

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

**CM No.5123-C of 2016 in/and
RSA No.1562 of 2015
Date of decision:13.07.2017**

Jarnail Singh

.....Appellant

Versus

Kuldip Singh and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sumit Gupta, Advocate,
for the applicant-appellant.

Ritu Bahri, J.

CM No.5123-C of 2016

For the reasons mentioned in the application, the main appeal i.e. RSA-1562-2015 is restored to its original number and taken up today itself for disposal.

Misc. application stands allowed accordingly.

RSA-1562-2015

This appeal has been directed against the judgments of concurrent finding of facts recorded by both the Courts below i.e. Civil Judge (Junior Division), Ludhiana and the District Judge, Ludhiana, whereby suit filed by the plaintiff-appellant for specific performance of agreement to sell dated 25.01.1995, has been dismissed.

Jarnail Singh-plaintiff (appellant herein) filed a suit for possession by way of specific performance of agreement to sell dated 25.01.1995 alleging that defendant No.1-Kuldip Singh, who was owner of the shop in dispute measuring 9 feet x 25 feet, detailed in head note of the plaint, had

agreed to sell the said shop in his (plaintiff's) favour for total consideration

of Rs.1,00,000/- vide aforesaid agreement dated 25.01.1995 and received an amount of Rs.40,000/- as earnest money. Balance sale consideration was to be paid at the time of execution and registration of the sale deed, which was to be executed on or before 06.04.1995. Later on, the said date was extended up to 05.06.1995 on the request of defendant No.1 as he was not having necessary documents at that time. However, defendant No.1 had failed to execute sale deed in favour of plaintiff-appellant and threatened to alienate the shop in question to some other person.

Upon notice, defendant-respondents filed written statement, wherein it was stated that neither defendant No.1 was owner of the shop measuring 9 feet x 25 feet, as described in the head note of plaint, nor he had entered into any agreement to sell in respect of the said shop. It was further stated that the alleged agreement to sell did not bear the signatures of defendant No.1. All other averments made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether plaintiff is entitled for the decree for specific performance of the agreement to sell dated 25.01.1995? OPP
2. Whether plaintiff is entitled to the injunction as prayed for? OPP
3. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

While dismissing the suit, trial Court has observed that in order to prove the agreement to sell Ex.P1, neither the scribe was produced by the plaintiff nor execution thereof has been proved as per the provisions of the

property from defendant No.2 vide agreement to sell dated 06.04.1995. Thus, at the time of execution of agreement to sell dated 25.01.1995, defendant No.1 was not owner of the property in dispute. It is settled principle of law that mere agreement to sell does not create any title in favour of prospective vendee. Hence, ownership of the defendant No.1 over the suit land was not proved. Even, as per report of Handwriting Expert namely Kranti Kumar (DW-1), agreement to sell Ex.P1 did not bear the signatures of defendant No.1. Since the ownership of defendant No.1 over the shop in dispute was not proved, the suit has been rightly dismissed by the trial Court.

The lower appellate Court, in appeal, has further observed that plaintiff-appellant had filed a criminal complaint under Sections 414/420/120-B IPC against the defendant-respondents and Gursewak Singh son Kuldeep Singh for cheating him by executing the agreement to sell dated 25.01.1995. This complaint was filed on 29.10.1997. After the trial, the said complaint was dismissed by the Court of Judicial Magistrate Ist Class, Ludhiana, vide order dated 30.01.2013.

Learned counsel for the appellant states that revision against the said order is pending before this Court. Even as per the deposition of PW-1 and PW-2, the suit land had been purchased by defendant No.1-Kuldip Singh from defendant No.2-Partap Singh through registered sale deed prior to the execution of agreement to sell Ex.P1. Even in the Jamabandi for the year 1994-95, Ex.DA, produced by defendant No.1, the land in dispute has been recorded in the name of defendant No.2-Partap Singh as a co-sharer. Subsequently, mutations were entered in the name of Harsewak Singh son of defendant No.1. Those mutations were not entered in favour of defendant

the above said mutation. In the agreement Ex.P1, defendant No.2-Partap Singh had signed as marginal witness and not as a vendor. He had never authorized defendant No.1 to execute the agreement Ex.P1 on his behalf in favour of the plaintiff.

After going through the impugned judgments, no illegality, much less perversity has been found therein, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

13.07.2017
ajp

(RITU BAHRI)
JUDGE