

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

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**R.S.A No. 5489 of 2014(O&M)
Decided on : February 24, 2014**

Sukhjinder Singh ... Appellant.

Versus

Gurjant Singh & Ors. ... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. B.S.Sra, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

C.M No. 600-C of 2015

Allowed as prayed for subject to all just exceptions.

R.S.A No. 5489 of 2014

Defeated defendant – Sukhjinder Singh is in regular second appeal to challenge judgment/decreed dated 09.09.2014 passed by learned Additional District Judge, Amritsar, ('first appellate Court' – for short) whereby judgment/decreed dated 05.03.2013 passed by learned Civil Judge (Senior Division), Baba Bakala, District Amritsar, ('trial Court' – for short) decreeing respondent Gurjan Singh's suit for possession of suit land by way of specific performance of agreement dated 11.06.2008 has been affirmed.

Civil Suit No.182 of 2009 was brought by Gurjan Singh (hereinafter referred to as the 'purchaser') against Harjinder Singh (hereinafter referred to as the 'seller') and Sukhjinder Singh (hereinafter referred to

as the 'appellant') to seek possession of the suit land by specific performance of agreement to sell dated 11.06.2008, Exhibit P/1. It was stated by the purchaser that by way of this agreement suit land was agreed to be sold to him by the seller for a consideration of Rs.10 lacs and out of this amount an amount of Rs.2 lacs was received by him as earnest money, but he did not appear before the Sub Registrar on the appointed day i.e., 30.04.2009 for execution of the sale deed whereas he (the purchaser) remained present there having ready with him sufficient amount of money to pay the balance amount of consideration and meet the expenditure of execution and registration of the sale deed.

Suit was contested by the appellant by filing a written statement wherein execution of the agreement to sell was denied and some preliminary objections were pleaded.

Defendant No.1 (the seller) did not file any written statement.

From the pleadings of the parties following issues were framed by the learned trial Court:-

1. Whether the defendant executed an agreement to sell dated 11.06.2008, regarding the land measuring 3 kanals bearing Khasra No.10/7/2? OPP.
2. Whether the plaintiff was and is always willing and ready to perform his part of agreement dated 11.06.2008?OPP
3. Whether the plaintiff is entitled for specific performance of agreement to sell dated 11.06.2008?
4. If issue No.3 is not prove, whether the plaintiff is

entitled for recovery of Rs.2,00,000/- alongwith interest
in alternative?OPP

5. Whether the plaintiff is entitled for permanent
injunction as prayed for?OPP

6. Whether the sale deed dated 17.04.2009 allegedly
executed by defendant No.1 in favour of defendant
No.2, is illegal, null and void?OPP

7. Whether the suit of the plaintiff is not maintainable in
the present form?OPD

8. Whether the plaintiff has no locus standi to file the
present suit?OPD

9. Whether the suit is bad for non-joinder and mis-joinder
of necessary parties?OPD

10. Whether the plaintiff is estopped from filing the present
suit by his own act and conduct?OPD.

11. Whether the defendant No.2 is bonafide purchaser vide
sale deed dated 17.04.2009 for valuable consideration
without notice of the suit land?OPD.

12. Relief.

Both the sides adduced evidence and were heard by the learned
trial court to reach a conclusion that purchaser was able to prove execution
of the agreement to sell by the seller in his favour, as also his readiness and
willingness to perform his part of the obligation and failure of the seller to
perform his part thereof. Learned trial Court has also found as a matter of
fact that the appellant was not able to prove that he was a bona fide

purchaser for value without notice of agreement to sell. Accordingly, suit of the purchaser was decreed.

Appellant failed in appeal also.

I have heard learned counsel for the appellant.

Learned counsel for the appellant has put forth two arguments, firstly, that even after sale of land measuring 03 kanals to him, the seller still has 03 Kanals 04 marlas of land and the agreement to sell, Exhibit P/1, could be enforced against that land; and secondly, that the appellant being an army man cannot be expected to know of the agreement to sell dated 11.06.2008 (Exhibit P/1).

Nothing more has been urged.

It comes out from the record that the purchaser has proved agreement to sell, Exhibit P/1, by examining its attesting witnesses Mangal Singh as PW1 and Hardy Singh as PW-2 besides himself appearing as PW3. Even the appellant does not seriously dispute the execution of agreement to sell, Exhibit P/1. As regards readiness and willingness of the purchaser to perform his part of the agreement, no argument has been raised on behalf of the appellant. Still, it comes out from the record that purchaser has proved on record his affidavit, Exhibit P/2, whereby his presence in the office of Sub Registrar, Baba Bakala on the appointed day is established. The seller has chosen not to contest purchaser's plea with regard to execution of the agreement and readiness and willingness of the respondent to perform his part and failure of seller to perform his part of the obligation.

As regards the contention that the appellant was not in the knowledge of the agreement to sell dated 11.06.2008, when he entered into

a bargain with seller in respect of land measuring 03 kanals vide sale deed dated 17.04.2009, Exhibit D-1, suffice it to say that the appellant being brother of the seller is presumed to be in the knowledge of what was happening in the house of his brother, the seller. Be that as it may, the appellant himself appeared as DW-1 before the learned trial Court and thought it unnecessary to state even a single word to suggest that he was not in the knowledge of agreement to sell, Exhibit P/1 when sale deed, Exhibit D/1, was executed by the seller in his favour in respect of land measuring 03 kanals.

The contention that the agreement to sell, Exhibit P/1, can be enforced qua the land which is still in possession of the seller, it needs to be highlighted that the appellant while appearing as DW-1 before the learned trial Court has admitted in quite unequivocal terms that the land which is agreed to be sold to the purchaser is the same land which is the subject matter of sale deed, Exhibit D-1, in his favour. That being so, the contention put forth on behalf of the appellant is not available to him.

In view of the above, coupled with the fact that no question of law, much less a substantial question of law, is shown to be involved in the appeal, the appeal fails and is dismissed.

No costs.

February 24, 2014
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[Mahavir S. Chauhan]
Judge