

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

**Regular Second Appeal No.6360 of 2014 (O&M)
Date of decision: 03.09.2015**

**Surjit Kaur (deceased) through LRs Raghbir Singh and others
.....Appellants**

Versus

**Bakshish Singh (deceased) through LRs Usha Rani and others
.....Respondents**

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vishal Sharma, Advocate,
for Mr. Jasbir Singh Chahal, Advocate,
for the appellants.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 28.07.2012 passed by the Additional District Judge, Gurdaspur, dismissing the appeal filed by LRs of plaintiff-Surjit Kaur against the judgment and decree dated 11.12.2007 passed by the Additional Civil Judge (Senior Division), whereby suit of the plaintiff has been decreed for alternative relief of recovery of Rs.5000/- along with interest, however, primary relief of specific performance was not granted.

Surjit Kaur-plaintiff filed a suit for possession alleging that vide agreement to sell dated 28.10.1981, defendant No.1 had agreed to sell his land in her favour for a total sale consideration of Rs.6000/- and had received a sum of Rs.5000/- as earnest money. Possession of the suit land was handed over to Surjit Kaur-plaintiff at the time of execution of aforesaid agreement to sell. The balance amount of Rs.1000/- was to be paid by the plaintiff at the time of execution and registration of the sale deed. It was

also agreed that defendant No.1 would execute the sale deed within six months from the date of issue of the sale certificate. The sale certificate was issued qua the said land in favour of defendant No.1 in the year 1983, however, there was a condition that he could not sell the property for 20 years. Entry to this effect was also recorded in the Jamabandi for the year 1985-86. Defendant No.1 had agreed that he would execute sale deed in favour of the plaintiff after removal of the condition of 20 years. But, on 15.03.2000 he fraudulently and illegally executed a sale deed in respect of the suit land in favour of his sons i.e. defendant Nos.2 and 3.

Upon notice, defendant-respondents filed written statement and controverted the allegations levelled by the plaintiff.

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

1. Whether defendant No.1 entered into an agreement to sell dated 28.10.1981 in favour of plaintiff? OPP
2. If so, whether the plaintiff is entitled to the specific performance of the agreement? OPP
3. Whether the plaintiff is entitled to the possession of the suit property as owners? OPP
4. Whether the plaintiff is entitled to the alternative relief prayed for? OPP
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the suit is barred by time? OPD
7. Relief.

Trial Court, after going through the evidence led by both the parties, decreed the suit qua alternative relief to the effect that plaintiff was

at the rate of 12% per annum from 28.10.1981. However, the plaintiff was not held entitled to possession as well as specific performance of the agreement to sell dated 28.10.1981. The lower appellate Court affirmed the findings of the trial Court and dismissed the appeal of the plaintiff-appellant.

As per letter/notification dated 04.09.1974 (Ex.PW5/1) the land in question was allotted in favour of Bakshish Singh-defendant No.1. Possession of Bakshish Singh was established as per Jamabandi (Ex.D1) and mutation No.330 (Ex.PW4/1) was also sanctioned in his favour on 25.10.1983. As per Jamabandi for the year 1985-86 (Ex.P3), there was a condition that suit property could not be sold or mortgaged for 20 years and same position was reflected in the Jamabandis (Ex.P8 and Ex.P9), where possession of Bakshish Singh was shown. The plaintiff was not held entitled for possession of the suit property as it could not be sold for 20 years as per notification (Ex.PW5/1) issued by the Punjab Government, Department of Rehabilitation. After sanctioning of the mutation in favour of Bakhshish Singh vide Ex.PW4/1, sale was confirmed on 28.02.1978. Defendant No.1-Bakhshish Singh could not sell the suit property till 28.02.1998 and after 28.02.1998, no sale deed was executed by him in favour of the plaintiff. The agreement to sell dated 28.10.1981 (Ex.P2) was void and against the public policy because defendant No.1 was not owner of the suit property on the date when the said agreement to sell was executed. The suit of the plaintiff for specific performance of the agreement to sell (Ex.P2) was dismissed. However, the plaintiff was held entitled for alternative relief of recovery of earnest money to the tune of Rs.5000/- along with simple interest at the rate of 12% per annum from 28.10.1981 till the

decretal amount till its realization.

After going through the impugned judgments, this Court is of the view that sufficient evidence has been led by the defendant-respondent(s) to show that the suit property was allotted in favour of defendant No.1- Bakshish Singh. Mutation was sanctioned in his favour vide Ex.PW4/1. The sale was confirmed on 28.02.1978 and there was a specific condition that he could not sell the property for 20 years i.e. up till 28.02.1998. Since, the sale deed could not be executed for 20 years, suit for specific performance of the agreement to sell dated 28.10.1981 could not be decreed in favour of the plaintiff. Accordingly, the impugned judgments have been passed after appreciation of evidence in the right perspective. No illegality, much less perversity has been found in the judgments passed by both the Courts below.

No substantial question of law arises for consideration.

Dismissed.

03.09.2015
ajp

(RITU BAHRI)
JUDGE