IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

102 **RSA No.6179 of 2014(O & M)**
Date of Decision:29.09.2015

Karnail Singh

....appellant

Versus

Shagan Singh and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

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

Present: Mr.Umesh K.Kanwar, Advocate
for the appellant

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ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was decreed by the trial Court, qua an alternative relief for recovery of ₹ 2,60,000/- along with interest, vide judgement and decree dated 16.04.2010. Appeal preferred against the said decree failed and was dismissed vide judgement dated 20.01.2012. This is how, defendant No.1 is before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiffs, they prayed for a decree for possession by way of specific performance of the agreement to sell dated 09.06.2001, vide which defendant No.1 had agreed to sell a land measuring 20 kanals, in favour of the predecessor-in-interest of the plaintiffs namely Fauja Singh, being half share of total land measuring 40 kanals, comprised in Rect.No.15 killa No.8(8-0), 10(8-0), Rect.No.17 killa No.15(4-0), Rect.No.15 killa No.19(8-0), 20/1/1(4-0), Rect.No.18 killa No.13(8-0), khewat No.68 khatoni No.165 to 166, as per jamabandi for the year 1997-98, situated in the area of village Mochan Wala, for a sale consideration of ₹ 2,60,000/- of which an amount of ₹ 2,50,000/- was paid by way of earnest money. It was maintained that the date fixed for execution of the sale deed was 08.06.2002 and Fauja Singh was always ready and willing to perform his part of the agreement. However, Fauja Singh expired on 02.07.2002. And in the interregnum, despite agreement dated 09.06.2001, defendant No.1, in connivance with defendants No.2 to 4 transferred the suit land in their favour. Thus, the suit.

In the written statement filed by defendant No.1, it was pleaded, inter alia, that he never executed an agreement in question in favour of Fauja Singh, predecessor-in-interest of the plaintiffs. In fact, defendant No.1 used to sell his agricultural produce through an agency i.e.M/s Shere Punjab, Commission Agents, Mandi Ladhuka, Tehsil Fazilka, and plaintiff No.1 happened to be one of the partners of the said firm and the other partner was Karnail Singh son of Arjun Singh. Defendant No. 1 would often obtain advances from the said firm to meet his domestic/agricultural needs and by way of security plaintiff No.1 and Karnail Singh had obtained his signatures on various blank papers. And defendant No.1 was assured that at the time of final settlement of accounts, all the blank signed papers shall be returned to defendant No.1. Defendant No. 1 had repaid the entire amount that was lent to him about 2½ years ago, but yet plaintiff No. 1 and Karnail Singh did not return the blank signed papers. The agreement in question dated 09.06.2001, as also the receipt of Rs.2,50,000/-, allegedly executed by defendant No.1, was a result of fraud and manipulation.

In a separate written filed by defendants No.2 and 3, it was pleaded that they had purchased the suit land along with some other property from defendant No.1 i.e.land measuring 8 kanals comprised in Rect.No.15 killa No.18 (8-0), to the extent of half share and half share from Gurjit Singh etc., vide sale deed dated 15.10.2001. Mutation No. 632, pursuant to the sale deed, was sanctioned in favour of defendant No.2. Likewise, defendants No. 2 and 3 purchased land measuring 24 kanals, comprised in different khasra numbers, from defendant No.1 i.e.half share and the rest half from Gurjit Singh etc., vide sale deed dated 15.10.2001 and the mutation No.631 in this regard was sanctioned in favour of defendant No.3.

Defendant No.4 in his separate written statement, claimed himself to be the bona fide purchaser on the basis of a sale deed dated 17.05.1994.

On a due and comprehensive consideration of the matter in issue and the evidence on record, both the Courts below concurrently concluded that plaintiff had successfully proved the execution of the agreement dated 09.06.2001 (Ex.P1). Jasbir Singh (PW2), who happened to be the attesting witness of the agreement, testified that the agreement dated 09.06.2001, bears his signatures and the same was scribed by deed writer Bagicha Singh, at the instance of Karnail Singh-defendant No.1, in favour of Fauja Singh. Plaintiff No.1 himself appeared in support of his case as PW3 and duly proved his claim. Bagicha Singh (PW1), deed writer, duly deposed that the agreement in question was scribed by him and was signed by the parties and the marginal witnesses. He testified that an entry in this regard was duly entered in his register at Sr.No.301 on 09.06.2001, and that was proved as Ex.P2. That being so, it was concluded that the agreement to sell dated 09.06.2001 was indeed entered between Fauja Singh and defendant No.1. The plea set out by defendant No.1 that he had been dealing with firm M/s Shere Punjab, Commission Agents, and plaintiff No. 1happened to be one of the partners therein, was found to be wholly erroneous. Rajinder Singh, Sub-Inspector, Chief Agriculture Office, Ferozepur (DW2), proved that, in fact, the name of the firm was M/s Shere Punjab Pesticides and Fertilisers, and was a sole proprietorship of Sher Singh son of Fauja Singh. That being so, it was observed that the record produced by DW2 showed that M/s Shere Punjab was not a commission agency but was dealing in pesticides and fertilisers. In any case, defendant No. 1 failed to lead any evidence to prove that he ever had any such business dealings with M/s Shere Punjab, Commission Agents. Though, the predecessor-in-interest of the plaintiffs was found to be ready and willing to perform his part of the contract, but yet a decree for specific performance of the agreement dated 09.06.2001, could not be granted in his favour. It was observed that a portion of the suit property already stood alienated in favour of defendant No.4 Waryam Singh, vide sale deed dated 17.05.1994 (Ex.P7). Therefore, defendant No.1 was not competent to execute the agreement in question qua the suit land in favour of the predecessor-in-interest of the plaintiffs. Further, vide sale deed dated 15.10.2001 (Ex.P5), a land measuring 24 kanals was sold to Sham Lal son of Labh Chand. Concededly, defendant No.1 had half share in the land measuring 40 kanals and, thus, he was owner of only 20 kanals and post sale of 8 kanals to defendant No.4, vide sale deed 17.05.1994 and 12 kanals in favour of Sham Lal, vide sale deed dated 15.10.2001, he was left with no share in the suit land. Further, it was concluded that the agreement in question was uncertain as regards the description of the property. Thus, the plaintiff was only entitled to recovery of ₹ 2,60,000/- i.e. ₹ 2,50,000/-on account of earnest money and ₹ 10,000/- by way of damages, from the defendants as an alternative relief.

I have heard learned counsel for the appellant and perused the paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced. However, learned counsel for the appellant could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

Ex facie, execution of the agreement in question dated 09.06.2001 (Ex.P1) was duly proved by the plaintiffs by examining one of the attesting witnesses and the scribe. Payment of ₹ 2,50,000/- by way of earnest money to defendant No.1 was also proved. Plaintiffs never assailed the decree dated 16.04.2010, to claim a decree for specific performance of the agreement.

So much so, the appeal in hand was filed after over two years of the dismissal of the appeal preferred by the appellant, and is thus, barred by 690 days. Not just that, the same also suffers from a delay of 168 days in re-filing. Be that as it may, I have considered the matter on merits and find that the appeal is wholly devoid of merit.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

29.09.2015 **(ARUN PALLI)**
neenu **JUDGE**