

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3409 of 2015 (O&M)
Date of Decision: July 23, 2015

Jaswinder Singh

...Appellant

Versus

Jasvir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Bali, Senior Advocate with
 Mr.A.V.S.Barsat, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-defendant Jaswinder Singh has filed this regular second appeal against respondent-plaintiff Jasvir Singh, challenging the impugned judgment and decree dated 07.11.2012 passed by learned Addl. Civil Judge (Senior Division) SAS Nagar, Mohali, vide which the suit filed by the plaintiff-respondent for possession by way of specific performance, was decreed and also the judgment and decree dated 21.04.2015 passed by learned Addl. District Judge, SAS Nagar Mohali, vide which the appeal filed by the appellant-defendant was dismissed.

The brief facts of the case are that plaintiff-respondent Jasvir Singh filed a suit against appellant-defendant Jaswinder Singh, for possession by way of specific performance of agreement to sell

dated 30.09.2005 regarding 2 kanal area out of the share of the defendant. It is the case of the plaintiff that defendant is the owner in joint possession of 1/8 share out of the land as described in the head note of the plaint, which has been inherited by him from his father after his death. On 10.09.2005, the defendant agreed to sell two kanals out of the suit land to the plaintiff for a total consideration of ₹4,25,000/- and ₹2,25,000/- was received by him as earnest money. The last date for execution of sale deed was fixed for 10.01.2006. The defendant also agreed that in case mutation of inheritance is not sanctioned then sale deed shall be executed within three months after sanctioning the mutation. On 30.03.2006, plaintiff came to Tehsil Complex along with remaining sale consideration of ₹2 lacs in the shape of demand draft but defendant refused to execute the sale deed. The plaintiff got his presence marked in Tehsil complex.

Upon notice, the case of the defendant is that he approached plaintiff for borrowing some amount on loan basis and for the return and safety of amount, plaintiff obtained his signatures on some blank papers and afterwards he also obtained the signatures and thumb impressions of his mother and sister. It is further stated that on 30.09.2005, he was not having any land in his name and he never entered into agreement to sell with the plaintiff. He went to plaintiff on 20.01.2006 along with loan amount and interest but the plaintiff put off the matter that he would receive money after few days. It is also stated that agreement to sell is result of fraud, in connivance with the witness Gurmukh Singh, who is brother of the plaintiff and

serving in Tehsil office, Kharar. It is also stated that at present, the price of land is more than ₹1 crore per acre.

After framing the issues and after the parties led evidence, learned Addl. Civil Judge (Senior Division) SAS Nagar, Mohali, decreed the suit of the plaintiff vide judgment and decree dated 07.11.2012. Aggrieved from the above-said judgment and decree, appellant-defendant filed appeal and learned Addl. District Judge, SAS Nagar, Mohali, dismissed the appeal vide judgment and decree dated 21.04.2015.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellant-defendant.

At the time of arguments, learned counsel for the appellant argued that fraud has been committed with the defendant by obtaining the thumb impression on blank papers by forging agreement to sell. He further argued that the Sub Registrar's signature differ on the affidavits vide which the plaintiff got marked his presence in the morning and evening, which also shows that fraud has been committed. He next argued that at the time of execution of agreement to sell, the defendant was not owner of the suit property.

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

From the record, I find that to prove the execution of agreement to sell, the plaintiff examined himself as PW-1. He also tendered into evidence Ex.P1 to P5. Plaintiff also examined PW-2

Avtar Singh, attesting witness, who duly proved his attestation on the agreement and supported the version of the plaintiff and proved the execution of agreement to sell, PW-3 Matwinder Singh, officer of Punjab & Sind Bank, who proved on record document i.e. attested copy of credit voucher and copy of draft voucher etc. Plaintiff also examined PW-4 Manbir Singh, Advocate.

On the other hand, defendant examined himself as DW-1, Sodagar Singh, Clerk of Advocate as DW-2, who proved on record the legal notice and DW-3 Nachhatar Singh.

The agreement was scribed by Manbir Singh, Advocate, who appeared into the witness box and supported and corroborated the version of the plaintiff. The versions of the PWs have been duly supported by documentary evidence. It is also duly proved by the plaintiff that he remained ready and willing and is still ready and willing to perform his part of the contract. On the other hand, defendant has denied the execution of the agreement but in the written statement, he indirectly admitted his signatures as well as of his mother and sister on the agreement. The defendant also admitted receiving of ₹2,25,000/- earnest money indirectly by saying that it was a borrowed amount. The version of the defendant that the agreement is result of fraud, is not proved by the defendant by bringing cogent evidence on record.

The finding of facts given by the Courts below are as per evidence and law. The fact that there is mere difference in the signatures of the Sub-Registrar on the application/affidavits etc. given

by the plaintiff for the purpose of marking his presence, will not show that plaintiff was not ready and willing to perform his part of the contract. Plaintiff immediately after the date of execution of the sale deed, filed the suit on 03.04.2006. He also gave legal notice. Otherwise also, there is evidence on record that plaintiff was ready and willing and is still ready and willing to perform his part of the contract. On the other hand, by denying the agreement to sell, it is proved that defendant was not ready and willing to perform his part of the contract.

The perusal of the agreement shows that it is mentioned in the agreement that father of the defendant had already died. The mere fact that if mutation has not been sanctioned, it cannot be held that defendant was not owner at the time of execution of the agreement. The defendant became owner of the suit property by way of inheritance after the death of his father. The mutation does not confer title, rather, mutation in the revenue record, is just for the completion of the revenue record. Therefore, it cannot be held that defendant was not the owner of the suit property.

The findings given by the Courts below are as per evidence and law. In no way, it can be held that any evidence has been misread or the findings are perverse.

In view of the above discussion, I find that the judgments and decrees passed by the Courts below are correct, as per law and evidence and do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular

second appeal.

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

July 23, 2015
Vgulati

(INDERJIT SINGH)
JUDGE