

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

RSA-2741-2015 (O&M)

Date of decision: 02.02.2016

Shiv Kumar

...Appellant(s)

Versus

Mohinder Kumar and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Peeush Gagneja, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

Appellant/plaintiff No.2, Shiv Kumar, is in second appeal challenging the concurrent findings returned against him and plaintiff No.1, Ram Sarup, by the learned Civil Judge (Junior Division), Abohar (for short, 'the trial Court'), vide judgment and decree dated 01.10.2012, and the learned Additional District Judge, Fazilka (for short, the 'first Appellate Court'), vide judgment and decree dated 26.02.2015.

In brief, the facts are that a suit for possession by way of specific performance of an agreement to sell dated 08.03.2007 was instituted by the plaintiffs against respondent/defendant

Mohinder Kumar with regard to their respective properties i.e. the defendant had agreed to sell his land measuring 1 Kanal 3 marlas situated at village Bishanpura, Tehsil Abohar @ Rs.1,80,000/- per acre, whereas, the plaintiffs had agreed to sell their land measuring 8 marlas again for the same price of Rs.1,80,000/-. Details of the properties are mentioned in the head note of the plaint. The defendant Mohinder Kumar received the entire sale consideration from the plaintiff and delivered the possession of his land measuring 1 Kanal 3 Marlas to the plaintiffs at the spot. He further agreed to execute the sale deed qua the above land in favour of the plaintiffs on 15.05.2006, for which an agreement was reduced into writing signed by the defendant and plaintiffs in the presence of witnesses. On 15.05.2006, the date of performance of the said agreement was mutually extended to 01.06.2006 and a writing to this effect was made on the overleaf of the said agreement which was signed by the parties to the agreement. On 01.06.2006, the plaintiffs came present in the office of Joint Sub Registrar, Sitto Gunno with the required fees but the defendant did not turn up. However, the plaintiff got his presence marked by way of his affidavit attested by the Executive Magistrate, Sitto Gunno.

After the suit was set in motion and issues framed the plaintiff had tendered his duly sworn affidavit Ex.PW1/1 in

evidence. PW2 Mani Ram who was the attesting witness of the agreement to sell tendered his affidavit Ex.PW2/A and wherein he deposed that on 18.02.2006 the parties had entered into a mutual agreement to sell with regard to their property. He further deposed that the defendant had received the entire consideration in his presence in the presence of witness Krishan Kumar. Plaintiff further examined PW3, Ram Lubhaya, Advocate-cum-Notary Public who tendered his affidavit Ex.PW3/A and deposed that he has seen the affidavit Ex.P9 and Ex.D1 and that he had read over the matter of those affidavits to the respective deponents who signed the same. PW5 Ramesh Dhingra, Reader, Naib Tehsildar, Sitto Gunno had produced the register maintained by his office regarding execution of affidavit by plaintiff No.1 Ram Sarup and plaintiff No.2 Shiv Kumar at Sr. No.195 dated 01.06.2006.

On the other hand, defendant Mohinder Singh examined himself and tendered his affidavit, Ex.DW1/A. Another witness who came forward from the defendant side in evidence was DW2 Rajinder Kumar and tendered his affidavit, Ex.DW2/A. This witness further deposed that he personally knew the parties to the suit and that they used to altercate regularly with regard to use of Government passage existing in Khasra No.489. In order to resolve this issue, one Krishan Kumar suggested the parties to

exchange their land which was reduced into writing. He also deposed that defendant Mohinder Kumar objected to the exchange on account of his land being in excess as compared to plaintiffs. However, it was suggested he can be compensated by way that he can have the Government passage to which he did not agree in lieu of his own land.

The trial Court non suited the claim of the plaintiffs on the ground that Khasra No.489 is a Government passage and plaintiff, Shiv Kumar has admitted to the same in his cross-examination that he has no title in the same. Therefore, specific performance cannot be executed regarding Government passage. Hence, the civil suit was dismissed by the trial Court vide judgment and decree dated 01.10.2012.

The appellate Court in appeal did not upset the decision of the trial Court vide its judgment dated 26.02.2015.

Now, in the second appeal, the learned counsel for the appellant has raked up the same issues which were debated before the Courts below. The learned counsel for the appellant, who has primarily argued that the findings with regard to issue Nos.1 to 3 are wrong as the pathway comprised in Khasra No.489 was not a subject matter of the agreement and the appellant had relinquished his right only for the use of said passage so that peace and harmony

prevail.

No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for.

Hence dismissed.

02.02.2016

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(JITENDRA CHAUHAN)
JUDGE