

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A. No. 4910 of 2014 (O&M)

Date of Decision:- 25.05.2015

Didar Singh

.....Appellant

Versus

Joga Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Mr. Harvinder Pal Singh Ghuman, Advocate,
for the appellant.

Mr. S.S. Salar, Advocate
for respondent No.1.

None for respondent No.2.

SHEKHER DHAWAN, J.

Present Regular Second Appeal against judgment and decree dated 03.07.2014, passed by District Judge, Patiala, whereby the first appeal against judgment and decree dated 09.08.2011, passed by Additional Civil Judge (Sr. Divn.), Nabha, was accepted and the suit of plaintiff was decreed for alternate relief for recovery of ₹15,00,000/- as

principal amount along with interest @ 9% per annum.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance.

3. The detailed facts of the case have already been recaptured in the judgments of both the Courts below. However, relevant facts for the purpose of decision of present Regular Second Appeal that plaintiff filed suit for possession on the basis of specific performance of agreement of sale dated 12.12.2001 and in the alternative a decree for recovery of ₹30,50,125/- along with interest.

4. As per plaintiff, Jita Singh (defendant No.1) in his capacity as owner in possession of suit land measuring 93 kanals 17 marlas out of total share of 125 kanals 17 marals entered into agreement of sale regarding said land at the rate of ₹2,60,000/- per acre. The total amount comes to ₹30,50,125/-. Payment of ₹15,00,000/- was made as earnest money. The balance amount was to be paid at the time of execution and registration of sale deed i.e. on or before 11.12.2002. The plaintiff requested defendant No.1 on different dates to execute sale deed on receipt of balance sale consideration on 11.12.2002. Plaintiff remained present before the office of Sub-Registrar, Nabha with balance sale consideration and necessary expenses but defendant No.1 failed to put in appearance. Plaintiff got his affidavit attested from Executive Magistrate Nabha on 11.12.2002. Plaintiff always remained ready and willing to perform his part of the agreement but defendant No.1 in order to defeat the rights of the plaintiff under the agreement Ex.P1, fraudulently

transferred the entire land in favour of Didar Singh (defendant No.2), vide registered sale deed dated 18.12.2002 and as such suit before the Court.

5. Defendant No.1 was represented by his wife Sukhwinder Kaur, as Jit Singh @ Jita Singh has died. Separate written statement filed by defendant No.2. As per defendant No.1, the suit land was ancestral and coparcenary property in the hands of Jita Singh, as Karta of joint Hindu family property was competent to alienate only 1/3rd share for legal necessity, as he was having two sons. After his death, 1/3rd share was inherited by his widow, sons and daughters. Defendant No.1 denied that Jita Singh ever executed any agreement of sale with respect to the suit land to defendant No.2. Defendant No.2 fraudulently got suffered transfer deed through defendant No.1 by illegal and fraudulent manner and prayed that suit be dismissed. Defendant No.1 had not entered into agreement of sale of suit land and he had not received any earnest money of ₹15,00,000/-. In fact defendant No.1 was not owner in possession of the suit land and was not competent to enter into agreement of sale. Defendant No.2 was owner and in possession of the suit land and revenue record finds relevant entries. The suit land was part of joint family and coparcenary property. After death of defendant No.1, his brother Avtar Singh sold their agricultural produce through the agency of the plaintiff and repaid the remaining loan of the plaintiff. Plaintiff got executed sale deed from defendant No.1 qua the land measuring 16 kanal 0 marla, out of the suit land in the name of his brother Kulwant Singh on 19.05.2000

and another sale deed was got executed by the plaintiff from Avtar Singh brother of the defendant on the same day and same time. Both the sale deeds were registered in the office of sub-registrar, Nabha at Sr. Nos. 987 and 988 on 22.05.2000 and plaintiff and his brother were present at the time of execution of the above sale deeds. The said land was further sold by the plaintiff and his brother to other persons. Defendant and his brother also sold their land to other persons since there was no agreement of sale between plaintiff and defendant No.1 on 12.12.2001. No objection was raised by the plaintiff to such sale deeds. The entire loan of the plaintiff and his family was cleared by the defendant. The agreement in question is without any consideration and result of fraud and misrepresentation. The defendant stopped selling his crops through the agency of the plaintiff about two years back. Bikramjit Singh marginal witness of the alleged agreement is also commission agent and appeared as a witness in favour of the plaintiff in other cases. Plaintiff has not come to Court with clean hands and prayed that suit of the plaintiff is without any merit and be dismissed.

6. Court of first instance settled the following issues and parties were put to trial: -

- “1. Whether defendant No.1 is owner in possession of the suit land? OPP
2. Whether defendant No.1 had entered into agreement of sale of suit property in favour of plaintiff on 12.12.2001 for Rs.30,50,125/- on receipt of Rs.15 lacs as earnest money? OPP

3. Whether plaintiff always remained willing and ready to perform his part of agreement? OPP
4. Whether defendant No.1 fraudulently transferred the suit land in favour of defendant No.2 in order to defeat rights of the plaintiff? OPP
5. Whether the plaintiff is entitled for specific performance of the agreement to sell?OPP
6. Whether the plaintiff is entitled for possession of the suit property? OPP
7. Whether the suit is not maintainable and competent in present form? OPD
8. Whether the agreement is without consideration? OPD
9. Whether the plaintiff has no locus standi and cause of action to file the suit ?OPD
10. Whether the plaintiff is estopped from filing the suit by act and conduct? OPD
11. Relief.”

7. Court of first instance after appreciating the oral and documentary evidence, dismissed the suit for specific performance for alternative relief. Plaintiff preferred appeal before the first appellate Court and first appellate Court modified the findings and suit of the plaintiff for recovery of ₹15,00,000/- as principal amount along with interest 9%. Being aggrieved of passing the said judgment, the appellant-defendant is in appeal before this Court.

8. In the present case, the following substantial question of law is involved: -

“Whether the judgments of both the Courts below mis-appreciated the evidence, which resulted into perversity.”

9. Mr. H.P.S. Ghuman, Advocate, learned counsel for the appellant mainly took the plea that agreement of sale is dated 12.12.2001 and date of sale deed is 11.12.2002. Plaintiff was not having sufficient funds to make the payment of earnest money of ₹15,00,000/- in cash. No inquiry was made regarding revenue record. More so, PW4-Balwinder Singh has deposed that no agreement was executed in his presence but still the Court of first appeal reversed the well reasoned findings given by Court of first instance and the said judgment passed by learned Court of first appeal is liable to be set aside.

10. Mr. S.S. Salar, learned counsel for the respondent took the plea that PW4 Balwinder Singh has admitted due execution of agreement but not knowing denomination of notes and i.e. not accepted from any witness and on that point attested witness cannot be discarded. PW2 has also admitted the execution of agreement. As regards availability of funds, the same were available in cash at his residence. Deed writer has also admitted the due execution of agreement but still only money decree has been passed by Court of first appeal, whereas the suit of the plaintiff has been decreed for specific performance of agreement of sale of suit.

11. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the first appellate Court has rightly appreciated the evidence available on file and set aside the findings of Court of first instance. Learned Court of first appeal rightly came to the conclusion that agreement (Annexure Ex.P-3) was duly proved as plaintiff himself stepped into witness box as PW1 and

proved his case and payment of earnest money as well. The version was duly supported by PW4 Balwinder Singh, an attesting witness of the agreement, who also admitted due execution of agreement and payment of earnest money. As per PW4, Jita Singh has put his thumb impression. Stamp vendor was also examined as PW6, who had deposed that Jita Singh had purchased stamp paper for execution of agreement and the same was duly entered in his register. More so, PW8 Amarjit Singh, deed writer has also proved the due execution of the agreement.

12. Defendants had taken the plea that suit land was ancestral property and coparcenary property in the hands of Jita Singh for that has been proved in any way. The Court of first instance has rightly returned the findings that the plaintiff has been able to prove that defendant No.1 was owner in possession of the suit land at the time of agreement and he had entered into agreement of sale (Ex.P3), after receipt of earnest money. Next point involved in the present case was regarding readiness and willingness of the parties to execute the sale deed in pursuance of agreement of sale (Ex.P3). The Court of first appeal has rightly observed that there was absolutely no evidence available on file that plaintiff was ready with balance sale consideration of Rs.15 lacs for getting the sale deed executed and meet other expenses. No bank statement was produced on the file and nor any witness has been examined regarding availability of the funds. Plaintiff was not in a position to explain that funds were available in bank account and as a consequence of that the Court of first appeal rather than passing decree for specific performance of agreement

of sale passed decree for recovery of amount, which was received by defendant against agreement of sale along with interest @ 9%. The findings recorded by Court of first appeal are against the facts and evidence available on file and as per correct proposition of law whereas the findings recorded by the court of first instance were rightly discarded and set aside by Court of first appellate Court.

13. In view of the above, the question of law framed in this case returned in favour of respondent(s) and decided accordingly. Resultantly the present appeal filed by defendant-appellant is without any merit and same stands dismissed. The judgment and decree dated 03.07.2014, passed by Court of first appeal is maintained and suit of the plaintiff decree for recovery of ₹15,00,000/- as principal amount along with interest at the rate of 9% per annum from the date of agreement till filing of the suit with further pendent-lite interest at the rate of 9% per annum on the principal amount of ₹15,00,000/- from the date of filing of the suit till the date of decree and future interest at the rate of 6% per annum on the principal amount of ₹15,00,000/- from the date of filing the suit till the date of actual realization. Accordingly, the present appeal stands dismissed.

May 25, 2015
naresh.k

(SHEKHER DHAWAN)
Judge