

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 1681 of 2015 (O&M)
Date of Decision: 7.4.2017

Gurdial Singh

.....Appellant

Versus

Kanwar Singh (deceased) through LRs

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. G.C.Shahpuri, Advocate
for the appellant.

ANITA CHAUDHRY, J

This is the second appeal by the defendant aggrieved by the judgment and decree passed by the Courts below.

The plaintiff had approached the Court seeking specific performance of the agreement dated 29.4.2004. The possession was already with the plaintiff. The land had been mortgaged with the plaintiff vide three mortgage deeds dated 18.2.1999, 19.6.2000 and 13.5.2002. The sale consideration was agreed at Rs. 6,92,500/-. The defendant after the mortgage deed had sold 4 kanals of land to the plaintiff on 1.1.2004 for a consideration of Rs. 1,43,000/-. The case of the plaintiff was that the defendant entered into an agreement to sell the land to him and the last date fixed for execution of the sale deed was 31.12.2004 and the defendant had already received Rs. 3,18,000/- under the mortgage deed and another sum of Rs. 40,000/- was paid on 29.9.2004 and the balance amount of Rs. 3,34,500/- was payable at the time of the execution of the sale deed.

The plaintiff had averred that he informed the defendant to be present in the

office of the Sub-Registrar on the appointed day and he remained present with the balance money but the defendant failed to appear and he had got his presence marked.

The defendant pleaded that the agreement was forged and fabricated. It was averred that there was only one mortgage deed only relating to khasra No. 43//17 which was executed on 13.5.2000 and the plaintiff was cunning and wanted to grab his property. It was pleaded that he had paid back the mortgage money to the plaintiff and the other mortgage deeds were forged and fabricated. He also claimed that his son had died and his grandsons had filed a suit for declaration with respect to their shares as the property was ancestral and had challenged the alienation.

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

- 1. Whether the plaintiff is entitled to a decree for possession by way of specific performance of the suit property detailed in the head-note of the plaint in terms of agreement to sell dated 29.4.2004 with consequential relief of permanent injunction, as alleged ? OPP*
- 2. Whether suit of the plaintiff is not maintainable in the present form ? OPD*
- 3. Whether the plaintiff has no locus standi and cause of action to file the present suit, if so its effect ? OPD*
- 4. Relief.*

The plaintiff examined a hand writing expert to prove the signatures of the defendant on the agreement to sell. The defendant admitted all the three mortgages in the cross-examination when confronted with his photograph on the documents. The plaintiff had examined the attesting witnesses. Two additional pleas were later sought to be raised by the

defendant that he was of unsound mind and that the document had been

executed under the influence of liquor. These suggestions were not put to the plaintiff and the trial Court rejected them. It was also observed that there was no evidence to show that the property was ancestral as no document had been proved and the suit was decreed.

An appeal was preferred by the defendant which affirmed the findings of the trial Court.

I have heard the counsel for the appellant at great length and have gone through the agreement to sell.

An argument was sought to be raised that there was no target date but it gets falsified on perusal of the agreement to sell. There was a target date and the plaintiff had led evidence to show that he had appeared for getting the sale deed registered in the office of the Sub Registrar. It was the defendant who had failed to perform his part of the agreement. The defendant had taken a wrong plea denying the mortgage deed.

Counsel for the appellant has urged that since the sale deed had been executed in favour of the plaintiff on 1.1.2004 therefore, there was no reason for the defendant to enter into another agreement after a month. This argument has to be rejected as there is no presumption that an agreement to sell cannot be entered into after the owner sells part of his property. The agreement to sell was executed almost after 3½ months. The hand writing expert had compared the signatures. No expert witness was examined by the defendant. The matter was not even reported to the police. I find that false pleas have been taken by the defendant at different stages of the trial. Both the Courts below had thoroughly scrutinized the evidence and the findings are based on evidence. There is no infirmity in the findings recorded by the Courts below.

The appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

April 07, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No