

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

RSA No.2098 of 1986

DATE OF DECISION: February 23, 2015.

Baldev Singh (deceased) through L.Rs. Vir Kaur and others

....Appellants.

VERSUS

Gian (deceased) through his L.Rs. and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Argued by: Mr. H.S. Dhandi, Advocate for the appellants.

Mr. B.S. Bhalla, Advocate for the respondents.

SNEH PRASHAR, J.

1. This was an appeal preferred by Baldev Singh son of Shabeg Singh, appellant-plaintiff (hereinafter referred as the “plaintiff”) impugning the judgment and decree dated 04.03.1986 passed by learned Additional District Judge, Ferozepur, partly allowing the appeal preferred by Gian son of Kala, respondent no.1-defendant against the judgment and decree dated 13.06.1985 of Sub Judge 1st Class, Zira, vide which suit of plaintiff Baldev Singh for specific performance of the agreement of sale dated 16.07.1980 was decreed with costs.

2. The facts from which this appeal emerged are as under:-

Plaintiff Baldev Singh averred that Kala son of Khera was the owner of land measuring 51 Kanals 07 Marlas, detail of which was given in the head note of the plaint, situated in the area of village Jaspur alias Gehliwala, Tehsil Zira (hereinafter to be referred as the "suit land"). On 16.07.1980, Kala executed an agreement of sale of the suit land in his favour for a consideration of ₹25,675/- and on the same day received ₹15,000/- as earnest money. The remaining amount was to be paid to Kala at the time of registration of the sale deed which was agreed to be executed on or before 15.07.1983. Kala, however, died before 15.07.1983.

The plaintiff submitted that the suit land was purchased by Kala with some other land from the Central Government in auction. The sale amount was to be paid in installments. Kala executed a Will in favour of his son Gian (defendant no.9). Gian being son, Daro, Salamto and Bibi being daughters had got the P. rights. Daro, Balvinder Singh, Soma, Prem, Santosh and Amrik Singh (defendants no.1, 4 to 8) inherited the share of Wali son of Kala, being his legal heirs as he had expired.

It was further pleaded by the plaintiff that he had always been ready and willing and was still ready and willing to perform his part of the agreement of sale. Possession of the suit land had already been handed over to him by Kala at the time of execution of the agreement of sale. He repeatedly asked the defendants to execute the sale deed but as they had been putting off the matter on one pretext or the other, he served upon them a notice under registered cover through his counsel on 15.07.1983 to

execute the sale deed in his favour but the defendants did not reply the same. Alleging that the defendants intended to alienate the suit land to one Karnail Singh, he gave a notice to him also but he refused to receive the same.

In the said circumstances, the plaintiff filed a suit for specific performance of the agreement of sale dated 16.07.1980 and in the alternative prayed for a suit for recovery of ₹25,675/- as compensation and damages for breach of the agreement.

3. All defendants except Salamto and Bibi (defendants no.2 and 3) contested the suit. One written statement was filed by Gian (defendant no.9) and the other by defendants no.1 and 4 to 8.

The defendants alleged that originally the land was owned by Central Government and it was allotted to Kala but his proprietary rights were confirmed during his lifetime. After his death, proprietary rights were confirmed in favour of all the defendants with a condition precedent that the defendants will not transfer the suit land except to a member of Scheduled Caste or Scheduled Tribe for a period of 20 years. Expressing ignorance about the agreement of sale relied upon by the plaintiff, the defendants alleged that even if the said agreement was proved, it was result of fraud and undue influence and was without consideration. The agreement was also void and not enforceable in view of the embargo in the sale certificate executed in their (defendants) favour by the Government. The plaintiff is a Jat Sikh and therefore, they cannot legally transfer the suit land to him.

The defendants further pleaded that Kala had executed a valid

will in favour of his sons Wali and Gian. On the death of Wali, his legal heirs defendants no.1 and 4 to 8 had inherited his share. Gian filed a civil suit in the Court of Shri O.P. Goel, Additional Senior Sub Judge, Zira on the basis of the will and the suit was decreed on 23.05.1983 affirming that Gian was owner of half share and the remaining half share was of defendants no.1 and 4 to 8. As such, they were the actual owners of the suit land.

4. Plaintiff filed replication controverting the objections raised by the defendants and reasserted his claim. On the rival contentions of the parties, following issues were framed:-

- (1) Whether Kala son of Khera executed an agreement dated 16.07.1980 in favour of the plaintiff? OPP.
- (2) Whether the plaintiff has been always ready and willing to execute the sale deed in his favour? OPP.
- (3) Whether the agreement dated 16.07.1980 is not specifically enforceable as terms of the sale certificate of the dispute land? OPD.
- (4) If the specific performance is not granted, then the plaintiff is entitled to alternative relief? OPP.
- (5) If the agreement is proved whether the agreement is result of fraud and misrepresentation and undue influence? OPD.
- (6) Whether the suit is barred for misjoinder of the parties? OPD.
- (7) Relief.

5. Both the parties led oral and documentary evidence to substantiate their pleadings.

6. Considering the evidence adduced by the parties and the

submissions made on their behalf, learned trial Court decreed the suit of the plaintiff and passed a decree for specific performance of the agreement of sale dated 16.07.1980 directing the defendants to execute the registered sale deed with possession of the suit land in favour of the plaintiff within a period of 45 days from the date of order, on receipt of balance sale consideration of ₹10,675/- from the plaintiff.

7. Feeling aggrieved by the judgment and decree dated 13.06.1985 passed by learned trial Court, defendant no.9 (Gian) preferred an appeal which was partly allowed by learned Additional District Judge, Ferozepur, vide the impugned judgment and decree dated 04.03.1986. While the judgment and decree dated 13.06.1985 was set aside, a decree for refund of ₹15,000/- paid as earnest money was passed in favour of the plaintiff.

8. Feeling unsatisfied, appellant-plaintiff Baldev Singh preferred the instant appeal.

9. The submissions made by Mr. H.S. Dhandi, learned counsel representing the appellants and Mr. B.S. Bhalla, learned counsel representing the respondents have been considered and record perused.

10. It was not a matter in dispute that Kala son of Khera was the owner of the suit land. The plaintiff alleged that on 16.07.1980 Kala entered into an agreement of sale with him qua the suit land for a consideration of ₹25,675/- and executed the agreement of sale Ex.P1. An amount of ₹15,000/- was paid as earnest money by him to Kala and the remaining was agreed to be paid to him at the time of registration of the sale deed which

was to be executed on or before 15.07.1983, however, Kala died before the said date.

The defendants in their pleadings expressed ignorance about the agreement of sale but at the same time alleged that if proved it was result of fraud and undue influence and no consideration was ever paid to Kala. They also pleaded that the agreement of sale was void and not enforceable as there was a condition in the sale certificate executed by the Government in their favour in respect of the suit land that the land cannot be transferred to anyone except a member of Scheduled Caste or Scheduled Tribe for a period of 20 years. The plaintiff being a Jat Sikh, the land could not be alienated to him.

11. Besides himself appearing in the witness box as PW2 and reiterating his claim, the plaintiff examined Ram Lal, Document Writer as PW1, scribe of the agreement of sale. PW1 stated that the agreement was scribed by him at the instance of Kala in favour of Baldev Singh. The contents were read over and explained to him and admitting the same to be correct he had appended his thumb impressions on the same. PW1 added that as per terms of the agreement the suit land was agreed to be sold at the rate of ₹4,000/- per acre and an amount of ₹15,000/- as earnest money was paid by plaintiff Baldev Singh to Kala in his presence. He also stated that the agreement was attested by Maghar Singh son of Ujjagar Singh and Nishan Singh son of Bahadur Singh who had signed on the same in token of its correctness.

12. The defendants assailed the agreement of sale on two grounds,

one that they were not aware of the same and second that it was result of fraud and undue influence and that no earnest money was paid to Kala.

13. Evidently, there was no substance in the objections of the defendants as far as execution of the agreement of sale was concerned. A perusal of the testimony of PW1 Ram Lal, Scriber reveals that no suggestion was put to him that the agreement in question was result of fraud and misrepresentation. To plaintiff Baldev Singh PW2, it was suggested that no such agreement was ever executed and the thumb impressions of Kala were obtained by misrepresentation. The detailed particulars of fraud and misrepresentation were neither pleaded nor put to the plaintiff or proved by way of any evidence by the defendants. Defendant no.9 Gian and defendant no.2 Daro, who appeared as DW1 and DW2 respectively did not utter a word to reiterate their objection that the agreement was got executed by fraud or misrepresentation.

Based on the evidence of the plaintiff, learned trial Court held that execution of the agreement of sale dated 16.07.1980 Ex.P1 by Kala in favour of the plaintiff in respect of the suit land as well as payment of earnest money of ₹15,000/- by the plaintiff to Kala were established. Learned first appellate court noticed that no dispute had been raised by learned counsel for the defendants as regards payment of earnest money.

14. Importantly, while the plaintiff preferred an appeal against dismissal of his suit by learned first appellate court, the defendants did not prefer any appeal against the findings relating to the due execution of the agreement of sale. In that manner, the decision that an amount of ₹15,000/-

was paid as an earnest money by the plaintiff to Kala on execution of the agreement of sale Ex.P1 became final between the parties.

15. The substantial question of law which needs determination in the instant appeal is whether the agreement of sale Ex.P1 is enforceable under law. Learned counsel for the appellant-plaintiff argued that when execution of the agreement of sale Ex.P1 by Kala in favour of the plaintiff Baldev Singh stood established and payment of earnest money ₹15,000/- was also proved, the plaintiff who had always been ready and willing to perform his part of the contract was entitled to specific performance of the agreement of sale. It was only because Kala died before the date fixed for execution of the sale deed i.e. 15.07.1983 and the defendants intentionally refused to honour the agreement of sale, that he had to approach the court for specific performance of the contract.

16. On the other hand, learned counsel for the respondents argued with vehemence that the agreement of sale Ex.P1 was a void contract as the land which was purchased by Kala in a restricted auction from the Central Government could not be leased, transferred, sold or mortgaged with possession or otherwise be alienated to any person for 20 years except to any member of the Scheduled Caste or Scheduled Tribe. He also contended that the proprietary rights qua the suit land were confirmed in favour of the defendants after the death of Kala, subject to the embargo mentioned in the sale certificate executed by the Government. The agreement of sale which was in clear breach of the condition levelled by the Government while executing the sale certificate was void in the light of provisions of Section

23 of the Indian Contract Act, 1872 (for short “the Act of 1872”) and is therefore not enforceable.

17. Learned counsel for the plaintiff-appellant argued that in view of the condition in the sale certificate executed by the Government in favour of the defendants the agreement of sale was at the most a voidable contract and not void. At the most on account of breach of condition by Kala that he could not alienate the suit land within a period of 20 years to anyone except a Scheduled Caste or Scheduled Tribe person, the Government could take action of resumption of the land but on that ground the agreement of sale Ex.P1 could not be held void.

18. There appears to be no force in the argument of learned counsel for the plaintiff-appellant. Rule 8 of the Punjab Package Deal Properties (Disposal) Rules, 1976 (for short “the Rules of 1976) reads as under:-

“Bar on the alienation of land purchased in restricted auction- (i) Where any land has been sold in restricted auction, the auction purchaser shall not be entitled to lease, transfer, sell, mortgage with possession, or otherwise, alienate or part with the land wholly or partly so purchased, in any manner, in favour of a person who is not a member of the Scheduled Castes, for a period of 20 years; provided that the land may be pledged in favour of a Government or semi Government corporation or Co-operative financing institution, for securing loan for effecting improvements on the said land.”

Also under Section 23 of the Act of 1872, an agreement that defeats the provisions of any law or is opposed to public policy is an illegal agreement.

19. It is an admitted fact that Kala purchased suit land in restricted

auction from the Central Government being member of the Scheduled Caste. Under Rule 8 of the Rules' of 1976 such land could not be leased out, sold or mortgaged with possession or be alienated in any other manner for a period of 20 years to any person who was not a member of the Scheduled Caste or Scheduled Tribe. The suit land was purchased by Kala in restricted auction in the year 1975. There is no denial of the fact that plaintiff is a Jat Sikh. At the time of execution of the agreement of sale Ex.P1 the period of 20 years had not expired. Moreso, in the present case time could not be said to be the essence of the contract because the suit land agreed to be sold by Kala to the plaintiff could not be sold under the law. Such contract was specifically barred under the provisions of Section 23 of the Act of 1872. The agreement of sale Ex.P1 being in contravention to the provisions of law was a void contract and therefore no decree for specific performance of the same could be passed.

20. As far as payment of earnest money of ₹15,000/- by the plaintiff to deceased Kala is concerned, learned first appellate Court ordered for refund of the same and no appeal was filed by the defendants against that part of the decree. The earnest money paid will be returned by the defendants to the plaintiff

Resultantly, the appeal fails and is hereby dismissed.

(SNEH PRASHAR)
JUDGE

February 23, 2015

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