

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4201 of 2015 (O&M)

Date of Decision: 14.09.2016

Sanjeev Kumar

...Appellant

Vs.

Harvinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not? No.
2. Whether the judgment should be reported in the Digest? No.

Present:- Mr. S.K. Rattan, Advocate
for the appellant.

Amol Rattan Singh, J (Oral)

This appeal has been filed by the second defendant in a suit filed by respondents No.1 and 2 herein, seeking possession of the suit property through specific performance of the agreement dated 08.12.2005, stated to have been entered into by the respondents-plaintiffs with defendant No.1 (respondent No.3 herein, now represented by his legal heirs)

The case set up by the plaintiffs was that the said agreement had been entered into for the purchase of property from defendant No.1, i.e. a 1/4th share in land comprised in different khasra numbers given in the plaint, measuring 1 kanals, 11 marlas, situated at Kurali, District Mohali.

The sale consideration settled was Rs.4,09,000/-, of which Rs.80,000/- was paid as earnest money on the date of the agreement and Rs.1 lac was paid on 08.01.2006 as part payment of the total consideration.

The last date fixed for execution of the sale deed was

08.06.2006. It was further stated that on 12.06.2006, plaintiff No.1 obtained a copy of the *jamabandi* (records of right) for the purpose of execution of the sale deed, from which the plaintiffs came to know that the suit property had already been sold by defendant No.1 to defendant No.2, i.e. the present appellant herein.

2. Upon enquiring from defendant No.1, he told them that some fraud had been committed by defendant No.2, as he never intended to sale the suit property to him. When the appellant (defendant No.2) was contacted, he, on the other hand, stated that defendant No.1 had sold the suit property of his own free will and had also informed him that the plaintiffs had never approached him to purchase the property.

A sale-deed is stated to have been registered in favour of defendant No.2 on 10.02.2006, i.e. about two months after the date of agreement with the plaintiffs/respondents No.1 and 2 herein.

Consequently, it was contended in the suit that the plaintiffs having always remained ready and willing to purchase the said property, with them still willing to do so (at the time of the filing of the suit on 08.06.2006), it was prayed that the sale deed registered on 10.02.2006 (executed earlier on 09.02.2006) should be declared to be null and void and not binding on the rights of the plaintiffs and that further, that defendant No.1 be directed to execute a sale-deed in favour of the plaintiffs, with a further decree of permanent injunction against the present appellant (defendant No.2), restraining him from further alienating the suit land.

3. Upon notice being issued to them, defendant No.1 admitted the agreement entered into by him with the plaintiffs on 08.12.2005 and further admitted receipt of Rs.80,000/- on that date and another Rs.1 lac on

08.01.2006.

It was further contended that when defendant No.2 approached him, it was actually with regard to purchase of some other land which was not subject matter of the agreement with the plaintiffs but at the time of execution of the sale deed of that other land, appellant-defendant No.2 allegedly got the khasra numbers that were subject matter of the agreement with the plaintiffs, included in the sale deed.

It was thus contended that the appellant had played a fraud with defendant No.1 and in connivance with the revenue authorities had also got a mutation sanctioned in his favour.

In his written statement, the appellant also pleaded concealment of facts by defendant No.1 and stated that he had no knowledge of any agreement between the said defendant and the plaintiffs and that actually he himself was a bona fide purchaser for lawful consideration, without notice of the agreement with the plaintiffs and as possession had already been delivered to him, the suit deserves to be dismissed.

4. The plaintiffs having filed a replication to the said written statement, the following issues were framed by the learned Addl. Civil Judge (Sr. Divn.), Kharar:-

“1. Whether plaintiffs are entitled to possession by way of specific performance of agreement of sale dated 08.12.2005?OPP

2. Whether sale deed dated 10.02.2006 executed by defendant No.1 in favour of defendant No.2 of the suit land, is illegal, null and void? OPP

3. Whether the plaintiffs are entitled to injunction as prayed for?OPP

3(A) Whether defendant No.2 is the bona fide purchaser of

the suit property without notice?OPD

4. Relief.”

The plaintiffs examined three witnesses, including plaintiff No.1 and tendered necessary documents by way of evidence, whereas defendant No.2 led no evidence. Appellant-defendant No.2 also examined three witnesses.

5. Upon appraising the evidence, pleadings and arguments, the learned Addl. Civil Judge found that the agreement relied upon in his testimony, by defendant No.2, Ex.D-1, dated 20.08.2005, was not even mentioned in the written statement filed by the present appellant.

On the other hand, with the witnesses for the plaintiffs having testified in support of the agreement dated 08.12.2005 and the first defendant having taken the same stand in his written statement, it was further found that PW-3 Sanjeev Bhatia had not been cross-examined by the appellant with regard to his testimony on the receipt, Ex.P-1/A, with regard to payment of Rs.1 lac to defendant No.1.

Further raising a doubt on how a mutation entry in favour of the appellant could have been entered on the basis of an agreement (Ex.D-1) dated 20.08.2005, in the revenue record, when the sale deed was actually of the year 2006, the inference that is seen to have been taken by the learned Addl. Civil Judge, without actually stating so, was that there was connivance in such an entry having been made.

Further, it was found that the plaintiffs had filed the suit on the very date which was fixed as the last date for executing the sale deed, they having come to know on 02.06.2006 that the suit land had already been sold to the appellant.

Hence, with the agreement set up by the appellant, dated 20.08.2005 (Ex.D-1), (actually in favour of the brother of the appellant), having been disbelieved by the learned trial Court, and the agreement in favour of the plaintiffs dated 08.12.2005 having been found to be proved, the suit of the plaintiffs was decreed in their favour.

6. In the first appeal filed by the present appellant, the learned Addl. District Judge also came to the same conclusion, that with the first defendant not having denied the agreement with the plaintiffs and having set up a case that he was in fact defrauded by the appellant, with regard to the khasra numbers entered, and the sale-deed of the appellant not having been even referred to in the alleged agreement dated 20.08.2005 entered into between defendant No.1 and the appellants' brother, the reference to the said agreement at the time of his testimony, was an afterthought.

Consequently, the first appeal of the appellant was dismissed.

7. Before this Court, learned counsel for the appellant submits that the application for amendment of the written statement of the appellant-defendant should have been allowed by the lower appellate Court, which was dismissed on the ground that it would change the entire nature of the suit.

I find no ground to interfere with that finding of the learned lower appellate Court, in view of the fact that the specific findings of the Courts below are that the earlier agreement alleged to have been entered into by Gurdev Singh in favour of Swaran Singh, brother of the appellant, on 20.08.2005, was never taken up as a plea in the written statement and it is only for the first time, during his cross-examination, that the appellant came up with this plea.

The controversy being whether the agreement entered into on

08.12.2005 between the plaintiff and defendant No.1 was a valid agreement or not, and as such whether the sale deed dated 10.02.2006 executed in favour of the appellant, by defendant no.1, was validly executed, despite the agreement entered into by him on 08.12.2005 with the plaintiffs, the finding of the Courts below, that the purpose of the sale deed 10.02.2006 was to defeat the agreement dated 08.12.2005 and that the earlier agreement dated 20.08.2005 was sought to be set up later only to 'defeat' the agreement of 08.12.2005, is not seen to be a perverse finding, in any manner, in the opinion of this Court.

8. Learned counsel for the appellant submits that Rs.4 lacs had been paid by the appellant to the late Gurdev Singh (defendant No.1), by way of the sale consideration (the receipt of which has been exhibited as Ex.D-1/A before the Courts below). Obviously, if the appellant has any claim for recovery against Gurdev Singh or his legal heirs, any such proceedings would be dealt with on their own merit by the Court concerned. No comment is made by this Court, in that regard.

In view of the above, finding no merit in the appeal, it is dismissed in limine, with no order as to costs.

September 14, 2016
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(AMOL RATTAN SINGH)
JUDGE