

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

**R.S.A. No. 1332 of 1995 (O&M)
Date of Decision:- 29.05.2015**

Gurdarshan Singh

.....Appellant

Versus

Dalip Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. S.S. Sarwara, Advocate
for Mr. S.P.S. Chakkal, Advocate,
for the appellant.

Ms. Harpreet Kaur Dhillon, Advocate
for respondent No.1.

SHEKHER DHAWAN, J.

Present Regular Second Appeal against the concurrent findings of both the Courts below, whereby suit of plaintiff for possession by way of specific performance of agreement of sale dated 15.06.1985 was decreed by the Court of first instance and first appeal dismissed by the first appellate Court.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance.

3. The detailed facts of the case have already been recapitulated in the judgments of both the Courts below. However, relevant facts for the purpose of decision of present Regular Second Appeal that defendant No.1 executed agreement of sale deed dated 15.06.1985 in favour of plaintiffs. Earnest money of ₹66,000/ was received. Target date was fixed to be 15.01.1986. Plaintiffs were ready and willing to perform their part of agreement but defendants never came forward and as such suit was filed.

4. Defendants contested the suit taking the plea that in fact plaintiffs were never ready and willing to perform their part of the agreement rather the defendants appeared in the office of sub-registrar Dharamkot on 16.10.11 but the plaintiffs did not turn up. In response to this, notice was issued to the plaintiffs and informed that the plaintiffs should pay the remaining amount to him within fortnight i.e. up to 06.02.1986 and get the sale deed executed and registered, failing which, the agreement of sale shall stand cancelled and earnest money forfeited. However, plaintiffs did not pay the sale consideration to him nor got the sale deed executed and as such the agreement of sale stood cancelled and earnest money forfeited.

5. Defendant No.2 had taken the plea that suit land was sold on the basis of sale deed dated 12.05.1987 and 19.05.1987 and sale was made in his favour for valuable consideration and he was a bona-fide

purchaser of the land in dispute. Defendant No.3 took the plea that suit land is ancestral property and there was no legal necessity for defendant No.1 to sell the land.

6. On these facts, the following issues were settled by the Court of first instance:-

1. Whether the plaintiffs have always been ready and willing to perform their part of the contract? OPP
2. If the relief of specific performance is denied whether the plaintiffs are entitled to the damages? If so, to what amount?OPP
3. Whether the agreement was cancelled for the reasons given in para No.3 of the written statement?OPD
4. Whether defendant No.2 is a bonafide purchaser for value and without notice?OPD2.
5. Whether the sale of land by defendant No.1 in favour of defendant No.2 is hit by the doctrine of lispendis?OPP
6. Whether the suit property is coparcenary property of Harnek Singh and Gurdashan Singh defendant? If so, its effect/OPD
7. Whether the decree dated 5.10.88 in favour of Gurdarshan Singh defendant and against Harnek Singh defendant is a nullity?OPP
8. Whether the proposed sale is for legal necessity and benefit of the estate and family?OPP
9. Whether defendant No.3 can take objection of legal necessity in this case?OPD
10. Relief.

7. Court of first instance after recording and appreciation the evidence, decreed the suit of plaintiffs for specific performance. First appeal filed by defendants was dismissed by first appellate Court. Hence,

the Regular Second Appeal before this Court.

8. At the time of arguments, learned counsel for the appellant mainly took the plea that main controversy before the Courts below was whether suit property is coparcenary property of Harnek Singh and Gurdarshan Singh, if so, its effect?. However, during the pendency of first appeal, mutation Ex.PX was sanctioned, vide which, Harnek Singh respondent No.3 had inherited the suit property from his father Naginder Singh and additional evidence was accepted. Plaintiffs failed to prove that the sale was for legal necessity or for welfare of the estate.

9. Learned counsel for respondent No.1 took the plea that Courts below have already dealt with the controversy in detailed and concurrent findings of facts have been recorded and there are no grounds to set aside the said findings.

10. Having considered the rival contentions by learned counsel for the parties, this Court is of the considered view that both the Courts below have already appreciated the facts and evidence available on file and recorded concurrent finding that agreement was duly executed. The Courts below have already returned the findings that the suit property was inherited by Harnek Singh, vide mutation 'PX' after consolidation of the land. The previous khasra numbers of the land have been connected by filing khatauni pumaish Ex.D11 and khatauni Istemal Ex.D12, which shows that present khasra numbers falls out of the old khasra numbers, which was inherited by Harnek Singh.

11. There is no substantial question of law involved in the

matter. Appreciation of evidence has already been done by both the Courts below.

12. Resultantly, present Regular Second Appeal is without any merit and same stands dismissed.

May 29, 2015
naresh.k

(SHEKHER DHAWAN)
Judge