

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

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RSA No.3923 of 2012 (O & M)

Date of Decision:05.10.2015

Tirloki Nath and others

....appellants

Versus

Jarnail Singh and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

1.Whether Reporters of local papers may be allowed to see the judgement?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Present: Mr.S.K.Singla, Advocate
for the appellants

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was dismissed by the trial Court vide judgement and decree dated 18.01.2007. As even the appeal preferred against the said decree failed, and, was dismissed on 13.02.2012, the plaintiffs are before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiffs, they prayed for a decree for possession by way of specific performance of the agreement to sell dated 30.01.1993, qua the suit property i.e. plot measuring 10 marlas, comprised in khasra No.2237//1. A decree for injunction was

also claimed, so as to restrain the defendants from causing forcible dispossession of the plaintiffs. It was maintained that the suit property was owned by Gurbachan Singh @ Bachan Singh, who had since passed away and was succeeded to, by the defendants. Late Gurbachan Singh had entered into an agreement to sell dated 30.01.1993, with the plaintiffs qua the plot in question for a total sale consideration of ₹ 1,15,000/-. A sum of ₹ 80,000/- was allegedly paid as earnest money. The balance amount of ₹ 35,000/- was to be paid at the time of execution of the sale deed, that was to be executed on or before 30.04.1994. But Gurbachan Singh died prior to the stipulated date. Plaintiffs informed the legal representatives of Gurbachan Singh as regards the agreement in question and requested them to execute the sale deed, but nothing tangible emerged. Plaintiffs had always been ready and willing to perform their part of the contract. Since the defendants refused to acknowledge the claim of the plaintiffs, thus the suit.

In defence, it was pleaded, inter alia, that the agreement in question was a forged and fabricated document. Late Gurbachan Singh never executed any such agreement. Possession was never delivered to the plaintiffs pursuant to any such agreement.

On a due and comprehensive consideration of the matter in issue and the evidence on record, both the Courts below concurrently concluded that the agreement in question was purportedly witnessed by Rajeshwar Singh and Gurdial Singh, Lambardar. However, none of them was examined by the plaintiffs to prove the execution of the agreement. Rajeshwar Singh was stated

to have died. Whereas Gurdial Singh, though appeared on 16.03.1999 as PW2, but his statement could not be recorded as the original agreement was not on record at that time. Subsequently, he could not be produced as he was physically disabled. Gurprem Singh son of Rajeshwar Singh (PW5), who was examined by the plaintiffs, could only identify the signatures of his father upon the agreement in question, but without any proof of the due and valid execution of the said agreement. Though, he tried to prove the agreement by stating that he had assisted his father at the time of execution of the said document, but in his cross-examination, he conceded that the alleged agreement was already typed when he reached. He did not know the name of the typist who had typed the said agreement. The agreement dated 30.01.1993 (Ex.P10), does not even bear the name of the scribe or the typist, who allegedly typed the said document. Though, the agreement in question was purported to have been written in the Court premises, but concededly, it was not got scribed from the regular deed writer. Testimony of Bhag Chand (PW4) Stamp Vendor, was found to be wholly doubtful, as he conceded in his cross examination that the entry as regards the sale of stamps upon which, the agreement was typed, was at the last page of his register. Three stamp papers were allegedly purchased by Gurbachan Singh and were entered at Sr.No.7481 to 7483 on 28.01.1993, whereas the next sale was registered at Sr.No.7484, but after over 13 months. That showed that the date of sale of the stamp papers was ante dated. Further, nothing was indicated in the register of stamp vendor as to for what purpose

those stamp papers were purchased. Not just that, plaintiff No.1 Tirloki Nath (PW6), deposed in his cross examination that Bachan Singh was in actual, physical possession of the suit property and handed over the possession to him at the time of execution of the agreement. Whereas, evidence on record proved that Gurbachan Singh had obtained a decree dated 25.03.1983 against Mohinder Singh for possession by way of redemption of the mortgaged land including the suit property. The warrants of possession Ex.D4 was issued in an execution petition dated 24.10.2001, preferred by late Gurbachan Singh. Whereas the plaintiffs claimed to have been put in possession pursuant to an agreement to sell on 30.01.1993. Ex facie, nothing was brought on record, least any cogent evidence, to show that plaintiffs were ever in possession of the suit land.

Learned counsel for the appellants could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality. No other argument was advanced.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

05.10.2015

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(ARUN PALLI)

JUDGE