

RSA No. 448 of 2011 (O&M)

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

**RSA No. 448 of 2011 (O&M)
Date of Decision: 3.4.2017**

Bachittar Singh and others

....Appellants

Vs.

Harnek Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Aakash Singla, Advocate for
Mr. Ashok Singla, Advocate
for the appellants.

Mr. S.K. Singla, Advocate
for the respondents.

RAMESHWAR SINGH MALIK J. (ORAL)

Defendants are in regular second appeal, against the judgment of reversal dated 16.8.2010 passed by the learned Additional District Judge, whereby first appeal of the plaintiffs was partly allowed, granting alternative relief for recovery of earnest money alongwith interest and setting aside the judgment and decree dated 13.2.2010 of the learned trial court to the limited extent indicated above.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that defendants were owners and in possession of the land, as fully detailed in the head note of the plaint in which they had 1/10 share in the property as detailed in sub head "A" and defendant No.1-Bahittar Singh had 1/3 share in sub head "B" of plaint,

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whereas Gurdev Singh had 1643/6459 share and they agreed to sell the same by way of agreement to sell dated 24.11.2004 at the rate of ₹4,00,000/- per acre, out of which they received ₹13,00,000/- as earnest amount, in the presence of the witnesses and sale deed was to be executed on or before 23.12.2004. It was alleged that on 23.12.2004, plaintiffs remained present in the office of Sub Registrar, Tapa, with balance sale consideration and other expenses but defendants failed to turn up. Thereafter, Nachhattar Singh got his presence marked by way of affidavit, entry of which was mentioned at Sr. 251, witnessed by Ex.Sarpanch Mohinder Singh and Lambardar Chamkaur Singh. It was alleged that plaintiffs were ready and willing to perform their part of contract but defendants failed to perform their contract of the agreement. When defendants refused to admit the claim of plaintiffs, they filed the present suit.

Having been served, defendants put appearance and filed their written statement, raising more than one preliminary objections. Plaintiff filed replication. On completion of pleadings of parties, learned trial court framed the following issues.

1. Whether plaintiff is entitled to relief of specific performance as alleged?OPP
2. Whether parties are (had) entered into an agreement to sell property in dispute vide agreement dated 24.11.04?OPP
3. Whether agreement to sell dated 24.11.04 is outcome of the connivance of scribe with the plaintiff, if so, its effects?OPD
4. Whether the plaintiff has no locus standi to file present suit?OPD
5. Whether instant suit (is) filed by the plaintiff just to harass the defendant?OPD

6. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiffs have failed to prove their case. Accordingly, suit of the plaintiffs for possession by way of specific performance of the agreement to sell dated 24.11.2004 and for permanent injunction or for recovery of earnest money, was dismissed vide judgment and decree dated 13.2.2010. Dissatisfied, plaintiffs filed their first appeal, which came to be partly allowed by the learned first appellate court, vide its impugned judgment and decree dated 16.8.2010. Primary relief of possession by way of specific performance of agreement to sell was declined to the plaintiff, however, alternative relief for recovery of earnest money alongwith interest was granted. Hence this regular second appeal at the hands of defendants.

Heard learned counsel for the parties.

A bare combined reading of the impugned judgment and decree passed by the learned Additional District Judge would make it crystal clear that each and every relevant aspect of the matter was duly examined, considered and appreciated in the correct perspective. Rakesh Kumar Dania-scribe of the agreement to sell was produced as PW-2, who categorically stated before the Court that the agreement to sell was scribed by him at the instance of the parties. He further deposed that the agreement to sell was read over and explained to the defendants-appellants, who after admitting correctness thereof, put their thumb impressions.

The agreement to sell was registered at Sr. No. 208 of the

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register of the scribe, which has also been proved as Ex.PW1/2. Statement given by PW-2 Rakesh Kumar-Scribe was also duly supported by Mohinder Singh-PW3, who was marginal witness to the agreement to sell (Ex.P-1). This witness has also deposed regarding passing of consideration of ₹13 lacs from the plaintiffs to the defendants. One of the plaintiffs namely Nachhattar Singh appeared in the witness box and proved the pleadings in this regard. Thus, agreement to sell stands duly established and proved on record, without there being any doubt about the genuineness thereof.

It is pertinent to note here that both the parties examined their respective Handwriting and Fingerprint Experts. Both these expert witnesses deposed in favour of their own parties. However, since the expert evidence produced by both the parties was not found to be conclusive proof, science of handwriting not being an accurate and exact science, the learned first appellate court rightly ignored this expert evidence. Having said that, this Court feels no hesitation to conclude that the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

It is equally true that even if an agreement to sell is proved on record, that does not automatically followed by decree of possession by way of specific performance. Reference can be made to Section 20 of the Specific Relief Act, 1963. However, it is also equally true that in such a situation, plaintiffs would be entitled to the alternative relief of recovery of earnest money alongwith interest. That is what has been held by the learned first appellate court, while passing the impugned judgment and decree and the same deserve to be upheld. Since the learned first appellate court finally granted only the alternative relief for recovery of earnest money alongwith

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interest @ 6% per annum, no fault can be found with the impugned judgment and decree and the same deserve to be upheld, having been found duly supported with sound reasons.

The view that has been taken by this Court also finds support from the judgments of Hon'ble the Supreme Court as well as this Court in **Golap Chand Agarwalla G.K.Agarwalla Versus Gopal Chandra Pal, 2002(1) A.R.C. 535; Azhar Sultana Versus B.Rajamani and others, 2009 (17) SCC 27; Mangat Singh Versus Rakesh Kumar Gupta and another, 2014(4) R.C.R.(Civil) 387; Richhpal Singh Versus Sandhura Singh, 2013(3) Civil Court Cases 242; Gurdial Sarup Versus Kaushalya Kapur and others, 2003(2) R.C.R.(Civil) 374; Nirmal Singh Versus Mangal Singh, 2002(1) R.C.R.(Civil) 745 and Gurdeep Singh Vs. Gurdev Kaur and others, (RSA No. 1545 of 2017 decided on 20.3.2017).**

Before arriving at a just conclusion, learned first appellate court rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Cogent findings recorded by the learned first appellate court in para 39 of its impugned judgment, which deserve to be noticed here, read as under:-

“Now to be seen is whether plaintiffs/appellants are entitled to relief of specific performance on the basis of agreement to sell or not. For that reference can be made to the statement of Rakesh Kumar Dania (PW2) who has stated that he has scribed agreement to sell after going through jamabandi on the file, but Nachhatar Singh one of the plaintiffs/appellants when appeared as PW4, from his statement, it is proved on the file that intention of the plaintiffs/appellants was not to get the sale deed executed in their favour of the suit property but

to secure loan amount. In the cross examination, he has admitted that khasra number of the property have not been mentioned in Ex.P1. He had seen the disputed property which is in two tucks but he cannot tell area of land in each tuck. He also failed to tell share of defendants/respondents in each tuck and boundary of said property. He admitted that he cannot tell how much land is “nehri” and how much land is “Varani”. He has not obtained copy jamabandi from the Halqa Patwari and how much loan has been obtained by the defendants/respondents on this property. He also failed to tell number of electric motors installed by defendants/respondents in the property in dispute nor this fact was verified by him after visiting the spot. All these facts show that intention of plaintiffs/appellants was not to purchase the property but to secure the loan amount. As such, plaintiffs/appellants are not entitled to relief of specific performance on the basis of agreement to sell but are entitled to alternative relief of recovery of Rs. 13 lacs along with interest @ 12% from the date of execution of agreement till filing of suit which comes to rs. 24,000/- total recoverable amount of Rs. 13,24,000/-. As per agreement to sell Ex.P1 Bachittar Singh and Gurdev Singh has received Rs. 4 lacs each and Gurdial Singh received Rs. 5 lac. Therefore, they are liable to return amount they received from the plaintiffs/appellants alongwith proportionate interest. Issue No.1 is accordingly modified.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in the abovesaid findings recorded by the learned first appellate court. He also could not refer to any question of law much less substantial question of law, which is

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sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

3.4.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No