

RSA No.1557 of 2015 (O&M)

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

RSA No.1557 of 2015 (O&M)

Date of Decision: October 29, 2015

Sadhu Singh and another

...Appellants

Versus

Balwinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Malkeet Singh, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. :

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Tarn Taran, dated 12.05.2012, by which, prayer for possession by way of specific performance of the agreement to sell dated 10.01.2005, has been declined but the relief of recovery has been ordered to be decreed with costs for ₹2,00,000/- plus ₹1,17,000/- alongwith interest at the rate of 9% per annum from the date of payment till the date of realization of the decretal amount, appeal against which preferred by the appellant-plaintiffs stands dismissed alongwith the cross-objections of respondent-defendants No.1 and 2, by the Additional District Judge, Tarn Taran, vide judgment dated 15.11.2014.

2. It is the contention of the learned counsel for the appellants that the Courts below have returned a finding that the

agreement to sell dated 10.01.2005 has been duly executed between the appellant-plaintiffs and respondent-defendants No.1 and 2 and also that the appellant-plaintiffs were ready and willing to perform their part of the contract but still the relief of specific performance of the agreement to sell, has not been decreed. He submits that the findings of the Courts below are not based on the pleadings and the evidence led by the parties and the reliance by the Courts below upon the agreement to sell dated 04.02.2003 entered into between respondent-defendants No.1 and 2 (Balwinder Kaur and Sukhwinder Kaur) and respondent-defendants No.3 and 4 (Baljit Singh and Narinder Singh) is not sustainable as in the agreement to sell, no rate of the land is given rather consideration amount is mentioned as a lump sum. Even in the sale deeds which have been executed between the respondents, dated 16.05.2003 and two sale deeds dated 09.05.2005, it has not been mentioned that it was in pursuance to agreement to sell dated 04.02.2003.

3. Another contention which has been raised by the learned counsel for the appellants is that the agreement to sell dated 04.02.2003 (Ex.D-1) was for the total land measuring 129 Kanals and 16 Marlas, out of which, sale deed was executed on 16.05.2003 in favour of Baljit Singh and Jatinder Singh for 52 Kanals by Balwinder Kaur and Sukhwinder Kaur. Qua the other land, since no sale deed was executed, the agreement to sell dated 04.02.2003 had lapsed and therefore, further sale of the remaining land at a subsequent

date and that too during the pendency of the present suit, cannot be said to be valid sale deed as the principle of *lis pendens* would apply. He, on this basis, contends that the judgments and decree passed by the Courts below deserve to be set aside and the suit of the appellant-plaintiffs for specific performance of the agreement to sell, be decreed.

4. I have considered the submissions made by the learned counsel for the appellants and have gone through the impugned judgments.

5. The facts as are culled out from the pleadings of the parties are that an agreement to sell was entered into between respondent-defendants No.1 and 2 (Balwinder Kaur and Sukhwinder Kaur) and respondent-defendants No.3 and 4 (Baljit Singh and Narinder Singh). An amount of ₹2,00,000/- was received as earnest money in the presence of attesting witnesses Pal Singh and Narinder Singh. Registered sale deed dated 16.05.2003 was executed by respondent-defendant No.2 in favour of Baljit Singh and Jatinder Singh for land measuring 52 Kanals and the mutation was also sanctioned. A dispute arose between the parties due to the terms and conditions of the agreement to sell as the respondent-defendants agreed to execute the sale deed after getting mutation of inheritance sanctioned in their favour by giving notice to respondent-defendant No.3 for execution of the sale within one month. At this, respondent-defendant No.3-Baljeet Singh filed a suit on 13.10.2004

for specific performance of the agreement to sell which was, on the basis of compromise entered into between the parties, decided on 21.04.2005. Thereafter, sale deed qua land measuring 24 Kanals alongwith tube-well of 5 H.P. in favour of Narinder Singh-defendant No.4 to the extent of $\frac{1}{2}$ share and to Sukhbir Singh vide sale deed dated 09.05.2005 and the possession was delivered. Respondent-defendants No.1 and 2 sold a land measuring 53 Kanals and 16 Marlas in favour of respondent-defendant No.3 vide registered sale deed dated 09.05.2005 and thus, respondent-defendants No.3 and 4 became the owners in possession of the entire land measuring 129 Kanals 16 Marlas. The agreement to sell dated 04.02.2003 (Ex.D-1) and the subsequent sale deed have been duly proved on the basis of the evidence led by the defendants. A sequence of events clearly establishes that the sale deeds were in pursuance to the agreement to sell dated 04.02.2003 and therefore, the contention of the learned counsel for the appellants that the land in dispute has not been sold in pursuant to the agreement to sell dated 04.02.2003 and that the said agreement to sell has lapsed, cannot be accepted.

6. It further requires to be mentioned here that in the agreement to sell dated 10.01.2005 (Ex.P-1), it has been mentioned that a case is pending in the Civil Court regarding the land in question between respondent-defendants No.1 and 2 and Baljit Singh-respondent-defendant No.3 and the sale deed will be executed in favour of the appellant-plaintiffs in case the suit is decided in

favour of respondent-defendants No.1 and 2 and if it is decided against them, then they shall be liable to repay the amount of ₹1,00,000/- (earnest money) already paid by the appellant-plaintiffs to them alongwith damages of ₹1,00,000/-. This clearly shows that the appellant-plaintiffs were aware of the pending litigation and the sale deed in pursuance to the agreement to sell dated 10.01.2005 could be executed in case the pending suit went in favour of respondent-defendants No.1 and 2 which unfortunately was not to be as is apparent from the earlier part of this order. Thus, the claim of the appellant-plaintiffs cannot be accepted.

7. A contention has been raised that no rate of land per acre has been mentioned in the agreement to sell but this contention of the learned counsel for the appellants is without any legal basis as there is no bar in any statute that the land cannot be sold for a consolidated amount.

8. Next contention which has been raised by the learned counsel for the appellants is that had there been a valid agreement to sell or a compromise between the parties in the civil suit which was preferred by respondent-defendant No.3, which suit was decided on 21.04.2005, the respondent-defendants No.1 and 2 would not have accepted an amount of ₹1,17,000/- for purchasing the stamp papers from the appellants. This contention of the learned counsel for the appellants cannot be accepted as the respondent-defendants No.3 and 4 have been able to duly prove and correlate the execution of the

sale deeds with total area of the land in question i.e. 129 Kanals and 16 Marlas which is the same land as was the subject matter of the agreement to sell dated 04.02.2003.

9. The argument of the learned counsel for the appellants that the sale deed do not refer to the agreement to sell dated 04.02.2003 and therefore, it cannot be accepted that the sale deeds were in pursuance thereto, again cannot be accepted as the evidence which has been brought on record clearly establishes that the sale deeds which have been executed between respondent-defendants No.1 and 2 (Balwinder Kaur and Sukhwinder Kaur) and respondent-defendants No.3 and 4 (Baljit Singh and Narinder Singh) are in pursuance to the agreement to sell dated 04.02.2003.

10. It is not in dispute that the agreement to sell entered into between the respondent-defendants No.3 and 4 and respondent-defendants No.1 and 2 is prior to the agreement to sell which was entered into by respondent-defendants No.1 and 2 with the appellant-plaintiffs i.e. dated 04.02.2003 & 10.01.2005, respectively.

11. On perusal of the impugned judgments shows that the concurrent findings returned by both the Courts below are based on proper appreciation of the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

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appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

CM No.4323-C of 2015

In view of the order passed in the main appeal, the present application for restraining respondents No.3 and 4 from alienating/encumbering the suit property during the pendency of the appeal, has become infructuous.

Disposed of as such.

October 29, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**