

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

Date of Decision: November 18, 2016

1. R.S.A.No.4876 of 2009 (O&M)

Kamikkar Singh & others

...Appellants

Versus

Avtar Singh (deceased) through L.Rs & others

...Respondents

2. R.S.A.No.4877 of 2009 (O&M)

Kamikkar Singh (now deceased) through L.Rs

...Appellants

Versus

Avtar Singh (deceased) through L.Rs & another

...Respondents

3. R.S.A.No.4499 of 2010 (O&M)

Avtar Singh (deceased) through & another

...Appellants

Versus

Kamikar Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.A.P.Kaushal, Advocate for
Mr.Navjot Singh, Advocate,
for the appellants (in RSA No.4876 & 4877 of 2009) &
for the respondents in RSA No.4499 of 2010.

Mr.R.K.Gupta, Advocate,
for the appellants (in RSA No.4499 of 2010) &
for respondents in RSA No.4877 of 2009.

Mr.G.S.Sidhu, Advocate,
for the respondents (in RSA No.4876 of 2009).

AMIT RAWAL, J. (Oral)

CM No.10598-C of 2014

Prayer in the application is for impleading the L.Rs of Avtar

Singh-respondent No.1.

Allowed subject to all just exceptions for the purpose of prosecuting this case only.

RSA No.4876 of 2009

By this order, I intend to dispose of three Regular Second Appeals No.4876, 4877 of 2009 and 4499 of 2010 as common questions of law are arising in all the appeals.

RSA No.4876 of 2009 is arising out of decretal of Civil Suit No.158 of 1995 titled as Avtar Singh Versus Birinder Singh & others (for short "Suit No.1"), whereas RSA Nos.4877 of 2009 and RSA No.4499 of 2010 are arising out of Civil Suit No.412 of 1994 titled as "Kamikar Singh & others Versus Avtar Singh & another" (for short "Suit No.2") seeking specific performance of the agreement to sell dated 16.11.1993.

Mr.A.P.Kaushal Advocate for Mr.Navjot Singh, Advocate for the appellants in RSA No.4876 of 2009 submits that Birinder Singh and Avtar Singh son of Gurnam Singh had allegedly entered into an agreement to sell dated 18.10.1993 with Avtar Singh son of Nand Singh to sell the suit land, at the rate of ₹52,000/- per bigha against the payment of earnest money of ₹3,00,000/-. The stipulated date for execution and registration of the sale deed was 14.3.1995. However, the same very vendors had also entered into an agreement to sell dated 16.11.1993 in respect of the same very land with the plaintiffs in Civil Suit No.412 of 1994, which was instituted prior in time to Suit No.1, at the rate of ₹49,000/- per bigha. The trial Court had erroneously decreed Suit No.1 and in Suit No.2 (RSA No.4877 of 2009) did not grant the discretionary relief of specific performance by holding the appellants entitled to alternative relief, though

the agreement to sell dated 16.11.1993 has been proved to the hilt. The agreement to sell dated 18.10.1993 was ante-dated as the suit instituted to defeat the right of the appellants, for, it cannot be believed that the rate prior in time was more than to the subsequent one. All these factors have not been taken care of. The appellants had filed the appeal prior in time than the one by Avtar Singh son of Gurnam Singh. The discretionary relief in favour of Avtar Singh son of Nand Singh in Suit No.1 ought not to have been granted, rather it should have been dismissed and discretionary relief in the appellants' case in RSA No.4877 of 2009 should have been granted.

Mr.G.S.Sidhu, learned counsel appearing on behalf of respondent Avtar Singh son of Nand Singh submits that the agreement to sell dated 18.10.1993 is prior in time and the same has been proved through the testimony of the attesting witnesses and the scribe. Defendant Birinder Singh has not been able to belie the same. The first agreement would always carry strength than the subsequent one and rightly so, the Courts below have granted the discretionary relief and, thus, urges this Court for dismissal of the appeals.

Mr.R.K.Gupta, learned counsel for the appellants-vendors, namely, Avtar Singh son of Gurnam Singh and Birinder Singh in RSA No.4499 of 2010 submits that on apparent glance of the agreement to sell dated 16.11.1993 set up by Kamikar Singh is not conforming to the provisions of the Contract Act. He even denied the aforementioned agreement to sell, yet has been held entitled to alternative relief and in this aspect of the matter, RSA No.4499 of 2010 has been filed.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the

submissions of Mr.Kaushal and Mr.Gupta, for, the appellants have not been able to prove that the agreement to sell, i.e., 18.10.1993 set up by Avtar Singh son of Nand Singh was ante-dated document. There is no logic to the argument that the agreement to sell prior in time was for a higher rate than the one in his favour. Once the vendors do not support the agreement to sell dated 16.11.1993, yet they have been able to deny the signatures on the same, but the Courts below have ordered for refund of earnest money. On the contrary, the plaintiff in Suit No.1, i.e., 158 of 1995 has been able to prove the readiness and willingness, much less payment of earnest money and his presence in the office of the Sub Registrar on 14.3.1995 and the suit had been filed 31.3.1995. Both the Courts below have discussed the evidence threadbare and examined the same.

For the foregoing reasons, no case for interference is made out. Resultantly, all the appeals are dismissed.

November 18, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No