

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

Date of Decision: February 02, 2015

Regular Second Appeal No. 6395 of 2014(O&M)

Ranjit Kaur & another

....Appellants

Versus

Raja Singh & others

....Respondents

AND

Regular Second Appeal No. 6429 of 2014(O&M)

Ranjit Kaur & another

....Appellants

Versus

Raja Singh & others

....Respondents

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

Present: Mr. H.S. Dhindsa, Advocate, for the appellants.

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

Mahavir S. Chauhan, J.

This judgment being penned down in Regular Second Appeal No. 6395 of 2014 shall dispose of, besides this appeal, Regular Second Appeal No. 6429 of 2014 also, as both these appeals have emanated from common judgment/decreed dated August 28, 2014 whereby learned Additional District Judge, Ludhiana (here-in-after referred to as 'the first appellate court') has affirmed findings recorded by learned Civil Judge (Junior Division), Ludhiana (here-in-after referred to as 'the trial court') vide judgment/decreed dated May 29, 2012, while dismissing the suit of plaintiffs, appellants herein, for specific performance and allowing counter claim of defendants/respondents herein.

02. Synthesis of events culminating into the instant two appeals reveals

that appellants approached the learned trial court for a decree of specific performance of an 'oral agreement of sale' whereby Karnail Singh was stated to have agreed to sell to them suit land, as fully described in the head-note of the plaint, for a sale consideration of Rs. 26,000/- in the year 1990; and a decree of perpetual prohibitory injunction restraining the respondents from interfering in their peaceful possession over the suit property and respondents No. 02 and 03 from alienating it in any manner. It was averred by the appellants in the plaint that the suit land in the hands of Bhagwant Kaur was declared surplus and was allotted to Karnail Singh by the State Government. Karnail Singh, in the presence of Piara Singh and Garcha Singh, had agreed to sell the suit land, by way of an 'oral agreement', and after receipt of the entire sale consideration, had delivered its actual physical possession to the appellants in the year 1990 while promising to execute a written agreement or sale deed after litigation initiated by Bhagwant Kaur to challenge order declaring the suit land surplus, was over but, as ill luck would have it, he bid farewell to this world on October 15, 1995 much before the Civil Writ Petition brought by Bhagwant Kaur was dismissed by this Court on March 26, 2003. Requests made by the appellants to respondent No. 02 to execute the necessary sale deed, however, fell on deaf ears, rather, respondents threatened to dispossess them therefrom. It was also alleged that the appellants had raised construction over the suit land after its possession was delivered to them by Karnail Singh.

03. Respondents filed a joint written statement wherein preliminary objections based on plea of bar of limitation, concealment and misstatement of facts and plea of estoppel were pleaded and while admitting that Karnail Singh was allottee of the suit land, it was stated that suit land originally belonged to Upinder Kaur etc. and being declared surplus it was allotted to Karnail Singh after whose demise it was mutated in favour of Jagdev Singh on the strength of a Will executed

by Karnail Singh and posthumous Jagdev Singh it was inherited, in equal shares, by Jaswinder Kaur, widow, and Sarabjot Singh, minor son, of Jagdev Singh (respondents No. 02 and 03, respectively), who after obtaining leave of the Guardian Judge to sell share of the minor vide order dated February 09, 2004, had sold it to respondent No. 01, Raja Singh vide registered sale deed dated December 31, 2004 (Exhibit D1) and the appellants were in unauthorised possession of the suit land. All other allegations of the plaint, including raising of construction by the appellants, were denied.

04. Respondent No. 01, Raja Singh also preferred a counter claim to seek a decree of possession of the suit land on the strength of sale deed dated December 31, 2004 (Exhibit D1) .

05. On completion of pleadings, learned trial court framed issues with regard to appellants' entitlement to specific performance of the 'oral agreement'; bar of limitation, and plea of estoppel.

06. Appellant Swaran Singh examined himself as PW2 and Nachhattar Singh as PW1 while, to rebut appellants' evidence and to substantiate their plea as contained in the written statement and counter claim, respondents examined one of them namely, Raja Singh (DW3), Sardara Singh (DW1) and Hoshiar Singh (DW2).

07. Learned trial court, on hearing the parties and appraisal of evidence, held that appellants' plea had remained unsubstantiated; the suit was barred by time and that the appellants were estopped, by their act and conduct, from maintaining the suit; and that the respondents were able to establish their plea as contained in the counter claim. Accordingly, appellants' suit was dismissed and respondents' counter claim was decreed vide judgment/decreed dated May 29, 2012 which has been affirmed in appeal vide judgment/decreed dated August 28, 2014.

08. I have heard learned counsel for the appellants and with his able

assistance have perused the findings recorded by the learned courts below.

09. Appellants' learned counsel argues that the learned courts below have misread the evidence and have missed that part, whereby it is established that Karnail Singh, by way of an 'oral agreement', had agreed to sell the suit land to, had received the entire sale consideration from, and had delivered possession of the suit land to, the appellants in the year 1990 and, as evidenced by photographs at *Annexure A1*, appellants have raised construction over it after possession of the suit land was delivered to them in the year 1990. Learned counsel also argues that the sale deed, Exhibit D1, executed by respondent No. 02 in favour of respondent No. 01 is outcome of fraud and the learned courts below ought to have waited for decision of the Hon'ble Supreme Court in the matter of the suit land having been declared surplus because in the event of it being decided in favour of Bhagwant Kaur the entire controversy would have been rendered infructuous.

10. No other or further point has been urged.

11. 'Oral agreement of sale' referred to in the plaint has remained unproved. Piara Singh and Garcha Singh, in whose presence Karnail Singh is said to have made the 'oral agreement of sale' of the suit land and to have delivered its possession to the appellants, have been kept away from the witness stand. It is not the case pleaded on behalf of the appellants that Nachhattar Singh (PW1) was a witness to the 'oral agreement'. Thus, there is no evidence in proof of the 'oral agreement' except self serving solitary statement of appellant Swaran Singh as PW2.

12. Appellants' very specific plea has, throughout, been that possession of the suit land was delivered to them by Karnail Singh and after delivery of its possession to them in the year 1990, they have raised construction over the suit property but these assertions of the appellants are negated by Exhibit D3, copy of

plaint in Civil Suit No. 206 of May 28, 2003 wherein appellant Swaran Singh is shown to have stated that suit land was given, and possession thereof was delivered, to him by Hoshiar Singh, his maternal uncle; and by Nachhattar Singh (PW1) by revealing that no construction has been raised over the suit property since the year 1990. Appellant Swaran Singh, while appearing as PW2 before the learned trial court, has attempted to disown a statement contained in Exhibit D3 with regard to delivery of possession of the suit land to him by Hoshiar Singh and has thereby attempted to mislead the Court. From what has been stated in Exhibit D3 and by Nachhattar Singh (PW1) it is abundantly clear that the appellants have made blatantly false statement in the plaint that suit land was given and its possession was delivered to them by Karnail Singh and that they have raised construction thereon. It is apposite to state here that grant of a decree of specific performance and/or perpetual prohibitory injunction are discretionary in nature and cannot be granted in favour of a plaintiff who comes to the court with sullied hands and attempts to pollute the fountain of justice by misstating and concealing true facts. Such being the position of law, the appellants, by misstating and concealing true facts, have disentitled themselves from the discretionary relief of specific performance and perpetual prohibitory injunction.

13. On the other hand, respondents have proved, by examining one of them namely, Raja Singh (DW3), Sardara Singh (DW1) and Hoshiar Singh (DW2) that the suit land has been sold by respondent No. 02 to respondent No. 01 vide registered sale deed, Exhibit D1, after obtaining leave of the Guardian Judge, vide order dated February 09, 2004, for sale of share of minor respondent Sarabjot Singh. Registration of a document is a solemn act performed in the presence of a competent official appointed to act as a Registrar, whose duty is to attend to the parties during the registration and see that the proper parties are present, are

competent to act, and are identified to his satisfaction, and all things done before him in his official capacity and verified by his signature are presumed to be done duly and in order. Therefore, the certificate endorsed on the sale deed by the Registering Officer under Section 60 of Registration Act is a relevant piece of evidence for proving its execution (per ***Piara v. Fattu, AIR 1929 Lahore 711, Subhash Kumar v. Prabhu Dayal, 1994 PLJ 443, Daljinder Singh v. Harbans Kaur, 2001 (2) CCC 530, Joginder Singh v. Surinder Singh, 1997 (Suppl.) CCC 339, and Kartar Kaur v. Bhagwan Kaur-1993 CCC 171***)

Further, sale deed, Exhibit D1, being a registered document there is a presumption that it is validly executed. The registered sale deed, therefore, prima facie would be valid in law and onus to prove to the contrary, thus, would be on a person who leads evidence to rebut the presumption, say the appellants herein (per ***Prem Singh & Ors. v. Birbal & Ors., 2006(3) RCR(Civil) 381***). However, no evidence has been adduced by the appellants to rebut this presumption and to substantiate their plea that registered sale deed, Exhibit D1, is child of fraud.

14. The appeal, even otherwise, is not shown to involve a question of law, much less a substantial one.

15. For the reasons recorded above, the appeal is found to lack in merit and, as such, I regret my disinclination to entertain it.

16. Dismissed.

17. As a consequence of dismissal of the appeal, miscellaneous applications, if any, are rendered infructuous and are disposed of as such.

[Mahavir S. Chauhan]
Judge

February 02, 2015
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