

(1994) 04 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Regular Second Appeal No. 1457 of 1988

Mohinder Singh

APPELLANT

Vs

Rameshwar Kumar Singla and
AnotherRESPONDENT

Date of Decision: April 19, 1994**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 35B

Citation: (1994) 107 PLR 696**Hon'ble Judges:** S.K. Jain, J**Bench:** Single Bench**Advocate:** P.S. Saini, for the Appellant; Amarjeet Markan, for the Respondent**Final Decision:** Dismissed

Judgement

S.K. Jain, J.

Mohinder Singh defendant owned agricultural land measuring 6 bighas 5 biswas comprised in Khasra No. 90 situated in village Salempur vide agreement dated 11.7.1983. He agreed to sell the same at the rate of Rs. 4000/- per bigha in favour of the plaintiffs and received Rs. 18500/- as earnest money. The sale deed was agreed to be executed on 30.11.1983. Since the defendant failed to execute the sale deed, the plaintiff filed Civil Suit No. 18 of 09.1.1986 for a decree of possession of the suit land by specific performance of agreement to sell dated 11.7.1983. The defendant contested the suit. He denied the execution of the sale deed and receipt of the earnest money by him. The agreement to sell in question was alleged to be a forged document.

2. The parties fought the litigation on the following two issues :-

1. Whether the defendant executed an agreement to sell dated 11.7.1983 and received Rs. 18,500/- as earnest money? OPP.

2. Whether the plaintiffs remained ready and willing to perform their part of the contract? OPP.

3. Relief?

3. Learned trial Court returned the finding to the effect that the defendant had executed an agreement to sell dated 11.7.1983 in favour of the plaintiffs and had received Rs. 18500/- as earnest money and that the plaintiffs remained and were ready and willing to perform their part of the contract, vide his judgment dated 18.5.1987. Sub Judge 1st Class, Malerkotla decreed the suit of the plaintiff on deposit of balance sale consideration of Rs. 6500/- upto 14.6.1987.

4. Feeling aggrieved, the defendant filed Civil Appeal No. 70 of 1987 which was heard by District Judge, Sangrur, who vide her judgment dated 18.1.1988 dismissed the same.

5. It is that judgment and decree of the first Appellate Court which has been appealed against by the defendant and which requires my examination of its sustainability.

6. I have seen the pleadings in the suit, the evidence adduced by the parties in the suit and the judgments of both the Courts below.

7. Agreement to sell Ex. P1 has been proved by the plaintiffs in the testimony of Sham Lal, Document Writer, Malerkotla and PW Faqir Chand, an attesting witness of the said agreement. It is also revealed in their testimony that the defendant had received Rs. 18,500/- as earnest money in their presence. Document Writer Sham Lal has testified that the copy of jamabandi Ex. P-8 was brought by the defendant at the time of the execution of the sale deed. Plaintiff Rameshwer Kumar Singla appearing as PW-3 has naturally supported his case. Additionally, he has stated that on the day when the sale deed was to be executed the plaintiffs were ready and willing to perform their part of the contract and to that effect he had sworn affidavit Ex. P.-8 and got it duly attested. Notice Ex. P5 and Ex. P7 had been sent to the defendant through registered post which had been received by him. The postal receipts are Ex. P3 and Ex. P-6 whereas the acknowledgement due receipt is Ex. P-4. He had moved application Ex. P-9 dated 30.11.1983 before the Sub Registrar to the effect that he was ready with the necessary funds and was willing to get the sale executed. The plaintiffs closed their evidence on 5.1.1987 and then the case was fixed for defence evidence on 28.2.1987. On that date it was found that no witness was summoned by the defendant. The case was, therefore, adjourned to 18.5.1987 on payment of Rs. 30/- as cost. On the adjourned date, the defendant did not turn up nor had summoned any witness for that date. Even the cost of adjournment imposed on the previous date had not been paid and therefore, he had rightly been debarred from prosecuting his case u/s 35B of the Code of Civil Procedure. Under these circumstances, which are apparent on the face of the record, the appellant cannot be heard to say that sufficient opportunity had not been afforded to him to adduce

his evidence.

8. In view of the above circumstances, no fault can be found with the concurrent findings of fact recorded by two Courts below. The judgment and decree dated 8.1.1988 passed by District Judge, Sangrur which is impugned in this Regular Second Appeal, affirmed.

9. Resultantly, this Regular Second Appeal fails which be and is hereby dismissed. No costs.