

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1795 of 2015 (O&M)
Date of Decision : 11.12.2015

Fakir Chand and othersAppellants

Versus

Chandi Ram and othersRespondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajinder Goyal, Advocate
for the appellants.

Surinder Gupta, J.

Plaintiffs filed suit seeking the relief of specific performance of agreement to sell/affidavit dated 22.06.2002 and symbolic possession of the suit land *inter alia* pleading that Ratna Ram father of defendants no. 1 to 3 agreed to sell the disputed plot to plaintiffs for a sum of ₹ 1,03,000/- and received entire sale consideration. Possession of the plot was handed over to plaintiffs on the same day and the execution of sale deed in favour of plaintiffs was left to the discretion of plaintiff. On 26.12.2008, plaintiffs approached defendants no. 1 to 4 (legal heirs of Ratna Ram) to execute the sale deed in their favour but they refused. From the revenue record, plaintiffs came to know that Ratna Ram executed a sale deed No. 2233/1 dated 18.12.2007 in favour of defendant no. 5-Smt. Kaushlya Devi and mutation no. 1973 based on that sale deed was sanctioned in her favour. The sale deed in favour of defendant no. 5 was collusive and result of fraud. Ratna Ram was not in possession of disputed plot, as such, he could not transfer the same to defendant no. 5.

2. Defendants no. 1 to 4, who are legal heirs of Ratna Ram, admitted the claim of plaintiffs *inter alia* pleading that Ratna Ram sold 4 *marlas* of land out of *khasra* no. 406 to plaintiffs in the year 2002 for a sale consideration of ₹ 1,03,000/- and duly executed and got attested an affidavit in this regard. They also admitted that possession of the land was delivered to plaintiffs, who are tethering their cattle in the rooms constructed over it. The execution of sale deed dated 18.12.2007 in favour of defendant no. 5 was denied and termed as result of collusion, misrepresentation and fraud played by defendant no. 5 on Ratna Ram.

3. Defendant no. 5 in her written statement took the plea that total area of land bearing *khasra* no. 406 is 8 *marlas* and not 6 *marlas*. A large space of *khasra* no. 406 is lying vacant outside southern wall on its southern side which has not been shown in the site plan placed on record by plaintiffs. Agreement dated 22.06.2002 in favour of plaintiffs was denied and she claimed to be a *bona fide* purchaser of the suit land without any notice of alleged agreement. She got the sale deed executed on 18.12.2007 for a sale consideration of ₹ 1 lac and possession was delivered to her. It was alleged that plaintiffs have no concern with the plot and were well aware of the sale deed in her favour from the very first date.

4. Learned Additional Civil Judge (Senior Division), Guhla upheld execution of the agreement/affidavit by Ratna Ram in favour of plaintiffs and also sale deed dated 18.12.2007 in favour of defendant no. 5. The relief of specific performance of

agreement was declined to plaintiffs on the ground of delay of about seven years in filing the suit. Defendants no. 1 to 4 were directed to return the amount of ₹ 1,03,000/- with interest to plaintiffs.

5. Ist Appellate Court upheld the findings of learned Additional Civil Judge (Senior Division), Guhla.

6. Against the concurrent findings of Courts below, appellants have filed this second appeal.

7. I have heard learned counsel for the appellants and perused the paper-book with his assistance.

8. Learned counsel for the appellant has argued that at the time of agreement entire sale consideration was paid to Ratna Ram and possession of plot was handed over to plaintiffs. No date was stipulated in the agreement for execution and registration of sale deed and the time was not essence of the contract. Ratna Ram died on 26.12.2008 and immediately after his death his legal heirs were asked to execute the sale deed. It was at that stage they came to know that Ratna Ram had executed a sale deed dated 18.12.2007 in favour of defendant no. 5-Kaushlya Devi. As the possession of plot was not with Ratna Ram, he could not transfer the same to defendant no. 5. Kaushlya Devi-defendant no. 5 was claiming herself to be a *bona fide* purchaser of suit land, but in the absence of delivery of possession of suit property to her, which is with plaintiffs, she could not raise this plea. In support of his contention he has relied on observations in cases of **Rathnavathi and another vs. Kavita Ganashamdas**, 2014 (4) RCR (Civil) 904 and

Gurbachan Singh and another vs. Gurmit Singh, 2003 (4) RCR (Civil) 223.

9. Both the Courts have recorded concurrent findings that sale deed dated 18.12.2007 was validly executed. Mutation (Ex. D-3) on the basis of that sale deed was also sanctioned. She had purchased the land after making due verification from the revenue record showing Ratna Ram as owner. Ist Appellate Court has taken note of the fact that plaintiffs and defendant are residents of same village. The plaintiffs have not explained as to why they remained mum for a long period of six years during life time of Ratna Ram and one year after his death before filing this suit. It was also observed that plaintiffs have not been able to prove their possession over the suit land.

10. Learned counsel for the appellants could not point out that while recording the above findings the Courts below have ignored any evidence on record. They have not produced on record any evidence to show their possession over the suit property. It is otherwise not believable that plaintiffs had paid entire sale consideration but not got the sale deed executed in their favour. Nothing was left to be done on their part after entire payment of sale consideration had been made. There is nothing as to what barred them from requesting Ratna Ram to execute the sale deed during his life time.

11. Even if the time was not essence of the contract still on the ground of delay, laches and keeping in view the facts and circumstances of the case, the Courts below have committed no error of law while recording the finding that Kaushlya Devi is

bonafide purchaser of suit land and declining the relief of specific performance of agreement to sell. At the same time, interest of plaintiffs have been taken care and legal heirs of Ratna Ram have been directed to return them the money paid to Ratna Ram with interest.

12. I have perused the citations referred by learned counsel for the appellants. In case of ***Rathnavathi (supra)*** the deal was complete after payment of entire consideration and delivery of possession, only the ownership of the property was to be got transferred from Bangalore Development Authority. Plaintiff in that case was in possession of the property and paying the electricity bills etc., while in this case plaintiffs have failed to prove delivery of possession to them. The facts of the case of ***Gurbachan Singh (supra)*** are quite distinguishable from facts of this case. The observations in both citations, as such, have no application to facts of the present case.

13. No substantial question of law, requiring determination arises in this appeal, which has no merits and the same is dismissed.

December 11, 2015

jk

**(SURINDER GUPTA)
JUDGE**