

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.2208 of 2016

Date of decision:26.5.2017

Rishal Singh

...Appellant

Versus

Raghbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Manoj Kumar Taya, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for specific performance filed on 21.8.2007, on the basis of agreement to sell dated 12.6.2001, was dismissed by the learned trial Court, vide its impugned judgment and decree dated 26.3.2012 and his first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 7.9.2015.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that respondent-defendant No.1 had entered into an agreement to sell dated 12.06.2001 in favour of appellant-plaintiff in respect of agricultural land measuring 4 Bighas 0 Biswa being $\frac{1}{2}$ share of 8 Bighas 0 Biswa comprised in Khewat No.7, Khatauni No.20, Khasra No. 1517(4 Bighas 0 Biswas) 1518 (4 Bighas 0 Biswas) situated in village Barthal, Sub Tehsil Nigdhu, District Karnal, as per Jamabandi for the year 1994-95 for a sale consideration of 1,60,000/-

per acre. The plaintiff had paid an amount of 1,50,000/- as earnest money to defendant No.1 and the possession of the land comprised in Khasra No.1517 (4B-0B) was also delivered to the plaintiff on the same day. The said agreement to sell was executed in the presence of witnesses and it was also agreed that the sale deed would be got executed and registered as and when desired by the plaintiff. Thereafter, the plaintiff approached defendant No.1 so many times and requested to execute the sale deed in his favour, but the defendants postponed the matter on one pretext or the other. Lastly, on 07.06.2004 a Panchayat was convened at the house of defendant No.1, in which the target date for execution of the sale deed was extended upto 11.06.2005. It was further pleaded that on 11.06.2005 it was holiday being Saturday in the office of Sub Registrar, as such on 13.06.2015 the plaintiff duly equipped with the balance sale consideration, amount for the purchase of stamp papers and other expenses, remained present in the office of Sub Registrar, Nigdhu to perform his part of the agreement, but defendant No.1 did not appear to perform his part of the contract. Ultimately, the plaintiff got his presence marked by filing an application alongwith an affidavit duly attested by the office of Sub Registrar, Nigdhu. Thereafter, the plaintiff got served a legal notice dated 31.07.2007 to the defendant, but of no avail. It was further pleaded that it came to his notice that on 03.06.2005 defendant No.1 had executed a relinquishment deed No.310 in favour of defendants No.2 and 3 and mutation No.1571 qua the same has also been entered and sanctioned.

Having been put to notice, defendant No.1 appeared and filed his contesting written statement. Plaintiff did not file any replication. On

completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff was and is still ready and willing to perform his part of agreement to sell dated 12.06.2001?OPP
- 1(A) Whether relinquish deed dated 03.06.2005 is not binding on the rights of the plaintiff?OPP.
2. If issue No.1 is proved in affirmative, whether the plaintiff is entitled to the decree of possession by specific performance of the agreement to sell dated 12.06.2001? OPP
3. If issues No.1 and 2 are proved, whether the plaintiff is entitled to a decree for permanent injunction restraining the defendant from alienating the suit property?OPP
4. Whether the suit of the plaintiff is hopelessly time barred? OPD
5. Whether the suit is not maintainable in its present form?OPD
6. Whether the plaintiff has no locus standi to file and maintain the present suit?OPD
- 7.Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts?OPD
- 8.Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD
- 9.Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has failed to prove his case. Accordingly, his suit for possession by way of specific performance of agreement to sell was dismissed by the learned trial Court, vide its impugned judgment and decree dated 26.3.2012. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed

by the learned Additional District Judge, vide his impugned judgment and decree dated 7.9.2015. Hence this regular second appeal, at the hands of the plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that agreement to sell was dated 12.6.2001 Ex.P2. It was pleaded case of the plaintiff-appellant that target date was got extended up to 11.6.2005 vide endorsement Ex.P6 in the panchayat convened on 7.6.2004. Mam Chand and Om Parkash were the attesting witnesses of endorsement Ex.P6. However, none out of these two witnesses was produced by the plaintiff-appellant in the witness box, for the reasons best known to him. Defendant No.1 alleged that his signatures on endorsement Ex.P6 were forged.

With a view to substantiate his plea, defendant No.1 examined DW-3 Ram Dhan Babber, Handwriting and Fingerprint Expert, who reported that signatures of defendant No.1 on endorsement Ex.P6 does not tally with his standard signatures appended by him on the vakalatnama and affidavit Ex.DW1/A. Having said that, this Court feels no hesitation to conclude that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

It is the settled principle of law that initial onus is always on the plaintiff to prove his pleaded case by leading cogent and convincing evidence. However, in the case in hand, plaintiff-appellant failed to bring on record the relevant evidence so as to prove his pleaded case. Further, out of total sale consideration of Rs.1.60 lacs, plaintiff claimed to have paid an

amount of Rs.1.50 lacs to defendant No.1 on the alleged agreement to sell dated 12.6.2001. It was claimed by the plaintiff that he took the possession of the suit land on the date of agreement itself, however, learned counsel for the appellant submitted that later on plaintiff was forcibly dispossessed by the defendants.

Had it been true, the plaintiff would have certainly lodged some complaint before the competent authority in this regard, but he did not do so for the reasons best known to him. There is no revenue entry available on record including Khasra Gidwari which might even remotely suggest that plaintiff ever remained in physical possession over the suit land. Under these peculiar facts and circumstances of the case, it can be safely concluded that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 13 of its impugned judgment, which deserve to be noticed here, read as under:-

“I have considered the rival contentions of both the sides. A perusal of the file shows that the appellant-plaintiff approached the Court for specific performance of the agreement to sell dated 12.06.2001 Ex.P2 and as per the appellant-plaintiff himself in the agreement Ex.P2 no time limit was fixed for execution of the sale deed, however, the date of execution of the sale deed was later on fixed as

11.06.2005 in the Panchayat convened on 07.06.2004. No doubt, the appellant-plaintiff examined PW2 Ram Rakha Numberdar as one of the attesting witness of the agreement to sell Ex.P2, however, since the plaintiff has pleaded the accrual of cause of action in his favour on the basis of endorsement dated 07.06.2004 regarding the extension of the agreement to sell and fixation of the date of execution of the sale deed as 11.06.2005, he was also required to prove the execution of the said endorsement by defendant No.1 by examining any of its witnesses. The alleged endorsement dated 07.06.2004 on the back of Ex.P2 was attested by Mam Chand son of Kura Ram and Om Parkash son of Fateh Singh as attesting witnesses, but none of them has been produced /examined by the appellant-plaintiff during the course of evidence before the learned Trial Court. Though, learned counsel for the appellant-plaintiff contended that during his cross- examination DW1 Raghbir Singh admitted his signatures on endorsement Ex.P6, yet when defendant No.1 has duly pleaded his signatures on endorsement Ex.P6 as forged, mere admission regarding identification of signatures on Ex.P6 cannot be said to have resulted into the proof of the same. Even otherwise, the defendant No.1 has examined DW3 Ram Dhan Babber Handwriting and Finger Print Expert, who has reported that the alleged signatures of Raghbir Singh on endorsement Ex.P6 does not tally with his standard signatures appended by him on the Vakalatnama in favour of his counsel, affidavit Ex.DW1/A as well as his cross- examination dated 22.11.2011 during his evidence in the Court. Further PW2 Ram Rakha the alleged eye witness was not aware about the denomination of currency notes handed over by appellant-plaintiff to Raghbir Singh as consideration to the agreement to sell. Further as in this case a huge earnest money of 1,50,000/- was alleged to have been paid by the appellant-plaintiff to the respondent-defendant No.1 out of the total sale consideration, it cannot be

believed that for a meager balance amount, the appellant-plaintiff would keep the sale deed in abeyance for times together and he did not got the sale deed executed after paying of the aforementioned huge amount, no one would believe this story. Further, the appellant-plaintiff failed to produce any cogent evidence to prove the passing of consideration in respect of the alleged agreement to sell. It is pertinent to be mentioned here that in the original plaint filed by the plaintiff before the learned Trial Court, he had sought relief of decree of specific performance with possession, however, in the amended plaint, he has only sought the relief of specific performance without claiming the relief of possession, both are the contradictory pleas. Even otherwise, the appellant-plaintiff failed to produce any documentary evidence showing his possession over the suit land, whereas a perusal of the relinquishment deed Ex.PW5/A, mutation Ex.D14, Jamabandi for the year 2009-10 Ex.D15 as well as Khasra Girdawari for the year 2011 Ex.D16 shows possession of respondents-defendants No.2 & 3 upon the suit property and it is nowhere the case of the appellant-plaintiff that he was dispossessed from the suit property at any point of time. Therefore, considering all the aspects of the case, learned Trial Court has rightly come to the conclusion that plaintiff has failed to prove the execution of agreement to sell dated 12.06.2011 as well as endorsement dated 07.06.2004 and as such no relief of specific performance can be granted in favour of the appellant-plaintiff.”

It is also a matter of record that son of the plaintiff-appellant had been doing the business of commission agent. Defendant-respondent No.1 used to sell his agriculture produce through the said commission agency. Taking undue benefit of dominating possession of his son, plaintiff-appellant got the alleged agreement to sell prepared on 12.6.2001

and did not take any action in this regard for a period of more than six long years, which also does not appeal to reason at all.

Plaintiff was supposed to stand on his own legs without waiting for the alleged weakness of the case of the defendant. Plaintiff failed to bring on record cogent evidence so as to prove his pleaded case. In such a situation, he was bound to fail. That is what has been rightly held by both the learned courts, while recording their concurrent findings of facts, which have been duly supported by sound reasons and the impugned judgments and decrees deserve to be upheld, for this reason as well.

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus 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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

26.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No