

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2265 of 2016 (O&M)

Date of Decision: December 20, 2016

Dharam Singh

...Appellant

Versus

Mohinder Singh & others

...Respondents

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

Present: Mr.Balbir Singh Jaswal, Advocate,
for the appellant.

Mr.Bikramjit Aroura, Advocate,
for caveator-respondent No.5.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings of fact and law, whereby the suit seeking specific performance of the agreement to sell dated 17.8.2004 in respect of land measuring 11 kanals, agreed to be sold for a total sale consideration of Rs.6,50,000/- against the payment of receipt of earnest money of Rs.3,50,000/-, executed by only Mohinder Singh, who, according to the Courts below, was not full owner of the property as he had been claiming ownership on the basis of Will executed by Dayal Singh, has been decreed qua alternative relief.

Mr.Balbir Singh Jaswal, learned counsel for the appellant-plaintiff submits that the stipulated date for execution and registration of the sale deed was 3.9.2004, which was mutually extended upto 31.3.2005. The aforementioned suit was filed on 4.5.2005. However, during the interregnum, defendants No.2 to 4, the siblings and the legal representatives

of Dayal Singh as well as Mohinder Singh (defendant No.1) had entered into an agreement to sell dated 7.6.2004 in respect of the entire suit land and had executed two sale deeds dated 8.10.2004 (during the currency of the agreement to sell) and 3.6.2005 registered on 6.6.2005 (during the pendency of the suit), therefore, there was no occasion for challenging the subsequent sale deed as it would be hit by doctrine akin to *lis pendens*.

He further submits that the stand of Mohinder Singh in the written statement was complete denial of the agreement to sell dated 17.8.2004, but stated that he had only agreed to sell his share, i.e., 2 marlas for consideration of Rs.6,500/- against the earnest money of Rs.3,500/-. The Courts below have abdicated in misconstruing and misreading of the oral and documentary evidence, particularly the written statement filed by Mohinder Singh in a suit filed by Harpal Singh (defendant No.5 herein) seeking specific performance of the agreement to sell dated 7.6.2004 where he had denied the execution of the aforementioned agreement. In fact, the Courts below should have granted the discretionary relief under Section 20 of the Specific Relief Act instead of ordering for alternative relief and, therefore, the judgments and decrees of the Courts below are liable to be set-aside.

He further submits that Mohinder Singh was convicted for commission of an offence under Sections 420 and 467 IPC for cheating and forgery of revenue record. Even the mutation, after the demise of Dayal Singh, was effected in the name of Mohinder Singh, who cleverly got the same cancelled. The appellant-plaintiff is a bonafide purchaser as two sale deeds are during the currency of the agreement to sell in question.

Per contra, Mr.Bikramjit Aroura, learned counsel for caveator-

respondent No.5 submits that the agreement to sell dated 7.6.2004 executed by all the defendants, i.e., vendors in favour of defendant No.5 Harpal Singh, has been proved. There is no challenge to the sale deed dated 8.10.2004, though the second sale deed is dated 6.6.2005. Demeanor of the person cannot be ignored vis-a-vis the fact that defendant No.1 Mohinder Singh was convicted in a criminal matter and, therefore, he can go to any extent in denying the execution of the agreement to sell.

He further submits that as per the alleged extension from 3.9.2004 to 31.3.2005, Mohinder Singh undertook to get the signatures of all the other co-owners for getting the mutation sanctioned in favour of all the co-owners. All these factors have been taken care of while declining the discretion and, thus, the appellant-plaintiff has been held entitled to seek relief of earnest money of Rs.3,50,000/- plus damages. He further submits that the agreement to sell at the instance of Mohinder Singh on behalf of others in the absence of any power could not be enforced.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.B.S.Jaswal, for, the facts noticed above would reveal that there is no challenge to the sale deed dated 8.10.2004. On the contrary, agreement to sell dated 7.6.2004 in favour of Harpal Singh (defendant No.5) has been proved to the hilt. Mohinder Singh had been playing hide and sick. He got the mutation on the basis of the Will of Dayal Singh, but thereafter the same was cancelled and ensured that he would get the mutation in respect of all the vendors. In my view, he had been hoodwinking all the vendees and appellant-plaintiff should have initiated criminal action against such a person. Having failed to do so, there appears to be some kind of

misunderstanding. Even the factum of possession has also not been proved. In my view, the agreement to sell in favour of defendant No.5 is prior in time and to the one in hand, i.e., 17.8.2004. The Courts below have rightly declined to grant discretion in favour of the appellant-plaintiff.

For the foregoing reasons, I do not intend to differ with the findings rendered by the Courts below, which are based on appreciation of oral and documentary evidence. No ground for interference is made out.

Appeal stands dismissed.

December 20, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No