

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

RSA No.1335 of 2015(O&M)

Date of Decision:-10.10.2017

Banta Singh through his Lrs.

.....Appellants.

Versus

Bakshish Singh @ Gurbaksh Singh & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Ramesh Sharma, Advocate for the Appellants.

Mr. Kanwal Goyal, Advocate for respondent no.1.

None for the respondent no.2.

JASWANT SINGH, J.

Defendant no.2-subsequent purchaser is in appeal against the findings returned by the learned Additional District Judge, Kapurthala, dated 5.12.2014, whereby the suit of the plaintiff-respondent no.1 has been decreed in *toto* and consequently, the findings of the learned Additional Civil Judge(Sr. Divn.), Kapurthala vide judgment and decree dated 05.03.2011, whereby suit was decreed for alternative relief of recovery, was reversed.

Learned Counsel for the appellant has argued that the learned lower Appellate Court has wrongly reversed the well reasoned findings returned by the learned trial Court by completely overlooking the fact that the respondents are real brothers and there is apparent collusion amongst them to defeat the valuable rights of the appellant. He has further argued that the appellant is a bonafide purchaser of the property in question by giving valuable sale consideration and, therefore, the lower Appellate Court had wrongly set aside the Sale Deed dated 21.03.2005. Finally, it has been

argued that the facts of the case would show that the plaintiff-respondent no.1 was never ready and willing to perform his part of the contract and thus, the lower Appellate Court has wrongly decreed the suit of the plaintiff in toto.

On the other hand learned Counsel for the respondent no.1 has argued that defendant no.1-Sohan Singh-owner of the property had entered into an agreement to sell dated 30.10.1998 with the appellant, as per which the Sale Deed was to be executed after the revenue record was corrected in favour of Sohan Singh. Since the mutation in favour of Sohan Singh was sanctioned on 23.12.2004, plaintiff-respondent no.1 immediately issued a legal notice dated 09.02.2005 asking Sohan Singh to get the sale deed executed in his favour. Since Sohan Singh did not come present for execution of Sale Deed, plaintiff was constrained to file the suit on 17.03.2005 and, therefore, there is no lapse on his part which would disentitle him for grant of discretionary relief of specific performance. It has also been argued that the Sale Deed executed in favour of appellant-defendant no.2 is a result of fraud and collusion amongst Sohan Singh and the appellant because after issuance of notice by plaintiff-Bakshish Singh to Sohan Singh-defendant no.1 on 09.02.2005, Sohan Singh entered into the Agreement to Sell with Appellant-Banta Singh on 14.02.2005 and thereafter got the sale deed executed on 21.03.2005 i.e. after three days of filing suit for specific performance. Consequently, it has been argued that the findings returned by the lower Appellate Court do not suffer from any illegality or infirmity and therefore same are liable to be upheld.

After hearing learned Counsel for the parties and perusing the paper book with their able assistance, this Court is of considered view that the present second appeal is devoid of any merit and deserves to be dismissed.

It is not in dispute that both the Courts below have concurrently held that agreement to sell dated 30.10.1998 Ex.P-1 has been proved on record by respondent no.1-plaintiff. In fact, none of the defendants had preferred an appeal against the findings returned by the learned trial Court on this aspect. Thus, the said finding of valid execution of agreement to sell has become final and it can be safely held that agreement to sell was indeed executed amongst plaintiff-Bakshish Singh and Defendant no.1 Sohan

Singh.

It is also not in dispute that Bakshish Singh and Sohan Singh are real brothers and at the time when the Agreement to Sell was executed, the property in question was wrongly recorded to be under ownership of Naranjan Singh (also real brother of Bakshish Singh and Sohan Singh). As per the terms of the agreement to sell, it was decided that plaintiff Bakshish Singh would spend the entire money on litigation to get the revenue record corrected in favour of Sohan Singh and in case the revenue record is not corrected then, Sohan Singh would not be liable to pay any amount to Bakshish Singh spent by him upon the litigation. It was also agreed that as and when the revenue record would be corrected in favour of Sohan Singh sale deed would be executed in favour of Bakshish Singh after giving one month notice. Meaning thereby, apart from the agreement being executed for money (i.e. sale consideration of Rs.8,000/-), the sale consideration included fighting the litigation on behalf of Sohan Singh and consequently winning it also.

Undisputedly, Bakshish Singh filed civil suit against Naranjan Singh for himself as well as on behalf of Sohan Singh on 15.01.1999 and was able to secure a decree in their favour on 20.08.2002(Ex.P-5). Naranjan Singh filed an appeal against the judgment and decree dated 20.08.2002 which was dismissed on 15.03.2004 (Ex.P-11). Thereafter mutation no.1260 was sanctioned in favour of Sohan Singh on 23.12.2004 and subsequently legal notice dated 9.02.2005 (Ex.P-7) was sent by plaintiff to defendant no.1 Sohan Singh for execution of sale deed on 11.03.2005. However, Sohan Singh did not turn up and instead executed an agreement to sell with appellant Banta Singh on 14.02.2005, as per which the last date to execute the Sale Deed was 15.04.2005. Admittedly, plaintiff-Bakshish Singh filed the present suit on 17.03.2005, however, Sohan Singh executed the sale deed in favour of Banta Singh on 21.03.2005 (much prior to the last date mentioned in the agreement to sell dated 14.02.2005).

From the aforesaid facts it becomes clear that the plaintiff-respondent no.1 Bakshish Singh was ready and willing to perform his part of the contract and in pursuance to the said agreement to sell he fought the litigation on behalf of Sohan Singh by spending money and was able to secure a decree in favour of Sohan Singh, after nearly six years of

litigation. In this view of the matter I do not find any merit in the arguments of the learned Counsel for the appellant that plaintiff-respondent no.1 was not ready and willing to perform his part of the contract, as there is no delay on his part.

As far as the argument of learned Counsel for the appellant that appellant is bonafide purchaser of the property, this Court is of the opinion that this argument is also devoid of any merit. Firstly, the present sale is hit by principle of *lis pendens* as admittedly, the sale deed was executed during the pendency of the suit. Even otherwise, a perusal of cross examination of appellant, who appeared in the witness box as DW-3 would show that he was aware about the litigation pending amongst the brothers, being resident of the same village and he has elaborately admitted about the entire litigation which took place prior to the filing of the present suit. In this situation, it cannot be said that appellant-defendant no.2 was not aware about the agreement to sell or the dispute pending amongst the brothers. Hence this Court has no hesitation to hold that the defendant no.2-appellant is not a bonafide purchaser of the property and the lower Appellate Court has rightly held that appellant is at liberty to recover the sale consideration from Sohan Singh-defendant no.1.

The argument of learned Counsel for the appellant that there is a collusion between the brothers is also bereft of any merit. Perusal of facts mentioned above, makes it apparent that it is infact Sohan Singh who has defrauded both the appellant as well as respondent no.1 and led to this unfortunate litigation. There seems to be no doubt in the mind of the court that there is no collusion between Sohan Singh and Bakshish Singh, as alleged.

In view of the above, finding no merit in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

October 10, 2017
Vinay

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No