

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

**RSA No.4543 of 2013 (O&M)
Date of Order: 17.08.2017**

Sukhwinder Kaur @ Guddi and others

..Appellants

Versus

Labh Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S.Dhaliwal, Advocate,
for the appellants.

ANIL KSHETARPAL, J (Oral).

Defendants are in regular second appeal against concurrent findings of fact arrived at by the Courts below.

Labh Singh, plaintiff-respondent, filed a suit for specific performance of agreement to sell dated 04.07.2005. Plaintiff also prayed for permanent injunction restraining the defendants from taking forcible possession.

Plaintiff and defendants no.1 & 3 are real brothers, whereas Jagsir Singh, defendant no.2 is son of Major Singh, brother of the plaintiff, therefore, the parties are closely related. Plaintiff had pleaded that the defendants had entered into an agreement to sell with respect to land measuring 29 kanals 16 marlas @ Rs.85,000/- per acre with him on 04.07.2005. The entire sale consideration was paid at the time of entering into an agreement. It was further pleaded that the defendants executed a General Power of Attorney appointing Labh Singh as the person authorised to take all actions. Thereafter, the defendants cancelled the General Power of Attorney on 09.08.2005, forcing the plaintiff to file the suit for specific

performance on 16.09.2005. It is the pleaded case of the plaintiff that on entering into an agreement to sell and execution of the General Power of Attorney, even the possession of the land was given to him.

Defendants contested the suit. Defendants took a stand that they never agreed to sell the land. Defendants further pleaded that the General Power of Attorney was given to the plaintiff only for the purpose of maintenance of the land. However, plaintiff in connivance with the document writer have got forged and fabricated agreement. It was further pleaded that the value of the land is not less than 3,00,000/- per acre.

Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff.

First appeal preferred by the defendants was also dismissed after re-appreciating the evidence available on the file.

I have heard learned counsel for the appellants at length and with his able assistance gone through the judgments passed by the Courts below.

Counsel for the appellants has submitted that the conduct of the plaintiff is such that the discretionary relief could not have been granted in favour of the plaintiff. He submits that Labh Singh and his wife sold certain part of the land out of the joint khewat @ Rs.2,16,000/- vide sale deed dated 08.08.2005. It is further submitted that Labh Singh, the plaintiff, purchased some land measuring 7 kanals 9 marlas from Gurnaib Singh, vide sale deed dated 22.08.2005, for a sum of Rs.3,72,000/-. He further submitted that Labh Singh had got ex-parte decree in his favour, which was challenged and ultimately set aside.

I have considered the submissions of learned counsel for the

appellants.

Explanation 1 of Section 20 of the Specific Relief Act provides that mere inadequacy of consideration shall not be deemed to constitute an unfair advantage within the meaning of clause(a) or hardship within the meaning of clause(b).

In this case, brothers had entered into an agreement at a particular rate. Not only agreement to sell was executed, even General Power of Attorney was given. The settlement of the rate depends upon the negotiation between the parties. It is the contract between the parties with which the Court cannot interfere. The rate of the land depends upon so many factors. It depends upon the location, it depends upon the quality of land, it depends upon whether the property is in the possession of the vendor or not, it depends upon whether the property is only a share in the joint holding or exclusive property. In the absence of evidence having brought on record, it is not possible to record a finding that the rate settled by the parties was not genuine or unreasonable.

Learned counsel for the appellants has further submitted that the conduct of the plaintiff did not entitle him to get a decree for specific performance.

I have seen the pleadings of the defendants as reproduced by the Courts below. No such plea was taken. Even, if some ex-parte decree was passed, which was set aside in 1986 that would not come in the way of the plaintiff to get a decree of specific performance of agreement to sell when the agreement to sell is proved on the file. Further the General Power of Attorney was also executed by the defendants in favour of the plaintiff.

For the reasons recorded above, I do not find any reason to

interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

August 17, 2017
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(ANIL KSHETARPAL)
JUDGE

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