

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3159 of 2015 (O&M)
Date of Decision: July 08, 2015

Mohan Singh and another

...Appellants

Versus

Rajbir and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vijay Kumar Jindal, Senior Advocate with
 Mr.Akshay Jindal, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellants-defendants Mohan Singh and Bansi Lal have filed this regular second appeal against respondent-plaintiff Rajbir and respondent Daya Ram challenging the impugned judgment and decree dated 21.08.2013 passed by learned Addl. Civil Judge (Senior Division) Hodal, vide which the suit filed by the plaintiff-respondent for possession by way of specific performance and for permanent injunction was decreed and also the judgment and decree dated 12.05.2015 passed by learned Addl. District Judge, Palwal, vide which the appeal filed by the appellants was dismissed.

The brief facts of the case are that plaintiff-respondent Rajbir filed a suit against defendants Daya Ram, Mohan Singh and Bansi Lal, for possession by way of specific performance of the

agreement to sell dated 22.01.2008 executed by defendant No.1- Daya Ram and the sale deed dated 27.02.2008 executed by defendant No.1 in favour of defendants No.2 and 3 and its subsequent mutation No.8404 may be declared to be illegal, null and void, ineffective, inoperative and does not confer any title upon the defendants No.2 and 3 qua the suit land and does not affect the rights of the plaintiff. It is stated in the plaint that defendant No.1 is recorded owner and in possession of the agricultural land including the suit property. He entered into an agreement to sell with the plaintiff on 22.01.2008 for a total consideration of ₹6 lacs and received ₹2.6 lacs as earnest money and sale deed was to be executed on 21.07.2008. The plaintiff remained ready and willing to perform his part of the contract but defendant No.1 executed sale deed dated 27.01.2008 in favour of defendants No.2 and 3 (real nephews of defendant No.1) in collusion with each other. It is also stated that defendants No.2 and 3 were also having the notice of the agreement to sell which was executed by defendant No.1 in favour of the plaintiff.

Upon notice, defendant No.1 filed written statement and took the plea that alleged agreement is false and fabricated document and the same is an outcome of fraud and cheating played by the plaintiff. It is stated that in the written statement that defendant No.1 borrowed a sum of ₹60,000/- from the plaintiff in the month of February 2007, which the defendant could not repay in time. The plaintiff being a strong and influential person, got affixed thumb impressions and signatures on few blank papers when defendant

No.1 was under the impact of intoxication as the plaintiff served liquor to defendant No.1. It is also the case that when after execution of sale deed in favour of defendants No.2 and 3, defendant No.1 offered repayment of borrowed amount to the plaintiff and plaintiff on one or the other pretext, refused to return the papers bearing thumb impressions and signatures of defendant No.1, even after receipt of borrowed money with interest. On merits, it is admitted that defendant No.1 is recorded owner in possession of suit property. He also admitted that he has sold the land to defendants No.2 and 3. He denied the execution of the agreement dated 22.01.2008 or receiving of earnest money. He also pleaded regarding the execution of agreement to sell dated 17.01.2008 in favour of defendants No.2 and 3 and it is denied that the sale deed 27.02.2008 is without consideration, null and void. Defendants No.2 and 3 mainly took the plea regarding bonafide purchasers and they denied that defendant No.1 took ₹2.6 lacs as earnest etc.

Learned Addl. Civil Judge (Senior Division) Hodal, after framing the issues and giving opportunity to lead evidence to the parties, decreed the suit of the plaintiff for possession by way of specific performance and the sale deed dated 27.02.2008 executed by defendant No.1 in favour of defendants No.2 and 3 and subsequent mutation were declared as null and void. Aggrieved from the judgment and decree passed by learned Addl. Civil Judge, appellants-defendants No.2 and 3 filed appeal before learned District Judge, Palwal and learned Addl. District Judge, Palwal, to whom it

was assigned, also upheld the findings given by learned Addl. Civil Judge and dismissed the appeal vide judgment and decree dated 12.05.2015.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellants-defendants No.2 and 3.

At the time of arguments, learned counsel for the appellants argued that defendants No.2 and 3 (appellants) are bonafide purchaser and the Courts below have wrongly declared the sale deed as well as the mutation as null and void. He further argued that the Courts below have also wrongly held the agreement to sell dated 17.01.2008 in favour of the appellants, as ante dated. He next argued that the Courts below have misread the evidence and the findings that agreement to sell dated 17.01.2008 is ante dated, has been given by presumption only.

I have heard learned counsel for the appellants and have gone through the record.

From the record, first of all, I find that both the Courts below have given concurrent findings and there is nothing on the record to show that any evidence has been misread by the Court or has not been appreciated in right perspective. In no way, after going through the evidence, it can be held that the findings given by the Courts below are perverse or against the evidence and law. As per the evidence on record as well as the findings of the Courts below, I find that the plaintiff has duly proved the agreement to sell dated

22.01.2008 executed by defendant No.1-Daya Ram in favour of the plaintiff. Even, defendant No.1 in written statement has indirectly admitted his thumb impressions and signatures as he himself stated that thumb impressions and signatures were obtained on blank papers after serving liquor to him. Defendant No.1 has also stated in the written statement that he has taken ₹60,000/- as loan from the plaintiff. These averments in the written statement regarding borrowing of loan or paying back any amount or interest, have not been supported and corroborated by cogent documentary evidence. Again the plea that fraud has been played with defendant No.1 by the plaintiff, was to be proved by the defendants but the defendants have not led any cogent evidence to prove the same. The agreement to sell Ex.P1 dated 22.01.2008 executed in favour of the plaintiff has been duly proved by the plaintiff by bringing himself into the witness box as PW-1 and by examining PW-2 Ram Chand and PW-3 Khayali, Lamberdar. PW-4 Hira Lal Sorout, Deed Writer, who deposed regarding execution of the agreement to sell dated 22.01.2008. These PWs have also deposed that ₹2.6 lacs was paid as earnest money. The agreement Ex.P1 is duly signed by Daya Ram and also there are signatures of his son. There is no explanation as to how the signatures of son of defendant Daya Ram appeared on the agreement after the signatures of Daya Ram, which were taken after serving liquor as alleged. Therefore, version of defendant No.1 regarding fraud etc. cannot be believed and same has been rightly discarded by the Courts below. Even DW-1 Daya Ram, in cross-examination has

stated that on Ex.P1, there might be his signatures. There is also photo of Daya Ram on agreement Ex.P1. Therefore, from the evidence on record, the Court correctly held that Ex.P1 has been duly proved and that it is executed by defendant No.1 after receiving ₹2.6 lacs as earnest money.

Defendant No.1 has executed sale deed dated 27.02.2008 in favour of defendants No.2 and 3 in less than one and half month after executing the agreement to sell in favour of the plaintiff. As regarding the sale deed, the Court has correctly appreciated the evidence that this agreement to sell is not scribed by any regular deed writer. This agreement is stated to be of 17.01.2008, which is earlier to the agreement in favour of the plaintiff. To prove this fact that agreement to sell in favour of defendants No.2 and 3 was executed on 17.01.2008, there is no cogent supporting document on record from where it can be held that this agreement was executed on 17.01.2008. There is no explanation as to why the agreement to sell in favour of defendants No.2 and 3 was not got scribed from a regular deed writer. This agreement is stated to be got typed on the dictation of Mr.P.S.Gehlot, Advocate but he has not come to the witness box and the typist has also not been examined, nor there are signatures of any Lamberdar on this agreement Ex.D2 nor the stamp vendor has been examined.

Defendants No.2 and 3 (appellants) are the real nephews of defendant No.1, which is another fact to show that defendants No.2 and 3 are not bonafide purchaser and agreement Ex.D2 in favour of

them can easily be ante dated. Further, I find that there is no evidence on record to show the payment of consideration by defendants No.2 and 3 to defendant No.1. No bank account details of defendant No.1, where the money was deposited, has been brought on the record nor consideration has been paid by way of any negotiable instrument like cheque, draft etc. Therefore, the Courts below have correctly passed the judgments and decrees in favour of the plaintiff by correctly appreciating the evidence in right perspective and as per law.

In view of the above discussion, the findings of the Courts below are concurrent, as per evidence and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 08, 2015
Vgulati

(INDERJIT SINGH)
JUDGE