

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4327 of 2014 (O&M)
Date of Decision: April 28, 2015

Gurnam Singh

...Appellant

Versus

Balwinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mohd. Yousaf, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-defendant No.1 Gurnam Singh has filed this regular second appeal against Balwinder Singh, Gurjant Singh (plaintiffs-respondents), Harjit Singh, Daljit Singh, Lakhvir Singh respondents and Smt.Amarjit Kaur, proforma respondent challenging the judgment and decree dated 10.12.2011 passed by learned Addl. Civil Judge (Senior Division), Zira vide which the suit for specific performance of the agreement of sale filed by the plaintiffs was decreed and also judgment and decree dated 19.05.2014 passed by learned Addl. District Judge, Ferozepur, vide which appeal filed by the appellant-defendant and Smt.Amarjit Kaur, was dismissed.

The brief facts of the case are that Balwinder Singh, Gurjant Singh, plaintiffs filed a suit against Gurnam Singh, Amarjit Kaur, Harjit Singh, Daljit Singh and Lakhvir Singh defendants for specific performance of agreement of sale dated 19.02.2001 and in

the alternative, relief of recovery of ₹9 lacs as well as suit for declaration. Plaintiffs stated in the plaint that defendant No.1 Gurnam Singh, owner of the property in dispute, entered into an agreement to sell dated 19.02.2001 of the said property with the plaintiffs for total sale consideration of ₹9 lacs and received ₹8 lacs as earnest money from the plaintiffs. The said agreement was scribed by Mehal Singh and witnessed by Baj Singh, Gurcharan Singh and Dial Singh. Defendant Gurnam Singh also agreed to get the sale deed executed on 18.03.2002 in favour of the plaintiffs and delivered the possession to the plaintiffs at the time of execution of the agreement. The defendant took the possession of land in dispute illegally and forcibly from the plaintiffs on 31.03.2003. The plaintiffs filed applications to the higher authorities regarding these facts. It is also the case of the plaintiffs that they were ready and willing and are still ready and willing to perform their part of the contract. On the stipulated date i.e.18.03.2002, the plaintiffs along with balance sale consideration and requisite expenses for stamp and registration, came to the office of Joint Sub Registrar, Makhu but the defendant Gurnam Singh did not turn up and ultimately plaintiffs got their presence marked before the Sub Registrar. It is further the case of the plaintiffs that defendant Gurnam Singh prepared false, forged and fabricated agreement to sell dated 18.07.2000 in collusion with defendant No.5 Lakhvir Singh, real brother of Gurnam Singh and executed sale deed in favour of defendants No.2 to 4, which is null and void.

On the other hand, the case of the defendant Gurnam

Singh, in the written statement, is that plaintiffs in connivance with witnesses and scribe, have committed a fraud with defendant and they have forged the signatures of defendant. The defendant denied the execution of agreement to sell in question and receipt of earnest money from the plaintiffs. It is also stated that defendant never delivered the possession of the suit property to the plaintiffs.

Learned Addl. Civil Judge (Senior Division), Zira vide judgment and decree dated 10.12.2011, after appreciating the evidence, decreed the suit of the plaintiff for specific performance of agreement to sell dated 19.02.2001 and directed the defendant to execute the sale deed in respect of land as detailed in the head note. An appeal was filed by the defendant Gurnam Singh and Smt.Amarjit Kaur, which was also dismissed vide judgment and decree dated 19.05.2014 passed by learned Addl. District Judge, Ferozepur.

Aggrieved from the above-said judgments and decrees passed by the Courts below, present regular second appeal has been filed.

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

At the time of arguments, learned counsel for the appellant argued only on one point that no agreement has been executed by defendant No.1 Gurnam Singh and denied the signatures of defendant No.1 on the agreement and argued that findings given by the Courts below are not as per evidence.

The perusal of the record shows that plaintiffs examined

PW-1 Gurcharan Singh, attesting witness, PW-2 Baj Singh, another attesting witness, PW-3 Mehal Singh, documents writer and plaintiff Gurjant Singh examined himself as PW-4. The scribe and the attesting witnesses along with plaintiff Gurjant Singh have duly proved the execution of the agreement to sell.

On the other hand, defendant Gurnam Singh examined himself as DW-1 and Amarjit Kaur as DW-2. No expert witness has been examined by the defendants to rebut the evidence of the plaintiffs that the agreement in question was not signed by Gurnam Singh.

Nothing has been pointed at the time of arguments as to which evidence has been misread by the Courts below. Both the Courts below have correctly appreciated the evidence and have given the findings of fact concurrently against the present appellant. The sale deed executed by defendant-appellant Gurnam Singh in favour of Amarjit Kaur, his wife and Harjit Singh and Daljit Singh, his sons, is nothing but a sham agreement to avoid the specific performance of the agreement to sell with the plaintiffs. The findings given by the Courts below are correct, as per evidence and law and do not require any interference from this court. 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.

April 28, 2015
Vgulati

(INDERJIT SINGH)
JUDGE