

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

**Regular Second Appeal No.1717 of 2014 (O&M)  
Date of decision: 19.03.2015**

**Ram Kishan**

**.....Appellant**

**Versus**

**Arvind Kumar**

**.....Respondent**

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Sanjay Mittal, Advocate,  
for the appellant.

**Ritu Bahri, J.**

Defendant-appellant has come up in regular second appeal against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Civil Judge (Senior Division), Narnaul and the Additional District Judge, Narnaul, whereby suit filed by the plaintiff-respondent has been decreed to the extent that he was entitled to get possession of the suit land qua 1/6 share of defendant in accordance with copy of mutation, Ex.D6.

Arvind Kumar, plaintiff-respondent had filed a suit for possession by way of specific performance of contract dated 10.12.1998 to the effect that defendant (appellant) agreed to alienate his land to the extent of 1/5 share, measuring 2 Biswas, 4 Biswansi, comprised in Khewat No.167, Khatoni No.240, Khasra No.2670/2, measuring 1 Bigha, 3 Biswa out of ½ share measuring 11 Biswa, as per Jamabandi for the year 1989-90, situated at

**Narnaul, in favour of the plaintiff for a consideration of Rs.1,00,000/- vide**

which he had received Rs.80,000/- as earnest money. He had further prayed that the defendant be restrained from interfering in the use and possession of the plaintiff over the aforesaid land and to restrain him from alienating the same to anyone. In the alternative, suit for recovery of Rs.80,000/-, already paid and Rs.39,000/- as compensation along with interest @ 24% per annum.

Vide sale deed No. 1085 dated 13.12.1971, father of defendant namely Jangli Ram son of Surajbhan Saini had purchased land measuring 1 Bhigha 3 Biswas out of 1/2 share, measuring 11 Biswas, comprised in Khewat No.167, Khatoni No.240, Khasra No.2670/2. Subsequent to the aforesaid sale deed, he became owner in possession of the said land. In this regard, mutation No.8818 dated 13.06.1985 was sanctioned, copy of which was attached with the plaint. Aforesaid Jangli Ram expired in the year 1986 and thereafter, the land in question came into the share of his four sons, including defendant, one daughter and his widow. However, Sarbati Devi, daughter of Jangli Ram relinquished her share in favour of his four brothers, including the defendant. The defendant was owner in possession to the extent of 1/5 share over the land in question. Vide agreement to sell dated 10.12.1988, the defendant-appellant agreed to alienate his land to the extent of 1/5 share, measuring 2 Biswas 4 Biswansi out of land measuring 11 Biswas in favour of the plaintiff-respondent for a consideration of Rs.1,00,000/- and received a sum of Rs.80,000/- as earnest money in the presence of witnesses. Remaining sale consideration was to be paid at the time of execution of the sale deed. The sale deed was to be executed on 30.06.1999. The actual possession of the suit land was delivered to the plaintiff on 10.12.1998 and the right of ownership was to be devolved at the time of execution of sale deed. On 30.06.1999, the plaintiff-respondent went

to the office of Joint Sub-Registrar, Narnaul along with balance sale consideration, stamp etc., but the defendant-appellant did not come present to execute the sale deed. Thereafter, the plaintiff-respondent got his presence marked before the Executive Magistrate, Narnaul by way of an affidavit. On 12.07.1999, plaintiff-respondent issued a notice to the defendant to execute the sale deed in his favour and to appear before the office of Sub Registrar, Narnaul on 19.07.1999. But, the defendant-appellant did not come present on that date as well. On 07.01.2002, plaintiff-respondent again issued a notice to the defendant to execute the sale deed in his favour on 17.01.2002. On that date also, plaintiff went to the office of Joint Sub Registrar, Narnaul along with balance sale consideration etc., but the defendant-appellant did not come present. On so many occasion, plaintiff-respondent requested the defendant-appellant to execute the sale deed in his favour, but the defendant was lingering upon the matter on one pretext or the other. Hence, the suit.

The defendant-appellant filed his written statement, wherein he controverted the allegations of the plaintiff and prayed for dismissal of the suit.

Before the trial Court, the plaintiff-respondent himself appeared as PW-1 and examined Naraindutt Sharma as PW-2. The agreement, Ex.P1, was executed with regard to 1/5 share of the defendant, but as per copy of mutation, Ex.D6, the defendant was owner in possession to the extent of 1/6 share in the land in question. As per Section 12 of the Specific Relief Act, alienation qua 1/6 share of the defendant in the land in question cannot be deemed as illegal. Accordingly, the suit of the plaintiff-respondent was decreed to the extent of 1/6 share of the defendant in the suit land as per

mutation, Ex.D6.

The lower appellate Court affirmed the findings recorded by the trial Court and held that execution of the agreement, Ex.P1, was duly proved as per the deposition of attesting witness Naraindutt Sharma (PW-2). As per the agreement, Ex.P1, the plaintiff-respondent had appeared before the Joint Sub Registrar, therefore, he was ready and willing to execute the sale deed. Out of total sale consideration of Rs.1,00,000/-, plaintiff had already paid Rs.80,000/- as earnest money at the time of execution of the agreement, Ex.P1 and possession of the suit land was given to him. Thereafter, the plaintiff had taken a number of steps to appear before the Sub Registrar to make the balance payment of Rs.20,000/- and to get the sale deed registered.

After going through the judgments passed by both the Courts below and keeping in view the fact that possession of the land in dispute had already been given to the plaintiff-respondent after accepting a sum of Rs.80,000/- by the defendant-appellant, the suit for specific performance has been rightly decreed in favour of the plaintiff-respondent. No interference is required on the concurrent findings of fact recorded by both the Courts below.

No substantial question of law arises for consideration.

Dismissed.

19.03.2015  
ajp

**(RITU BAHRI)**  
**JUDGE**