 54 Kanals 10 Marlas and Khewat No. 122 Khata no. 164 measuring 96 Kanals 16 Marlas total measuring 182 Kanals 12 Marlas to the extent of 3/32 share*

measuring 17 Kanals 12 Marlas situated in the revenue estate of village Nangla Teshil and Distt. Jhajjar to the plaintiff for sale consideration of Rs. 4,00,000/- vide agreement to sell dated 2.7.2001. The defendant received a sum of Rs. 2,65,000/- from the plaintiff as earnest money. The agreement to sell was executed and earnest money was received by the defendant in the presence of witnesses. The agreement was also got registered in the office of Sub Registrar, Jhajjar at no. 1182 dated 2.7.2001. The plaintiff has also paid the defendant substantial amount as part payment as per his request and the defendant also promised to hand over the possession of the land in question for getting substantial amount in pursuance of registered agreement. Photocopy of agreement to sell is enclosed herewith.

2. That as per agreement to sell, it was agreed that the sale deed on payment of remaining sale consideration would be executed and got registered on or before 1.7.2002."

16. Upon notice, the respondent/defendant had appeared and filed written statement to the above averments of the plaint stating as follows: -

"1. That para no.1 of the plaint is correct, hence admitted to the extent of execution of agreement to sell dated 2.7.2001 for consideration of Rs. 4,00,000/- regarding suit land, as mentioned and para no. 1 of the plaint. It is also admitted that deceased defendant no. 1 namely Sajjan Singh husband of defendant no. 1(a) and father of defendants no. 1(b to g) received a sum of Rs. 2,65,000/- from the plaintiff as earnest money in the presence of witnesses and it was got registered in the office of Sub Registrar, Jhajjar at no. 1182 dated 2.7.2001. But it is wrong and denied the

plaintiff also paid the defendant substantial amount as part payment as per his request and the defendant also promised to hand over the possession of the land in question for getting substantial amount in pursuance of registered agreement.

2. That para no.2 is corrected admitted, to the extent that it was the condition of the sale of agreement but it is true fact that plaintiff failed to comply with the terms and conditions of the agreement to sell.

3. That para no.3 of the plaint is completely wrong and hence denied that on 1.7.2002, plaintiff was not present in the office of Sub Registrar, Jhajjar along with balance sale consideration and expenses for execution for registration of sale-deed. It is also wrong and denied that the defendant did not turn up to perform his part of contract and has failed to execute the sale deed in favour of plaintiff to get the same registered. The real facts are that the defendant was ready and willing to perform his part of contract on or before 1.7.2002 and plaintiff has resiled from the above said agreement. For complying the agreement to sell dated 2.7.2001, defendant Sajjan Singh now deceased (who was husband of defendant no. 1(a) and father of defendants no.1 (b to g) went to the office of Sub Registrar on 1.7.2002 and obtained his presence marked by moving an application to the Sub Registrar, Jhajjar bearing subject-application for marking presence regarding registry and to this effect, an affidavit of deponent defendant Sajjan Singh was attested by the Executive Magistrate, Jhajjar on 1.7.2002. (The copy of the application given to the Sub Registrar, Jhajjar and copy of affidavit of Sajjan Singh, duly attested by Executive Magistrate, Jhajjar dated 1.7.2002 are attached herewith). Defendant waited for the plaintiff in the office *of Sub Registrar, Jhajjar up to 5.00 PM but the plaintiff did not turn up there to perform his part of contract… .. …"*

17. There is no ambiguity whatsoever with regard to the above said admissions made by the defendants in their written statement. The defendants have nowhere stated that there was any loan transaction between the parties. On the contrary, a bare reading of the above shows that respondents have unequivocally admitted the Agreement dated 2.7.2001; and has also admitted receiving the earnest amount of ₹2,65,000/–.

18. It is established tenet of law that, admission is the best evidence. Reference: judgment of Hon’ble Supreme Court in **Mritunjoy Sett v. Jadunath Basak (D) by Lrs. (SC) : Law Finder Doc ID # 252882,** wherein it is held that:-

> *“16. In the light of Respondent's own admission, it leaves no doubt in our mind that it will hold good as long as it was not withdrawn or clarified by him. It is too well settled that an admission made in a court of law is a valid and relevant piece of evidence to be used in other legal proceedings. Since an admission originates (either orally or in written form) from the person against whom it is sought to be produced, it is the best possible form of evidence. In the factual context of this case, it may also be noted here that the 'rent receipts' issued by Smt. Kamala Sett, the predecessor-in-interest of the Appellant herein, being the documentary evidence adduced by the Respondent to prove his contention that the tenancy was as per the Bengali Calendar, was never substantiated by the witness' testimony of the abovenamed Smt. Sett in the course of hearings.”*

19. Thus, the Agreement to Sell dated 02.07.2001 and receipt of earnest amount of Rs.2,65,000/- on 02.07.2001, stood proved; as defendants have admitted the same.

20. However, despite the above-said position in law, and despite the above specific admission of the defendants in their written statement, learned First Appellate Court has held the Agreement to Sell dated 02.07.2001 to be a 'loan transaction', for the following reasoning:

> *"19. There is no denying the fact that the appellants the written statement had not taken the plea that it was not in agreement to sell but a loan transaction. However, I am of the considered view that this cannot the bar them from raising such a plea in appeal. After all, it is a matter of interpretation of the terms and conditions of the agreement, the execution of which is admitted by the parties… .. …"*

21. To say the least, the aforesaid reasoning of the First Appellate Court is grossly incorrect and unsustainable. The respondents could not have been permitted to take a starkly opposite stance to the one taken by them in the written statement. The respondents have positively admitted the Agreement to Sell in their written statement; and have nowhere stated in written statement that there was any loan transaction dated 2.7.2001. Thus, the respondents could not have been permitted to take a contrary plea in their first Appeal. The first Appellate Court is in patent error in holding the Agreement dated 2.7.2001 to be a loan transaction.

2026:PHHC:073699

22. Even the observation of the first Appellate Court that it is only a matter of interpretation of the terms and conditions of the Agreement is grossly incorrect as, in holding as above, the learned first Appellate Court has also ignored that the Agreement dated 02.07.2001 was a registered document, registered in the Office of Sub-Registrar at serial No.1182 dated 02.07.2001. Thus, presumption of truth is attached to the same. The same can therefore, by no stretch of the imagination be interpreted as a loan.

23. The said interpretation can also not be given to the Agreement to Sell date 2.7.2001 to be a loan transaction as, the learned First Appellate Court has ignored the fact that defendant had duly marked his presence in the office of Sub-Registrar on target date of 01.07.2002 by submitting an application; and had even submitted his Affidavit of Attendance (Ex.DW2/A) dated 01.07.2002 in Office of Sub-Registrar to execute Sale Deed. However, plaintiff had not come present. The first Appellate Court has given no explanation for the fact that if the transaction dated 2.7.2001 was indeed a loan transaction, then where was the need or occasion for respondents to visit the office of Sub Registrar on target date of 1.7.2002. A perusal of the impugned judgment dated 19.12.2013 shows that none of the above-said factors have been dealt with by the First Appellate Court in holding the Agreement to Sell to be a loan. Thus, the said finding of the first Appellate Court is not just contrary to the pleadings, but is also in contravention of the relevant caselaw, as also contrary to the evidence on record; and can therefore, not be sustained.

24. The second ground on which the appellant has been non-suited is that the learned First Appellate Court has held that though the Suit has been filed within time, however, it has been only after unreasonable delay and this disentitles the plaintiff to relief of specific performance. Even the said finding of the learned First Appellate Court cannot be sustained. Admittedly, target date was 01.07.2002. Therefore, Limitation would expire on 30.06.2005. In the interregnum, the plaintiff had duly served legal notice dated 12.03.2004 upon the defendant vide registered AD (Ex.P4), which was received back with the report of refusal. The defendant has also not replied to the said legal notice dated 12.03.2004. Thereafter, Civil Suit was filed on 07.04.2005. Therefore, Civil Suit is filed within limitation. Further given the fact that the appellant had served legal notice dated 12.03.2004 upon the defendant, no adverse inference can be derived against the appellant in this regard.

25. As regards readiness and willingness of the plaintiff to perform the Contract, the plaintiff has failed to produce any Affidavit of Attendance before the Sub-Registrar, Jhajjar on target date of 01.07.2002. In fact, the ld. trial Court in its judgment dated 02.04.2011 has recorded in Para 9 that: -

> *"9. ……… Though the defendant has marked his presence in the office of Sub Registrar, Jhajjar by moving an application, but that is not sufficient for his readiness and willingness to perform his part of contract. The plaintiff has not adduced any evidence regarding his presence in the office of Sub Registrar, Jhajjar. That does not mean he was not ready and willing to perform his part*

of contract as he has served a legal notice upon the defendant and is still ready and willing to perform his part of contract. When the execution of agreement to sell dated 02.07.2001 and receiving of earnest money by deceased Surat Singh is not denied. Hence, the plaintiff is entitled for the relief of specific performance for execution of sale deed as per terms and conditions of agreement dated 02.07.2001 on payment of remaining sale consideration and expenses… …. ...”

26. I am not in agreement with the aforesaid reasoning of the learned trial Court. The Hon'ble Supreme Court in **"R. Shama Naik Vs. G. Srinivasiah" Law Finder Doc ID # 2670489 decided on 28.11.2024** has held readiness and willingness is to be proven from: a) availability of funds; b) presence marked in the Tehsil. Relevant extract is:

> *"11. There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.*
>
> *12. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff."*

27. In the present case, both of the above said ingredients are missing i.e. plaintiff has failed to prove that he was present in the Tehsil on target date; and plaintiff has also failed to prove the availability of balance sale consideration. In such a situation, Suit of the plaintiff cannot be decreed for specific performance.

28. Thus, keeping in view the above discussion, the findings of the first Appellate Court holding the Agreement in question to be a loan transaction, cannot be sustained. The said findings in Para Nos.19 and 21 of the Appellate Court judgment dated 09.12.2013 with respect to nature of Agreement are set aside and decree has to be modified accordingly. However, the refund as per Para 23 of the judgment dated 09.12.2013 will be as per Agreement to Sell and not as return of loan amount as Nature of money is earnest, and not loan.

29. The Regular Second Appeal stands **allowed** as above; and it is directed that the respondents will pay amount of Rs.2,65,000/- to the appellant along with interest @ 12% per annum from 02.07.2001 till date of payment.

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

(Nidhi Gupta)
Judge

11.05.2026
Sunena

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No