

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

RSA No.1820 of 2012 (O&M)

Date of decision : 03.09.2015

Rajinder Singh

...Appellant

Versus

Mohan Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. S.S. Dinarpur, Advocate for the appellant.

Mr. C.B. Goel, Advocate for respondents.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned judgment and decree of Courts below, whereby suit filed by respondent-plaintiff for specific performance of agreement to sell dated 19.08.2004 executed by Harbans Singh-defendant No.1, who is none else, but brother of the respondents-plaintiffs i.e. Mohan Singh and Kulwant Singh has been decreed & the appeal filed against the same has also been dismissed.

Mr. S.S. Dinarpur, learned counsel appearing on behalf of the appellant-defendant No.2 Rajinder Singh submits that Harbans Singh had 1/3rd share measuring 5 kanal 16 marla in the property and sold the aforementioned land vide registered sale deed dated 26.08.2004 for a

valuable consideration of ₹1,00,000/-. The registered document has presumption of truth until is rebutted by an evidence contrary to it. Defendant No.2-Rajinder Singh was flabbergasted to receive the notice of the suit filed on 30.09.2004 at the instance of Mohan Singh & Kulwant Singh-plaintiffs claiming the specific performance of agreement to sell dated 19.08.2004 allegedly executed by Harbans Singh brother of aforementioned persons for a valuable consideration of ₹87,750/- and earnest money of ₹40,000/- stated to have been received by Harbans Singh. The target date of the aforementioned agreement to sell was though 18.02.2005, but the suit was filed on 30.09.2004 as according to the respondents-plaintiffs alleged breach had been committed by Harbans Singh.

He further submits that specific stand of the appellant-defendant No.2 was that there is apparent collusion and connivance amongst brothers to frustrate the sale deed duly and validly executed on 26.08.2004. He submits that both the Courts below have committed illegality and perversity in not reading oral and documentary evidence, much less, testimony of DW2-Mehar Singh, who is witness to the sale deed.

Mr. C.B. Goel, learned counsel appearing on behalf of respondents-plaintiffs submits that agreement to sell was entered on 19.08.2004 much prior to the registration and execution of the sale deed and, therefore, Courts below have rightly exercised the discretion under Section 20 of the Specific Relief Act in decreeing the suit as necessity to file the suit, on 30.09.2004 had arisen. Defendant No.1-Harbans Singh had executed the sale deed in favour of defendant No.2. He further submits that

sale deed dated 26.08.2004 was without any consideration. There is no illegality and perversity committed by the Courts below, much less, no substantial questions of law arises.

Mr. S.S. Dinarpur, Advocate in rebuttal submits that no such pleadings vis-a-vis sale consideration has been taken in the suit or in the replication, therefore, the respondents-plaintiffs cannot be permitted to raise such plea.

He further submits that following substantial questions of law arises for determination by this Court:-

- 1) Whether the respondents in collusion with each other being members of one and the same family have played fraud upon the appellant which stands proved on the record.
- 2) Whether the courts below could grant discretionary and equitable relief of specific performance to the plaintiffs especially when a thick collusion between the plaintiffs and respondents No.1 and 2 was apparent on the face of record.
- 3) Whether the agreement to sell dated 19.08.2004 in favour of the plaintiffs was a waste paper since the same is a unregistered document by virtue of which possession is said to have been delivered to respondents No.1 and 2.

I have heard learned counsel for parties and appraised the paper book and record of the Courts below.

The appellant-defendant No.2 has proved the execution of the sale deed through testimony of DW2-Mehar Singh. There is categoric averments made in the examination-in-chief submitted in the shape of

affidavit that there was apparent collusion and connivance amongst brothers to frustrate the agreement to sell. No such question in the cross-examination has been put to the aforementioned assertion. In the absence of question in the cross-examination, the statement made in the examination-in-chief deemed to have been admitted. Reference is invited to Division Bench of this Court in *Harnam Kaur Vs. SGPC, Amritsar, 1992(1) RRR 135*.

There is another aspect of the matter. The witness to the agreement to sell unequivocally answered to a question put, in cross-examination, that he did not sign the stamp paper. The Stamp Vendor Anil Seth has not been examined, perhaps the respondents-plaintiffs was afraid that truth may not surface. It is very convenient way of frustrating the registered sale deed by entering into agreement to sell amongst brothers in respect of 1/3rd share of the land measuring 5 kanal 16 marla, which comes to 2 kanal approximately.

In my view, findings rendered by Courts below amounts to illegality and perversity in decreeing the suit as, aforementioned documentary evidence and position of law has not been noticed.

In view of aforementioned facts and circumstances and the observations, the questions of law noticed above is answered in favour of the appellant and against the respondents-plaintiffs.

Accordingly, impugned judgments and decrees are set aside.

Appeal is allowed.

03.09.2015

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**(AMIT RAWAL)
JUDGE**