

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

RSA-780-2013 (O&M)

Date of decision:- 25.09.2017

Bawa Singh and others

...Appellants

Versus

Gurnam Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Manish Kumar Singla, Advocate,
for the appellants.

Mr. G.N. Malik, Advocate
for respondent No.1.

RITU BAHRI J. (Oral)

Appellants-defendants have come up in appeal against the judgment and decree dated 16.01.2012, passed by the Additional Civil Judge (Senior Division), Fatehgarh Sahib, whereby the suit filed by the respondent No.1-plaintiff for possession by way of specific performance on the basis of agreement to sell dated 19.7.2004 of land measuring 12 kanal 10 marla has been decreed and the judgment dated 27.10.2012, passed by the Additional District Judge, Fatehgarh Sahib, whereby the appeal against the judgment and decree dated 16.01.2012, has been dismissed.

Respondent No.1-plaintiff had instituted the suit for specific performance, in the alternative for recovery and for permanent injunction qua suit property situated in village Hussainpura, Tehsil Bassi Pathana,

District Fatehgarh Sahib on the ground that defendant-Balwant Singh (now deceased) had executed an agreement to sell dated 19.07.2004 in favour of plaintiff at the rate of ₹4 lac per acre regarding 34 kanal 18 marla of land. Defendant received ₹One lac as earnest money from the plaintiff and after that defendant also received ₹50,000/- on two occasions i.e. 09.09.2004 and 06.12.2004 through the receipts on the back page of the agreement to sell. Defendant received total earnest money to the tune of ₹2 lacs from the plaintiff and also executed sale deed on 08.06.2005 regarding 22 kanal 8 marla out of 34 kanal 18 marla of land. Now defendant has to execute the sale deed remaining land measuring 12 kanal 10 marla. Plaintiff further alleged that ₹2 lacs has already been received by the defendant and after adjustment defendant is bound to execute the sale deed, but they have failed to execute and registered the same. Plaintiff remained present on the fixed dated i.e. 15.06.2005 before Sub-Registrar.

On notice, LR's of defendant Balwant Singh appeared and filed written statement contesting and controverting allegations of plaintiff raising preliminary objections with regard to maintainability and the alleged agreement to sell dated 19.07.2004 does not confer any right, title or interest in favour of the plaintiff as the same is forged and fabricated one. On merits, defendants pleaded that deceased Balwant Singh neither executed the alleged agreement to sell in favour of plaintiff nor consideration was received by him or any of the heirs as alleged.

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

- “1. Whether the plaintiff is entitled to decree of possession by way of specific performance on the basis of agreement to sell dated

19.4.2004?OPP

2. Whether the plaintiff is entitled to recovery of ₹6,25,000/- along with interest @ 18% per annum in the alternative? OPP
3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
6. Whether the plaintiff has concealed true and material facts from the Court? OPD
7. Relief.”

Learned trial Court while decreeing the suit of the plaintiff has observed that the agreement to sell was vital document and it has been proved by marginal witness PW2 Gurdeep Singh. PW3 Navdeep Gupta, handwriting and finger print expert, had compared the handwriting on Ex.P2 and Ex.P3 of Sadhu Singh and Basant Singh, who were the sons of Balwant Singh deceased and DW1 Sadhu Singh admitted in his cross-examination that his brothers had signed on the vakalatnama, which has given to Sh. C.S. Tiwana, Advocate and he also identified his signature on power of attorney, which he has given to Sh. Chamkaur Singh Tiwana, Advocate. Further, it has been observed that the plaintiff is ready and willing to perform his part of contract as per his affidavit Ex.P4 and Ex.P10. Balwant Singh had executed a sale deed in favour of the plaintiff and now the LRs of the defendant are bound to execute the sale deed as per the agreement to sell Ex.P1. The plaintiff is entitled for specific performance on the basis of agreement to sell regarding the land measuring 12 kanal – 10 marla after submitting the balance sale consideration of ₹4,25,000/-. Moreover, the defendant has failed to bring on record any evidence as to which facts have been concealed by the plaintiff.

The finding of facts recorded by the learned trial Court was rightly upheld by the Lower Appellate Court as in the present case there is no dispute that defendant as per agreement sell dated 19.07.2004 executed the sale deed dated 08.06.2005 regarding 22 kanal–8 marla and on that date itself ₹12,60,000/- was accepted by the defendant and possession of land 22 kanal 8 marla given to the plaintiff. He had admitted with respect to sale deed (Ex.P10) when he had appeared in an application under Order 32 Rule 15 CPC made by the defendant that he was unsound mind and this application has been dismissed. Moreover, the plaintiff has been able to prove his presence through affidavit Ex.P4 and also with regard to readiness and willingness to perform his part of contract.

Accordingly, the concurrent finding of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

September 25, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No