

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

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**RSA-3560-2014 (O&M)
Date of Decision-16.11.2015**

GURMAIL SINGH AND ORS

Appellants

Versus

GIRDHARI LAL

Respondent

CORAM:HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. K.S. Chahal, Advocate
for the appellants.

RAJ MOHAN SINGH, J. (ORAL)

1. Defendants are in second appeal in a suit for possession by way of specific performance of the agreement to sell dated 07.06.2003 on payment of balance sale consideration of Rs.2,25,000/-.
2. Plaintiff alleged that defendants No.1 and 2 are husband and wife and they were having share in joint land as shown in the head note of the plaint. Defendant No.1 entered into an agreement to sell dated 07.06.2003 in respect of his share whereas defendant No.2 also agreed to sell land to the extent of her share from the total land measuring 68 bighas 3 biswas that comes out to be 10 biswas being 200/1363 share. The rate was fixed as Rs.62,500/- per bigha. An amount of Rs.4,00,000/- was taken as earnest money at the time of execution of agreement. The target date for execution of sale deed fixed as 09.12.2003.

3. The agreement was scribed by Rana Partap Singh as deed writer. Defendants No.1 and 2 failed to register and execute the sale deed on 09.12.2003 so the target date for execution of sale deed was extended up to 17.12.2003 and endorsement was made to that effect. On the target date, plaintiff attended the office of Sub Registrar, Rajpura along with balance sale consideration and got his presence marked whereas defendants failed to perform their part of obligation. Plaintiff always remained ready and willing to get the sale deed executed and registered in his favour after making good the balance payment. Plaintiff further alleged that defendants No.1 and 2 got the entire land mortgaged with Punjab Housefed Chandigarh and this fact came to his knowledge when he obtained jambandi. With this background, the suit in question came to be filed.

4. The defendant contested the suit admitting the relationship between defendants No.1 and 2 whereas execution of agreement to sell was specifically denied. Additionally, it was pleaded that defendant No.1 was in the need of money and, therefore, had obtained loan from PADB in the name of his wife through one Ajit Singh. Parties were having great faith in aforesaid Ajit Singh. Ajit Singh is the attesting witness to agreement to sell. Besides the scribe he became attesting witness to agreement to sell in collusion with the plaintiff. In this way, fiduciary relationship is sought to be pleaded between defendants and aforesaid Ajit Singh who was instrumental in getting alleged agreement to sell executed between the parties.

5. Replication was not filed. Parties were asked to lead evidence on the following issues:-

- “1) Whether the defendant No.1 and 2 received Rs.4.0 lacs earnest money and entered into agreement to sell on 7.6.2003?OPP*
- 2) Whether the plaintiff always remained ready and willing and is still ready and willing to perform his part of agreement? OPP*
- 3) Whether the plaintiff has no locus standi to file the present suit? OPD*
- 4) Whether the plaintiff has not approached the Court with clean hands? OPD*
- 5) Whether the suit is bad for misjoinder of necessary parties? OPD*
- 6) Whether the suit of plaintiff is frivolous and is not maintainable? OPD*
- 7) As to what would be the effect of mortgage of property by plaintiff and defendant No.3? OP Parties*
- 8) Relief.”*

6. Both the parties led evidence. Trial Court considered issues No.1, 2 and 7 jointly and held execution of agreement to sell to be duly proved. Plea of fiduciary relationship as pleaded by the defendants was rejected by the trial Court as well as by the Appellate Court. Execution of agreement to sell Ex.P1 was duly proved. The agreement to sell has been proved with reference to statement of scribe as well as of attesting witnesses. Passing of consideration to the tune of Rs.4,00,000/- has been proved with reference to the statement of attesting witnesses.

7. PW-1 Ajit Singh who is one of the attesting witness to agreement to sell Ex.P1 has specifically deposed about due execution of agreement to sell at the instance of defendants No.1 and 2. He has also endorsed the factum of passing of consideration worth Rs.4,00,000/- in the presence of witnesses Bikram Singh son of Sher Singh and the agreement to sell was duly scribed by Rana Partap Singh deed writer and defendants No.1 and 2 appended their thumb impressions admitting the contents of the agreement to sell to be correct. Testimony of attesting witness was duly corroborated by another attesting witnesses to agreement to sell i.e. Bikram Singh and deed writer Rana Partap Singh as PW-4. Plaintiff Girdhari Lal has appeared as PW-3. The cross-examination of these witnesses were conducted at length but nothing incriminating could be brought out in favour of defendants-appellants. Both the Courts have recorded as a finding of fact that the evidence on record inspires confidence and is the result of trustworthy account submitted by the witnesses.

8. Bald statement of Gurmail Singh as DW-1 has not been taken to be sufficient evidence as against convincing overwhelming evidence led by the plaintiff. Gurmail Singh DW-1 took a plea that thumb impressions of the defendants No.1 and 2 were taken upon the paper already prepared by the plaintiff in collusion with Ajit Singh. In cross examination the witness even did not admit his signature upon which the alleged agreement to sell Ex.P-1 was scribed. The stand advanced by DW-1 Gurmail Singh was held to be

contradictory with the stand taken in the cross examination. Either the alleged agreement to sell Ex.P-1 was not the said document stated by the defendant in his cross examination or the earlier account submitted by the defendant was not correct.

9. Bare perusal of Ex.P1 reveals that the stamp papers were purchased by DW-1 Gurmail Singh himself on 07.06.2003 from the stamp vendor but he miserably failed to examine the stamp vendor to prove the factum of his not visiting the stamp vendor for the purpose of purchasing the stamp papers in question.

10. In the light of findings recorded by the Courts below on appreciation of evidence, the questions as formulated by the appellants in ground No.9 out of the grounds of appeal cannot be appreciated. Question No.1 has to be answered in negative in view of appreciation of evidence done by the Courts below. Re-appreciation in second appeal in considered opinion of this Court is not permitted. Question No.2 has to be answered in the light of agreement to sell duly proved on record. The discretion has to be exercised in lawful manner. Once the agreement to sell is proved, grant of decree is a natural consequence of the same, unless and until a case of hardship is pleaded by the defendants in terms of Section 20 of the Special Relief Act. Since no such hardship has been pleaded by the defendants in the defence, therefore, question No.2 has to be answered against the appellant. Question No.3 in the context of fiduciary relationship of the defendants with Ajit Singh has not been proved to the extent of discarding the case of the plaintiff

which is based on lawful evidence on record. Particulars of fiduciary relationship have not been proved on record with reference to evidence, therefore, question No.3 does not arise at all. Questions No.4 and 5 are not involved at all. Impugned judgments and decrees cannot be presumed to be illegal in the absence of any satisfactory evidence of the defence on record. The judgments and decrees passed by the Courts below are based on correct appreciation of evidence and, therefore, questions No.4 and 5 which have been duly answered in the context of question of No.2 also does not arise.

11. Considering the nature of evidence brought on record, this Court does not feel like to interfere in this appeal. Consequently, this appeal is dismissed.

16.11.2015
Prince

(RAJ MOHAN SINGH)
JUDGE