

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

**Regular Second Appeal No.6164 of 2014 (O&M)
Date of Decision: July 28, 2016.**

Kehar Singh

.....APPELLANT(s).

VERSUS

Amrik Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Manish Kumar Singla, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Appellant-plaintiff challenged the concurrent findings recorded by the Courts below declining him the relief of specific performance of the agreement dated 31.03.1994 and allowing him the alternate relief of recovery of earnest money with interest.

2. Before proceeding further, it will be relevant to have a look on the admitted facts of the case, which are enumerated as follows:-

- (i) The agreement to sell was executed on 31.03.1994.
- (ii) Land measuring 25 bighas 3 biswas was agreed to be purchased by the plaintiff @ ₹25,000/- per bigha.
- (iii) Earnest money of ₹3 lac was paid to defendant No.1.
- (iv) The date for execution and registration of the sale deed was

fixed as 10.03.1997 i.e. about three years after the execution of the agreement.

(v) On 10.03.1997, the sale deed was not got executed, rather the time for execution of the sale deed was extended upto 01.03.2000 vide writing dated 07.03.1997.

(vi) Again on 01.03.2000, sale deed was not got executed and time for execution of the sale deed was extended upto 25.02.2003.

(vii) On 25.02.2003, the sale deed was again not got executed and the time for execution was extended upto 15.04.2005 vide writing dated 24.02.2003.

(viii) At the time of alleged writings extending the time for execution of the sale deed, no further sale consideration was ever paid to defendant No.1.

(ix) Vide sale deed dated 26.02.2002, defendant No.1 sold 9 bigha 10 biswas of land for ₹4,50,000/- to defendants No.3 and 4 and transferred 16 bighas 10 biswas of land in the name of defendant No.2 vide mutation No.1372.

(x) Defendants No.3 and 4 sold the land purchased by them to defendants No.5 and 6 for a sale consideration of ₹5,50,000/- vide sale deed dated 04.11.2004.

(xi) On the basis of judgment and decree dated 29.11.2002, sale deed of land measuring 15 kanals 13 marlas was executed in favour of defendant No.7.

3. Plaintiff filed the present suit in May, 2005 i.e. after about 11 years of the agreement.

4. Learned Additional District Judge, Sangrur had a look on the entire facts and circumstances and observed in para 14 of the judgment as follows:-

“14. Now the only question which is to be determined in the present case is that whether plaintiff is entitled to decree of specific performance on the basis of documents Ex.P1 to Ex.P4. The answer is in negative. Rather the oral and documentary evidence adduced on the file during trial clearly **shows that agreement to sell Ex.P1 and writings Ex.P2 to Ex.P4 were prepared by plaintiff in connivance with defendants no.1 and 2 just to defeat the rights of defendant no.7/Malkiat Singh**, who had succeeded in his case upto the Hon'ble Apex Court of India. From the documents placed on the file, it is clear that defendant no.7 Malkiat Singh filed civil suit No.563 dated 29.1.1998 against defendant no.1 Amrik Singh on the basis of an agreement to sell dated 15.11.1996 of land measuring 15 Bighas 13 Biswas, which was decreed in his favour vide judgment and decree dated 29.11.2002 by the then learned Additional Civil Judge (Senior Division), Malerkotla. The judgment is Ex.D8 on the file and decree-sheet is Ex.D9. Admittedly Amrik Singh preferred an appeal against the said judgment and same was also dismissed by the Court of learned District & Sessions Judge, Sangrur vide judgment dated 11.8.2003 in civil appeal No.6 of 14.1.2003. The judgment of District Judge is Ex.D6 and decree-sheet is Ex.D7. Amrik Singh then filed Regular Second Appeal before the Hon'ble High Court and same was also dismissed vide judgment dated 08.9.2003 which is Ex.D5 on the file. **Whereas the plaintiff has filed this suit for specific performance in the Court on 20.5.2005 on the basis of agreement to sell dated 31.3.1994. It is an ante-dated document prepared by the plaintiff in connivance with defendants no.1 and 2 just to defeat the fruits of litigation which had accrued to defendant no.7 after a long litigation with Amrik Singh upto the Hon'ble**

Supreme Court of India. Had it been so that plaintiff had really entered into an agreement to sell with the defendant no.1, then what was the occasion to extend the date for execution of sale-deed for a period of 11 years in the present case. In the previous litigation, which has been contested by Amrik Singh upto Hon'ble Supreme Court, he has not alleged that any agreement was executed by him in favour of Kehar Singh. Amrik Singh has contested the case with Malkiat Singh from 1998 till 2013, but during this period of more than 15 years, he has not uttered even a single word regarding execution of agreement to sell in favour of the plaintiff on 31.3.1994. It clearly shows the conduct of the parties that Amrik Singh in connivance with the plaintiff got filed this suit just to defeat the judgments which have been affirmed in favour of Malkiat Singh upto to the Hon'ble Supreme Court of India. The alleged agreement to sell Ex.P1 and subsequent writings Ex.P2 to Ex.P4 have not seen the light of the day till 20.5.2005 when the plaintiff has filed the present suit in collusion with respondents no.1 and 2. It is totally unbelievable that a person will wait for a period of more than 11 years to file a suit for specific performance on the basis of agreement to sell. Rather just to bring the suit within limitation, these writings Ex.P2 to Ex.P4 were prepared by the plaintiff in connivance with defendants no.1 and 2. Even no objections were filed by the plaintiff in execution application in the year 2005 and now even sale-deed has been executed in favour of defendant no.7 Malkiat Singh. The son of Amrik Singh also filed a civil suit thereby challenging the agreement to sell dated 15.11.1996 which was executed by Amrik Singh in favour of Malkiat Singh on the plea that property in dispute is ancestral coparcenary and joint Hindu family property and Amrik Singh was not having any right to execute agreement to sell dated 15.11.1996. In that case, a stay application was also filed which was dismissed by the then Civil Judge (Junior Division), Malerkotla vide order dated 10.9.2004 which is Ex.D11 on the file. The case was

ultimately dismissed vide judgment dated 06.6.2006 which is Ex.D13 on the file and decree-sheet is Ex.D14. In view of these judgments which have been passed against Amrik Singh and in view of the fact that this document has been prepared to defeat the rights of defendant no.7, plaintiff is not entitled to the relief of specific performance. It is also an admitted fact that as per judgment and decree dated 29.11.2002, the sale-deed dated 02.12.2003 has already been executed in favour of defendant no.7 Malkiat Singh. Even the plaintiff has not sought any cancellation of these sale-deeds executed in favour of defendants no.3 to 7.”

5. Learned counsel for the appellant has mainly stressed on the point that the agreement to sell with the plaintiff was held to be executed by defendant No.1 and the period for execution of the sale deed was extended from time to time with the consent of the parties, as such, there was no reason to grant the alternate relief declining the relief of specific performance of the agreement.

6. On perusal of the judgments of the Courts below, I find no merits in the submission of learned counsel for the appellant-plaintiff. The facts of the case clearly show the hanky-panky and collusion of plaintiff with defendant No.1, which the first Appellate Court has elaborately discussed in para 14 above.

7. In the facts and circumstances discussed above, it would have been unfair, against law, justice and equity, rather criminal to allow the relief of specific performance of the agreement dated 31.03.1994 propounded by the plaintiff. Both the Courts below have committed no error of law or fact while declining the relief of specific performance of the agreement to the plaintiff.

8. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

July 28, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	√ <i>Yes/No</i>
<i>Whether Reportable:</i>	√ <i>Yes/No</i>