

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

**Regular Second Appeal No.2281 of 2009 (O&M)
Date of Decision: November 08, 2016.**

Jaswant Singh

.....APPELLANT(s).

VERSUS

Labh Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate
for the appellant.

Mr. Ashok Verma, Advocate
for the respondent.

SURINDER GUPTA, J.

This is appeal by Jaswant Singh son of Inder Singh, defendant in civil suit No.1140 of 2003 against concurrent judgments of the Courts below, whereby suit of respondent-plaintiff Labh Singh seeking relief of specific performance of agreement to sell dated 13.01.2003 was decreed and the direction was issued to the defendant to execute the sale deed on receipt of balance sale consideration.

2. Plaintiff's case, in brief, is that defendant entered into an agreement dated 13.01.2003 to sell his land measuring 32 kanals 8 marlas being 648/1412 share of land measuring 70 kanals 12 marlas comprised in khewat No.418 khatoni No.705 to 707 as per jamabandi for the year 1996-

97 situated in the revenue estate of village Odha, Tehsil Dabwali, District

Sirsa. The rate was settled as ₹1,10,000/- per acre and a sum of ₹3,16,000/- was paid to the defendant at the time of agreement and the date for execution and registration of the sale deed was initially fixed for 30.04.2003, which at the instance of defendant was postponed to 30.06.2003. The plaintiff has always been ready and willing to perform his part of the agreement and was present before the Sub Registrar, Mandi Dabwali with balance sale consideration and other incidental charges but the defendant did not turn up. Plaintiff got his presence marked before the Sub Registrar by executing affidavit dated 30.06.2003. Thereafter, the defendant was asked to execute the sale deed but in vain. Hence, this suit which was filed on 08.10.2003.

3. The defendant contested the claim of plaintiff inter-alia pleading that he never executed any agreement to sell his land in favour of plaintiff. Earlier also, plaintiff had fabricated a false agreement dated 04.12.2001 regarding the suit land and the witnesses on that agreement were the same who were witnesses on this agreement. He also denied receipt of ₹3,16,000/- as earnest money or the extension of date for the execution of sale deed from 30.04.2003 to 30.06.2003. It was also averred that rate of land at that time in the village was ₹2,50,000/- per acre and there was no occasion for the defendant to sell his land for ₹1,10,000/- per acre. All other averments were also contested, controverted and denied.

4. In the replication, the plaintiff denied that any agreement dated 04.12.2001 was executed as alleged by the defendant. He reasserted his case and pleadings of the parties led to the framing of issues as follows:-

- (i) Whether the defendant agreed to sell his land measuring 32 K 8 M detailed in the head note of the

plaint vide agreement to sell dated 13.1.2003 to the plaintiff? OPP

- (ii) Whether the defendant received an amount of Rs.3,16,000/- from the plaintiff as earnest money? OPP
- (iii) Whether the plaintiff has always been ready and willing to perform his part of contract dated 13.1.2003? OPD
- (iv) Whether the plaintiff is entitled to the decree for specific performance of contract/agreement to sell dated 13.1.2003 with consequential relief of permanent injunction as prayed for? OPP
- (v) Whether the suit of the plaintiff is not maintainable in the present form? OPD
- (vi) Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
- (vii) Whether the suit of the plaintiff is bad for non-joinder of necessary and proper party? OPD
- (viii) Whether the plaintiff has concealed true and material facts from the court, thus, he is not entitled to any relief? OPD
- (ix) Whether the suit of the plaintiff is time barred? OPD
- (x) Whether the plaintiff has not appeared (sic affixed) proper court fee on the plaint, thus, the suit is liable to be dismissed? OPD
- (xi) Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
- (xii) Whether the Civil Court has no jurisdiction to try the present suit? OPD
- (xiii) Whether the plaintiff had prepared a fictitious agreement earlier on 4.12.2001 regarding property in question? OPD
- (xiv) Relief.

5. Learned Additional Civil Judge (Senior Division), Dabwali held the execution of agreement dated 13.01.2003 as duly proved and discarded the plea of defendant that earlier a similar agreement relating to the suit property was executed on 04.12.2001.

6. Not satisfied, defendant filed appeal before learned Additional District Judge (Fast Track Court), Sirsa which was dismissed and the findings recorded by Additional Civil Judge (Senior Division), Dabwali were affirmed.

7. I have heard learned counsel for the parties and have perused the paper book and record of the Courts below with their assistance.

8. Learned counsel for the appellant has argued that the appellant by leading cogent and convincing evidence has been able to prove that a similar agreement was got executed by the respondent-plaintiff on 04.12.2001. The agreement is supposed to be in possession of the plaintiff and an application was moved for production of the same but it was not produced. PW4 Tara Chand, who was examined by the plaintiff to prove the writing (Ex.PW4/A), vide which the time for execution of the sale deed was allegedly extended from 30.04.2003 to 30.06.2003, had proved the execution of the agreement dated 04.12.2001. Both the Courts have discarded his statement without any cogent reason. Earlier agreement dated 04.12.2001 was for sale of the suit land and the sale deed was to be executed by 13.11.2002. This date was further extended on 02.11.2002 to 15.11.2003. These facts are evident from the copy of entries (Ex.D1 and D2) in the register of deed writer Tara Chand PW4. When an agreement for purchase of suit land was already in existence, there was no occasion for the

respondent-plaintiff to enter into another agreement on 13.01.2003. All this indicate the falsity of the claim of respondent-plaintiff and the Courts below have committed grave error while ignoring application filed by appellant seeking production of original agreement, existence of which was proved by the witness examined by the plaintiff. As the application of the appellant-defendant was not decided, he could not prove agreement dated 04.12.2001 by primary or secondary evidence.

9. Learned counsel for respondent-plaintiff has argued that agreement dated 04.12.2001 was not pleaded in the original written statement but this fact was pleaded by way of amendment of written statement. Writing (Ex.D1 and D2) in the register of deed writer Tara Chand PW4 are false and fabricated and Courts below have rightly drawn inference to this effect. Both the Courts on appraisal of evidence and pleadings rightly allowed the relief of specific performance of the agreement to the plaintiff which call for no interference.

10. The Courts below on appraisal of evidence held that execution of the agreement dated 13.01.2003 is proved and the plaintiff has also been able to prove his readiness and willingness to perform his part of the agreement. The plea of the appellant-defendant about agreement dated 04.12.2001 was discarded by the lower Court disbelieving the statement of PW4 Tara Chand with observation that the entry with regard to the agreement dated 04.12.2001 was incorporated in his register at later stage. However, the statement of Tara Chand regarding the writing Ex.PW4/A extending the date for execution of the sale deed as per the terms of the agreement dated 13.01.2003 from 30.04.2003 to 30.06.2003 was believed.

11. Learned first Appellate Court also termed the copy of the deed writer register (Ex.D1 and D2) as fabricated documents with the observations as follows:-

“In fact, Ex.D1 and Ex.D2 seem to be fabricated documents otherwise the appellant was supposed to examine Puran Ram and Chamkaur Singh who were the attesting witnesses of the alleged agreement to sell **which had never seen the light of the day**. In his cross examination, DW1 has stated that he never executed any agreement to sell in favour of the respondent then heaven knows how he has stated that agreement to sell dated 4.12.2001 was executed by him in favour of the respondent and this agreement to sell was written by Tara Chand, Advocate, but it seems to be concocted story. No doubt, an application was moved by counsel for the appellant with the request that direction be given to the respondent to place on the file agreement to sell dated 4.12.2001 but since no such agreement to sell was in existence, therefore, the question of the production of the same does not arise. The suit has rightly been decided by the Trial Court and the same does not require any interference.”

12. From the discussion of facts by Courts below, it is apparent that the agreement dated 04.12.2001 is a very vital document in this case, the proof of which will have the direct impact on the plea raised by the appellant regarding the veracity of the agreement dated 13.01.2003. While discarding this agreement, learned Additional Civil Judge (Senior Division), Dabwali **observed that this agreement has not been placed on record.**

The appellant had moved an application which is on the lower court's record at page 81 seeking direction for the plaintiff to produce the original

agreement. In due course, the original agreement is supposed to be in possession of the vendee though he has denied this agreement in the replication but the application filed by the appellant remained unattended and undecided. Even the reply of plaintiff to this application was not taken. In the event of refusal of plaintiff to produce this agreement, the appellant may have exercised option to prove the same by leading secondary evidence but was deprived of this opportunity. Even attention of learned first Appellate Court was drawn towards the application moved by the appellant but instead of taking any note of the argument raised by learned counsel for the appellant, the same was ignored with the observation that in view of the denial by the plaintiff's, that no such document is in existence, the question of production of same does not arise. The above observation was recorded without affording opportunity to the plaintiff to prove this agreement and following due procedure on the application moved by him seeking production of document. This procedure adopted by the courts below has resulted in miscarriage of justice.

13. The relief of specific performance of agreement is a discretionary relief which the Court has to allow keeping in view all the facts and circumstances of the case. The appellant, if succeeds in proving the agreement dated 04.12.2001, this may be a fact for Courts below to take note of circumstances in which the subsequent agreement was executed.

14. In view of my above discussion, I accept this appeal, set aside the judgment and decree passed by the Courts below and remand the case to Additional Civil Judge (Senior Division), Dabwali with direction to decide the application dated 04.08.2004 filed by the appellant-defendant seeking

direction to the plaintiffs to produce the agreement dated 04.12.2001. On decision of the application, further opportunity will be allowed to the defendants, if so requested, to prove this agreement and the suit will be decided afresh in accordance with law.

15. It is, however, made clear that the case has been remanded due to procedural lapse which has resulted in miscarriage of justice. The discussion above is limited to the effect of non-disposal of application moved by the appellant-defendant seeking production of agreement dated 04.12.2001, as such, shall not be referred to have any bearing at the time of disposal of case on merits.

16. Parties are directed to appear before learned Additional Civil Judge (Senior Division), Dabwali on 29.11.2016. Record of the Courts below be returned immediately.

November 08, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***