

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

**Regular Second Appeal No.390 of 2013 (O&M)
Date of Decision: August 29, 2016.**

Jugal Kishore and others

.....APPELLANT(s).

VERSUS

Kundan and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. V.B. Aggarwal, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Kundan son of Kapuria, respondent No.1-plaintiff filed suit seeking relief of specific performance of agreement to sell dated 24.11.2003 executed by defendants regarding their 2/3rd share in the suit land measuring 18 bighas 1 biswa.

2. The case of the plaintiff, in brief, is that bargain for purchase of 12 bigha of land was settled with the defendants for ₹7,80,000/-, out of which ₹2 lacs were paid as earnest money at the time of agreement. Date for execution and registration of the sale deed was fixed as 10.04.2004, on which date, it was a holiday. The defendants assured the plaintiff that they would execute the sale deed on the next working day. On the next day i.e. 12.04.2004, plaintiff remained present in the office of Sub Registrar, Kalka with balance sale consideration and expenses for purchase of stamp papers and registration but the defendants did not turn up. Plaintiff got his

presence marked in the office of Sub Registrar by way of his affidavit and filed this suit on 16.04.2004.

3. The defendants in their joint written statement, admitted the agreement to sell dated 24.11.2003, submitting that the last date for execution of the sale deed was fixed as 10.04.2004. It was alleged that plaintiff had requested the defendants to extend the date for execution and registration of the sale deed for 5-6 months due to some family problem. They remained present in the office of Sub Registrar on 09.04.2004 and again on 12.04.2004 and were willing to get the sale deed registered. They got their presence marked by way of affidavit. It was plaintiff, who did not appear in the office of Sub Registrar on 12.04.2004. He met the defendants outside the office of Sub Registrar and requested for extension of time as he could not arrange the balance sale consideration. He also requested the defendants to return the earnest money as he was not ready and willing to perform his part of the agreement.

4. Learned Additional Civil Judge (Senior Division), Panchkula on appraisal of evidence found that plaintiff has always been ready and willing to perform his part of the agreement and decreed the suit with direction to defendants to execute the sale deed as per the agreement dated 24.11.2009 on receipt of balance sale consideration on ₹5.8 lacs. The defendants were also restrained from creating any third party interest in the suit property.

5. Eight out of eleven defendants, filed appeal before the first Appellate Court, which was dismissed by District Judge, Panchkula and the judgment and decree passed by learned Additional Civil Judge was affirmed

with the modification that the plaintiffs were held entitled to get the sale

deed executed on payment of balance sale consideration after adjusting ₹2 lacs paid as earnest money and ₹1,14,000/- paid at the time of execution of sale deed Ex.P4.

6. Not satisfied, the appellants before the first Appellate Court have preferred this second appeal.

7. Learned counsel for the appellants has not challenged the judgments of the Courts below on merits so far as it allow relief of specific performance of agreement dated 24.11.2003. He has argued that the first Appellate Court without there being any cross appeal by the plaintiffs, has ordered adjustment of ₹1,14,000/- paid at the time of sale deed Ex.P4. While elaborating his arguments, he has argued that there was tampering in the lower Court's record as the sale deed Ex.P4 was tendered on 14.01.2010 when the case was not fixed before the learned Additional Civil Judge on that day and this sale deed was neither duly proved nor admissible in evidence.

8. This argument was also advanced by learned counsel for the appellants before the first Appellate court and it was observed in para 18 and 19 as follows:-

“18. The main thrust of the argument of the appellant was that the lower court record was 'tampered' and the plaintiff had introduced two documents and those document should be 'deleted' from the record. This is the word used by the appellants in their application. The documents which have come on record and are exhibited cannot be deleted or removed from the file and it can not be termed as tampering. A statement was made by the counsel representing the plaintiff, bringing on record some documents which were

subsequent to the filing of the suit. Those documents were exhibited and the statement carries the signatures of the subordinate judge.

19. There is no zimni order of 14.1.2010, that is the day the documents were tendered in evidence. The counsel for respondent No.1 had placed the copy of his diary to show that the date previous to 14.1.2010 is noted as 9.1.2010 and the date after 14.1.2010 is shown as 16.1.2010. The cover page of the court file at the end of the file also shows that after 9.1.2010, one more date was fixed and below that date 16.1.2010 is written. There is no doubt there is an over writing on the date and it can be read as 14.1.2010 and below it the figure 15 can be seen. The position that emerges from the file cover of the court record matches the entry in the diary maintained by the counsel. The appellants failed to produce their own diary. It appears that the zimni orders were not correctly recorded and therefore, this situation has arisen.”

9. I have seen the sale deed Ex.P4, which was executed by defendants Madan Gopal and Salochna Devi daughter of Ram Partap pertaining to one bigha fifteen biswas of land out of the suit property. They received sale consideration of ₹1,14,000/-. This sale deed was executed after filing of the suit i.e. 17.04.2009. Madan Gopal co-defendant of appellants has also given affidavit affirming execution of sale deed of their share in suit land, which was produced on record as Ex.P5. Learned first Appellate Court on appraisal of record has recorded a finding that there is no tampering of the record, rather there was mistake by the Court of learned Additional Civil Judge that no zimni order was recorded on 14.10.2010. Even otherwise, plaintiff will now seek the registration of the sale deed qua

the land as mentioned in agreement minus one bigha fifteen biswas, he had

already purchased vide sale deed dated 17.04.2009 and the price of the suit land will consequently come down and that is not to the detriment of the appellants, in any manner.

10. The production of this sale deed dated 17.04.2009 is virtually for the purpose of giving up of his claim against the executant of the sale deed by the plaintiff. Learned first Appellate Court has rightly observed that the appellants have tried to make mountain of a molehill just to take advantage of the circumstances. Though learned counsel for the appellants has hotly raised the issue again during the course of arguments but could not make out as to what damage or prejudice has been caused to the appellants, if two of their co-defendants have executed the sale deed of their share in suit land under the agreement which they virtually admitted.

11. As a sequel of my above discussion, I find no merits in the submission made by learned counsel for the appellants.

12. No other point has been argued.

13. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

August 29, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No