

In the High Court of Punjab and Haryana at Chandigarh

**R.S.A. No. 4431 of 2014 (O&M)
Date of Decision: January 14, 2016**

Sewak Singh and others

... Appellants

Versus

Manpreet Singh

... Respondent

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgments?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present: Mr. Umesh K. Kanwar, Advocate,
for the appellants.

Paramjeet Singh Dhaliwal, J. (Oral)

CM-10226-C-2014

Having heard learned counsel for the appellants and for the reasons recorded in the civil misc. application, same is allowed. Delay of 28 days in filing the appeal is condoned.

RSA No. 4431 of 2014

This regular second appeal has been preferred by the appellants-defendants against the judgment and decree dated 21.08.2012 passed by learned Additional Civil Judge (Senior Division), Fatehgarh Sahib, whereby suit filed by the respondent/plaintiff for possession by way of specific performance has been decreed, as well as, against the judgment and decree dated 24.12.2013 passed by learned Additional District Judge,

Fatehgarh Sahib, whereby appeal preferred by the appellants/defendants has

been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit for possession by way of specific performance on the ground that on 21.10.2004, defendant agreed to sell 5 marlas of his gair mumkin abadi to the plaintiff for a consideration of Rs.2,00,000/- and also executed a written agreement to sell in favour of the plaintiff and also received Rs.10,000/- as earnest money in the presence of attesting witnesses. Defendant agreed to get the sale deed executed and registered in favour of the plaintiff regarding 2-1/2 marlas of land upto 05.11.2004 after receipt of remaining amount of Rs.1,90,000/- and remaining sale deed of 2-1/2 marlas upto 31.05.2005. On 29.10.2004, defendant again received Rs. 63,200/- from the plaintiff. On 03.11.2004 and 31.05.2005 as per the terms of the agreement to sell, the plaintiff along with balance sale consideration visited the office of Sub Registrar, but defendant did not turn up. Plaintiff visited the house of the defendant several times and requested her to execute the sale deed, but she refused. Hence, suit was filed.

Upon notice, defendant appeared and filed written statement and denied the allegations levelled against her on the ground that she has not executed agreement to sell on 21.10.2004. The defendant averred in her written statement that the alleged agreement to sell is a forged and fabricated document.

On the basis of the pleadings of the parties, the Court of first

instance framed the following issues:-

- “1. Whether the plaintiff is entitled for possession by way of specific performance on the basis of agreement to sell dated 21.10.2004? OPP
2. Whether the plaintiff is entitled to recovery of Rs.1 lac along with interest from the defendant in the alternative? OPP
3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
4. Whether the plaintiff is ready and willing to perform his part of contract? OPP
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the alleged agreement to sell is without consideration and result of fraud and misrepresentation? OPD
7. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
8. Relief.”

The Court of first instance, after perusal of the evidence led by the parties, decreed the suit vide judgment and decree dated 21.08.2012. Against that, defendants preferred an appeal, which has been dismissed by the lower appellate Court vide judgment and decree dated 24.12.2013. Hence, this second appeal.

I have heard learned counsel for the appellants.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 13 of grounds of appeal, arise for consideration in this second appeal:-

- “i) Whether the judgments and decrees passed by both the Courts below are against the pleadings and evidence available on the record?
- ii) Whether the Courts below misreading the evidence available on record?
- iii) Whether the plaintiff is entitled to get sale deed executed in the

old market price from the defendant/appellants?

- iv) *Whether the respondent/plaintiff discharged the mandatory requirement of Section 16(c) of Specific Relief Act, 1963?*
- v) *Whether the Courts below failed to appreciate the facts, application of legal provisions of Sections 16(c), 17 & 20 of Specific Relief Act, 1963?*

Learned counsel for the appellant contended that the impugned judgments and decrees passed by both the Courts below are the result of misreading of evidence on record. The judgments and decrees of both the Courts below are based on conjectures and surmises. Therefore, the impugned judgments and decrees are liable to be set aside.

I have considered the contentions raised by learned counsel for the appellant and perused the record.

Both the Courts below have categorically held that execution of agreement to sell dated 21.10.2004 has been duly proved on record by plaintiff's evidence. PW-2 Sadhu Singh, one of the attesting witness, has proved the execution of agreement to sell. Execution of sale deed dated 03.11.2004 is admitted by the defendant. Neither in the pleadings of the defendant nor in her evidence, she gave particulars of the manner in which fraud has been committed by the plaintiff. It is further held that plaintiff was, is and has always been ready and willing to perform his part of agreement, however, defendant failed to perform her part of agreement.

Learned counsel for the appellants has failed to show that the findings of fact recorded by both the Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

In view of concurrent findings of fact recorded by both the

Courts below, I do not find any illegality or perversity in the impugned judgments and decrees passed by both the Courts below. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

January 14, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge