

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

**R.S.A No.3962 of 2016(O&M)
Date of decision :10.11.2016**

Gurnam Singh and others

..... Appellants

Versus

Swaranjit Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sanjay Majithia, Sr. Advocate
with Mr. Inderjit Singh, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 17.02.2016 passed by the learned Additional District Judge, Hoshiarpur, whereby the appeal filed by appellants-defendants against the judgment and decree dated 01.06.2012 passed by the learned Addl. Civil Judge (Sr. Division), Dasuya, has been dismissed.

2. Plaintiff-respondent no.1-Swaranjit Kaur filed the suit for possession by way of specific performance of the sale deed dated 07.01.2005 executed by appellants-defendants no.1 to 5 in her favour pertaining to the land measuring 43 kanals 11 marlas detailed and described in the head note of the plaint situated in the revenue estate of village Ghogra, Tehsil Dasuya, District Hoshiarpur.

3. As per averments in the plaint, appellants-defendants were in need of money and wanted to alienate the suit land. Plaintiff agreed to purchase the suit land measuring 43 kanals 11 marlas for consideration of Rs. 35,55,000/-. The sale deed was executed on 07.01.2005 in favour of the plaintiff. After receiving the sale consideration, defendants no. 1 to 5 had paid Rs. 3,33,925/- to the State Bank of Patiala to get the suit land released from hypothecation. Similarly, they have paid Rs. 5,90,000/- to Baljit Singh son of Puran Singh from whom they had received the earnest money to alienate the land measuring 25 kanals 12 marlas vide agreement to sell dated 05.12.2003. They also paid a sum of Rs. 6,41,300/- to one Harnam Singh son of Boor Singh from whom they have received the earnest money to sell their land measuring 17 kanals 4 marlas vide agreement to sell dated 12.03.2003. After making the aforesaid payments by appellants-defendants out of the sale consideration, both the parties along with witnesses appeared before the Sub-Registrar on 07.01.2005 to get the sale deed registered. However, third party namely Darshan Singh etc. appeared before the Sub-Registrar and submitted the copy of the stay order passed by the Hon'ble Apex Court vide which the appellants were restrained from creating any third party interest. Thus, the Sub-Registrar refused to register the sale deed. Appellants have received the huge amount of Rs. 35,55,000/- and they handed over the original sale deed to the plaintiff. Thereafter, third party namely Darshan Singh etc. withdrew his appeal. Plaintiff filed application to the Sub-Registrar for registration of the sale deed on 26.02.2007, but the defendant did not appear. So, the Sub-Registrar refused to register the sale deed vide order dated

27.08.2007. Hence the suit.

4. Appellant-defendant no.5 contested the suit on the grounds *inter alia* that appellants have got deposited an amount of Rs. 3,33,925/- after receiving Rs. 3,20,000/- from the plaintiff. But, the said amount was returned to the plaintiff in the presence of Arjun Singh son of Piara Singh and Balwinder Singh son of Dalip Singh. They further pleaded that the sale deed could not be executed due to the stay order passed by the Hon'ble Supreme Court. The plaintiff had undertaken to pay the sale consideration as and when the sale deed was to be registered after the vacation of stay. They further pleaded that they have not paid any amount either to Baljit Singh or to Harnam Singh. The amount of Rs. 3,23,500/- was received back by the plaintiff from the appellant-defendant due to non-registration of the sale deed. They further pleaded that plaintiff was never put in possession of the suit land. All other averments raised in the plaint were controverted. With these pleas, he pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 12.12.2009:-

1. Whether the defendants no.1 to 5 executed sale deed dated 07.01.2005 in favour of the plaintiff regarding the suit property on receipt of Rs. 35,55,000/-?OPP
2. Whether the plaintiffs remained ready and willing to perform their part of the contract?OPP
3. Whether the plaintiff is entitled to specific performance of the sale deed dated 07.01.2005?OPP
4. Whether the plaintiff is entitled to alternative relief of recovery of Rs. 35,55,000/-?OPP
5. Whether the suit is barred under Order 2 Rule 2 CPC?OPD
6. Whether the suit property is not properly valued for the purpose of Court fee and jurisdiction?OPD
7. Whether the suit is barred under Order 27 Rule 5 CPC against the defendant no.8?OPD
8. Whether the suit is bad for non joinder to State of Punjab and misjoinder of the defendants no. 6 to 8?OPD

9. Relief.

6. On appreciation of the evidence and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff vide impugned judgment and decree dated 01.06.2012 and a decree for specific performance of the sale deed dated 07.01.2005 executed by appellants-defendants in favour of the plaintiff was passed. They were directed to register the said sale deed in favour of the plaintiff within a period of two months from the date of receipt of the copy of the judgment.

7. Aggrieved with the aforesaid judgment and decree, appellants-defendants preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Hoshiarpur vide impugned judgment and decree dated 17.02.2016. Hence this Regular Second Appeal.

8. I have heard Mr. Sanjay Majithia, Sr. Advocate with Mr. Inderjeet Singh, Advocate, learned counsel for the appellants and have carefully gone through the paper book.

9. Initiating the arguments, learned counsel for the appellants contended that the present case has the peculiar circumstances. He contended that there is no evidence on record to show that the plaintiff-respondent was ready with the remaining sale consideration and she has tendered that amount to the appellants for the registration of the sale deed nor said amount has been tendered before the Sub-Registrar. Thus, he contended that in-fact the plaintiff-respondent no.1 had no money to get the sale deed registered. Plaintiff-respondent has wrongly pleaded that the

entire sale consideration was paid. Thus, he contended that the learned Courts below have wrongly decreed the suit.

10. I have duly considered the aforesaid contentions.

11. The plaintiff-respondent has filed the suit for specific performance of the sale deed dated 07.01.2005 executed by appellants-defendants no. 1 to 5 in her favour pertaining to the land measuring 43 kanals 11 marlas for a sum of Rs. 35,55,000/-. Only issue raised before this Court by the learned senior counsel is that the remaining sale price i.e. Rs.19,89,775/- was never tendered by the plaintiff-respondent to the appellants-defendants at the time of execution of the sale deed nor this amount was tendered before the Sub-Registrar. But, in the written statement the reason mentioned for non-registration of the sale deed is that third party namely Darshan Singh etc have produced the copy of the stay order passed by the Hon'ble Supreme Court. The non-payment of the remaining sale price was not the reason for the non-registration of the sale deed as per the written statement. So, the plea raised by learned senior counsel for the appellants is contrary to the pleadings.

12. Moreover, the evidence available on record also does not support the plea raised by the learned senior counsel for the appellants. The appellants have themselves examined Balwinder Singh, the attesting witness of the sale deed dated 07.01.2005 as DW-2. This witness has admitted that the plaintiff-respondent has made the payment of the sale price to the appellants. He has categorically deposed in the examination in chief that Swaranjit Kaur has paid the consideration money to Gurnam Singh and Randhir Singh. But, since the sale deed was not registered

therefore, Gurnam Singh paid back the consideration money to Arjun Singh, who further handed over the said amount to Swaranjit Kaur. However, in the cross-examination, he admitted that Gurnam Singh etc. had not paid back any amount to Swaranjit Kaur. Thus, from the statement of DW-2-Balwinder Singh, the attesting witness of the sale deed, it is established that the remaining sale price was very much tendered and even paid to the appellants-defendants by plaintiff-Swaranjit Kaur.

13. The payment of the remaining sale consideration is also evident from the conduct of the appellants. If, the remaining sale price would not have been tendered/paid by the plaintiff-respondent no.1, they must not had signed and executed the sale deed dated 07.01.2005 in favour of the plaintiff. The sale deed was duly executed by the appellants and attested by the witnesses. It is also an admitted fact that as the sale deed could not be registered due to the stay order issued by the Hon'ble Supreme Court, the original sale deed was handed over to the plaintiff. If, the entire sale consideration would not have been paid, the original sale deed would not have been handed over to the plaintiff. From the evidence adduced by the plaintiff also it is established that the sale price was duly paid. Thus, the plea raised by learned counsel for the appellants, carries no substance.

14. No other point was raised before this Court.

15. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

16. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

17. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

November 10, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No