

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

RSA No. 3450 of 2015 (O&M)
Date of Decision: October 20, 2015

HARINDERJIT SINGH AND ANOTHER

....APPELLANTS..

versus

IQBAL SINGH AND ANOTHER

...RESPONDENTS..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Vikas Cuccria, Advocate,
for the appellants.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

JASPAL SINGH, J.

This regular second appeal has been preferred by defendants No.2 and 3 feeling dissatisfied against judgment and decree dated May 18, 2015 passed by District Judge, Barnala confirming judgment and decree dated August 01, 2013 passed by Id. Additional Civil Judge (Sr. Division), Barnala, whereby suit of the plaintiff for specific performance, declaration and permanent injunction was decreed with costs to the extent of 9/100 share i.e. 15 marlas out of land measuring 8 kanals 8 marlas fully detailed in head note of the plaint.

2. The facts giving rise to the instant lis are that defendant No.1, who was owner in possession of the land to the extent of 9/100 share i.e. 15 marlas, out of the land measuring 8 kanals 8 marlas executed an agreement

to sell on December 23, 2014 in favour of plaintiff for ₹20,800/- per biswa and received ₹40,000/- as earnest money in the presence of witnesses. Sale deed was agreed to be executed up to May 31, 2005 in favour of plaintiff by defendant No.1 on receiving remaining sale consideration and possession was also agreed to be delivered at that time. It was also agreed that in case defendant No.1 fails to execute and get registered sale deed on due date, plaintiff shall be entitled to get the same executed and got registered through court and in case of failure on the part of plaintiff, the amount of earnest money shall be deemed to be forfeited. Agreement was scribed on stamp paper of ₹300/-, which was attested by Gurmail Singh son of Mohinder Singh and Harinder Singh son of Ranjit Singh, all are residents of Barnala. Defendants No.2 and 3 were also aware about the said agreement, because they also interested to purchase the suit land from defendant No.1. The plaintiff always remained ready and willing to perform his part of the contract and is still ready and willing. On May 20, 2005 when plaintiff came to the suit land, then defendants No. 2 and 3 claimed that they had purchased the suit land from Jatinderpal Singh-defendant No.1. Thereafter plaintiff made inquiry on May 05, 2005 he obtained the certified copy of jamabandi and sale deed No.1276 executed by defendant No.1 in favour of defendants No. 2 and 3 and came to know that in contravention of agreement in question, defendant No.1 had sold the suit land to defendants No. 2 and 3 for which defendant No.1 was not having any right and as such defendants No. 2 and 3 in connivance with defendant No.1 in order to defeat the rights of the plaintiff and without the consent of the plaintiff illegally got executed the sale deed No.1276 and got the same registered prior to the

date fixed for execution of sale deed in favour of the plaintiff in consonance with the above said agreement to sell. Moreover, the land which had been mortgaged by defendant No.1 with Sangrur Central Co-operative Bank Limited branch Barnala and had agreed to get the same redeemed before execution of sale deed in favour of the plaintiff, neither it had been got redeemed by defendant No.1 nor it had been mentioned in the sale deed, which also shows the dishonest intention of the defendants. As such, the sale deed in question is ineffective, null and void and has no effect on the rights of the plaintiff. It has further been pleaded that on the basis of above said sale deed, now defendants no. 2 and 3 are bent upon to get the mutation sanctioned in their favour and further to alienate the suit land in favour of some other persons and to change the nature of the same, which is totally illegal and in case they succeed in doing so, that would cause multiplicity of litigation between the parties. The plaintiff requested defendants to admit the agreement to sell regarding the suit land and to decree the sale deed No. 1276, being null and void and further requested defendant No.1 to execute the sale deed by receiving balance sale consideration and to deliver possession of suit land to the plaintiff but in vain. Hence, plaintiff filed suit for specific performance, declaration and permanent injunction.

3. Upon notice, suit was resisted by defendant No. 1 by filing written statement raising preliminary objections *inter alia* on the grounds that plaintiff has no locus standi and cause of action to file the present suit and that the suit is not maintainable in the present form. It is alleged that agreement is forged and fabricated document and plaintiff has filed the present suit in order to cause harassment to the replying defendant and as

such the replying defendant is entitled to get special costs from the plaintiff. On merits, it was submitted that defendant No.1 was owner in possession over the suit land to the extent of 9/100 share. It was denied that on 23.12.2004 defendant had executed any agreement to sell the disputed land @ ₹20,800/- per biswa or had received ₹40,000/- as earnest money. It was also denied that sale deed was agreed to be executed up to 31.05.2005. There was litigation between defendants No. 1 and 2 regarding the suit land and during the pendency of the suit, defendant No.1 had orally agreed to sell the land to defendant No.2, which adjoins the land of defendant No.2. It was denied that sale deed is forged and fabricated document. It was further submitted that before selling the suit land it was free from encumbrance. While denying all other averments, lastly prayed for dismissal of the suit was made.

4. Defendants No.2 and 3 filed separate written statement raising preliminary objections that suit is not maintainable as same being vague as no specific boundaries and definite boundaries have been mentioned either in the alleged agreement or in the plaint; that suit has not been properly valued for the purpose of court fee. On merits, it has been denied that defendant No.1 entered into an agreement to sell with plaintiff on 23.12.2004. It is admitted that answering defendants have purchased the suit property from defendant No.1 for a consideration of ₹2,00,000/- vide registered sale deed dated 17.5.2005 and are owners in possession of suit property. Material averment of remaining paras have been controverted and prayed for dismissal of suit.

5. Similarly, defendant No.4 has filed separate written statement by submitting that plaintiff has filed the instant suit in connivance with defendants No. 1 to 3 just to defeat the rights of the defendant No.4. It has been replied that suit property was already under mortgage with the answering defendant as defendant No.1 had equitably mortgaged the same with defendant No.4 on 24.05.2002.

6. However, during the pendency of suit, name of defendant No.4 was deleted from the array of defendants in view of the statement got recorded by counsel for the plaintiff.

7. From the pleadings of the parties, various issues were culled out by ld. trial court and both the parties were afforded ample opportunities to adduce and conclude their evidence. The plaintiff and defendants led oral as well as documentary evidence in respect of their pleadings and subsequently closed their evidence.

8. After analyzing evidence available on file adduced by parties i.e. oral as well as documentary and hearing learned counsel for parties, suit of plaintiff was decreed to the extent of 9/100 share i.e. 15 marlas detailed in head note of the plaint in favour of the plaintiff as per terms and conditions of agreement to sell dated 23.12.2004.

9. Aggrieved against judgment and decree dated August 01, 2013 passed by ld. trial court, defendants No. 2 and 3 preferred an appeal but that was also dismissed by ld. District Judge, Barnala on May 18, 2013 affirming/upholding judgment and decree dated August 01, 2013 passed by ld. trial court.

8. Disheartened with dismissal of appeal by first appellate court, defendants No.2 and 3 preferred instant appeal.

9. While assailing the impugned judgment and decree passed by the 1d. trial court and affirmed by lower appellate court, it has been ebulliently argued by learned counsel for the appellants that they are subsequent purchaser and both the courts below have misconstrued and misread the evidence available on file and has erred in law as well as facts by decreeing the suit of the plaintiff-respondent No.1 for specific performance of the agreement to sell dated December 23, 2004 executed by defendant No.1 in favour of plaintiff-respondent No.1. The sale deed executed by defendant No.1 in favour of appellants-defendants No. 2 and 3 is legal and valid one and at the best if the plaintiff-respondent No.1 establishes his case, he was only entitled to the refund of amount by defendant No.1 and no relief could have been granted by the courts below against the appellants, who are defendant No.2 and 3 in the suit in question. Undisputably, appellants-defendants No.2 and 3 are in possession of the property in suit and being bonafide purchaser could have been evicted or their sale deed could have been set aside only in a specific suit for declaration. The suit for specific performance is not legally maintainable. Moreover, the trial court as well as lower appellate court have further erred in law while totally ignoring the fact that appellants-defendants No. 2 and 3 have been duly acquitted by the trial court in the criminal case registered against them. This fact has also not been taken into consideration by the courts below. The agreement of sale is also not registered one.

10. Learned counsel for appellants-defendants No. 2 and 3 further contended that both the courts below have also failed to appreciate the fact that PW-2 is a business partner of Iqbal Singh-plaintiff. Moreover, plaintiff could not place and prove on record cogent and convincing evidence to establish that sale deed dated May 24, 2005 is a forged and fabricated document. The finding recorded in this regard are absolutely based upon conjectures. Thus, the impugned judgments and decrees are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant appeal.

11. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellants, but this Court is not in agreement with the same for the reasons recorded below.

12. In order to prove the agreement to sell dated 23.12.2004, Iqbal Singh-plaintiff himself stepped into the witness box as PW-3 and has reiterated the contents of plaint. Apart from his testimony, he has also examined Gurmail Singh as PW-1 and Harinder Singh as PW-2, attesting witnesses. Gurmail Singh PW-1 has categorically deposed on oath that Jatinder Pal Singh-defendant No.1 has entered into an agreement to sell dated 23.12.2004 in respect of the land measuring 15 marlas owned and possessed by him @ ₹20,800 per biswa, which was jotted down from a typist in his presence as well as in the presence of Harinder Singh and received a sum of ₹40,000/- towards earnest money out of the total sale consideration. He has further stated that the contents of the agreement to sell were read over and explained to Jatinder Pal Singh, who appended his signatures in token of its correctness. Not only this, it has also been deposed

in clear words that he as well as Harinder Singh signed the same as its marginal witnesses. As per the terms and conditions of the agreement to sell dated 23.12.2004 Ex.P-1, the sale deed was to be executed and registered on May 31, 2005 on payment of balance sale consideration. PW-2 Harinder Singh another attesting witness of the agreement to sell has also fully corroborated the version of Iqbal Singh-plaintiff PW-3 as well as that of Gurmail Singh PW-1. Iqbal Singh, PW-3 has also deposed that he is ready and willing to perform his part of the agreement and it was defendant No.1, who violated the terms and conditions and did not perform his part of contract. Further that in order to defeat the rights of plaintiff-respondent No.1, he executed sale deed No.1276, dated 24.05.2005, in favour of defendants No. 2 and 3. Though, both the witnesses namely Gurmail Singh PW-1 and Harinder Singh PW-2 have been examined by plaintiff-respondent No.1 and also subjected to lengthy cross-examination but nothing fruitful to the defendants could be wrenched out of them.

13. As far as the readiness and willingness on the part of plaintiff-respondent No.1 is concerned that stands proved from the fact that the plaintiff-respondent No.1 appeared and remained in the office of Sub-Registrar along with the balance sale consideration and other expenses, to be incurred for getting the sale deed registered on the stipulated date i.e. May 31, 2005 but at the time defendant No.1 did not turn up. Affidavit (Ex.P-2) of Iqbal Singh-plaintiff has been placed and proved on record, which finds the attestation of Jang Singh and Krishan Kumar.

14. Here, it would also not out of place to mention that in the State of Punjab, Tehsildar has been vested the power of Executive Magistrate as

well as that of Sub-Registrar. So, the mere fact that the attestation of the affidavit Ex.P-2 has been made by Executive Magistrate, does not mean that he was not present in the office of Sub Registrar. Otherwise also, the duty of the Sub-Registrar is to register the document and if any affidavit is to be attested, it is always to be done in the capacity of an Executive Magistrate. But on these minor contradictions or discrepancies, affidavit Ex.P-2 cannot be ignored and disbelieved. Though, Harinderjit Singh DW-1 as well as Jatinder Pal Singh DW-2 have appeared in the witness-box and have stated that he along with defendant No.3-Harraj Singh purchased the property for a sum of ₹2,00,000/- from defendant No.1 vide sale deed Ex.D-1 but there is no substantive or convincing evidence to prove that the sale consideration of ₹2,00,000/- was passed at the time of execution and registration of sale deed by defendant No.1 in favour of defendants No. 2 and 3. Rather, it has emerged in the statements of both the witnesses i.e. DW-1 and DW-2 that no money was ever paid by defendants No.2 and 3 to defendant No.1 in the office of Sub-Registrar. Even perusal of sale deed Ex.D-1 transpires that the consideration was not passed from the hands of defendants No.2 and 3 to defendant No.1 in the presence of Sub Registrar especially in view of the fact that there is recital of the sale deed that the sale consideration was given by defendants No. 2 and 3 in the presence of other witnesses in the house of defendant No.1. So, there is a suspicion with regard to the passing of consideration, which could not be removed by appellants/defendants No. 2 and 3.

15. There is another astonishing fact in the case in hand that as per defendants No.2 and 3, against the land subject matter of the sale deed

Ex. D-1, defendant No.1 has availed some financial assistance from the bank and further that the loan outstanding against defendant No.1 was repaid by appellants/defendants No.2 and 3 in lieu of the sale consideration.

16. But to the utter surprise, no employee of the bank has been examined to prove this aspect. Had there been some loan against defendant No.1, which has been paid by appellants-defendants No.2 and 3, this fact could have been easily proved by examining the bank employee. But no such effort in this regard was made. Similarly, nothing has also brought on record by appellants/defendants No. 2 and 3 that there was an oral agreement to sell in between defendant No. 1 and appellants-defendants No.2 and 3 prior to the agreement of sale propounded by plaintiff-respondent No.1. Moreover, plaintiff-respondent No.1 as well as defendants are residents of same locality and the suit property is also proved to be joint between the predecessor-in-interest of the plaintiff as well as predecessor-in-interest of defendant No.1 from which it becomes clear that defendants No.2 and 3 were aware about the execution of sale deed Ex.D-1/P-1. But despite that fact, they opted the sale deed to be executed and registered in their favour.

17. In the light of above narrated facts and discussion, this Court is of the considered view that the ld. lower court has rightly concluded that the sale deed is sham transaction, without consideration and has been got executed by appellants-defendants No.2 and 3 with a view to defeat the rights of respondent No.1-plaintiff. The ld. lower appellate court has also rightly concurred with the findings recorded by the ld. trial court. This Court has also does not find any infirmity or illegality in the impugned

judgments and decrees as the same are absolutely inconsonance with the evidence available on file and settled canons of law.

18. As an upshot of the aforesaid discussion, the instant appeal is without any merit. As such, the same is dismissed but with no order as to cost.

October 20, 2015
sonika

(JASPAL SINGH)
JUDGE