

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

**RSA No. 2597 of 2015 (O&M)
Date of Decision: 24.8.2017**

Bhagwan Singh

.....Appellant

Vs.

Jagga Singh (deceased) through LRs and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. L.S. Sidhu, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant regular second appeal, at the hands of plaintiff, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for possession by way of specific performance of the agreement to sell and permanent injunction was dismissed by the learned trial court vide its impugned judgment and decree dated 17.5.2014 and his first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 11.3.2015.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that as per mutation No. 3287 recorded in the revenue record, defendant No.1 was the owner of suit land. Defendant No.1 executed an agreement to sell dated 22.12.2006 vide which he agreed to sell the suit land in favour of the plaintiff @ ₹4,00,000/- per acre and defendant No.1 received an amount of ₹5,00,000/- as earnest money from the plaintiff at the time of execution of agreement to sell and agreed to receive the

balance sale consideration at the time of execution and registration of sale deed. It was settled between the parties that defendant No.1 would execute and get registered the sale deed in favour of plaintiff within a period of six months after final adjudication of the dispute pending between defendant No.1 and Chhinder Singh son of Kakku Singh and Kakku Singh son of Narain Singh in the courts of Ferozepur and Chandigarh by giving prior intimation in writing to the plaintiff. Plaintiff came to know regarding adjudication of the pending litigation in favour of defendant No.1 but defendant No.1 did not inform the plaintiff about the same so far. However, plaintiff was always remained ready and willing to perform his part of contract but defendant No.1 willfully avoided and neglected to perform the same. Legal notice dated 15.12.2008 was got served upon defendant No.1 to perform his part of contract but to no effect. On 5.1.2009, it was gazetted holiday and on the next date i.e. 6.1.2009, plaintiff, along with balance sale consideration and requisite registration expenses, came present at the office of Sub-Registrar, Jalalaband, to perform his part of contract and kept on waiting for defendant No.1 throughout the day but defendant No.1 did not turn up to perform his part of contract. The plaintiff got executed an affidavit for marking his presence and got it attested from Notary Public, Jalalabad. Legal notice dated 6.1.2009 was also issued upon the defendant requiring him to perform his part of contract but to no effect. Defendant No. 1 was threatening to alienate and part with the possession of suit land in favour of any other person except the plaintiff but to no avail. Hence, the present suit.

Having been put to notice, defendant No.1 appeared and filed his contesting written statement, raising more than one preliminary objections. Defendant No. 2-Bank, with whom the suit property was under mortgage, also appeared and filed its written statement pointing out about the mortgage of the

suit land with it. It was also pointed out by defendant No.2 that since defendant No.1 was not competent to enter into an agreement to sell qua the suit land, which was under mortgage with the respondent-Bank, the agreement to sell in question would be of no consequence. Plaintiff filed his replication.

On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the defendant executed an agreement for sale dated 22.12.2006 in favour of the plaintiff and received the earnest money of Rs. 5,00,000/-?OPP
2. Whether the plaintiff was ready and willing and still ready and willing to perform his part of the contract? OPP
3. If issue No.1 and 2 are proved, whether the plaintiff is entitled to the relief of possession by way of specific performance of the agreement for sale dated 22.12.2006? OPP
4. If issue No.3 is not proved, whether the plaintiff is entitled to alternative relief of recovery of Rs. 7,50,000/- from the defendant?OPP
5. Whether the plaintiff is entitled to recover the interest?If so, at what rate?OPP
6. Whether the plaintiff's suit in the present form is not maintainable?OPD
7. Whether the plaintiff has got no cause of action and locus standi to file the present suit?OPD
8. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP

9) Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has miserably failed to prove his case for want of cogent and sufficient evidence. Accordingly, his suit for possession by way of specific performance of the agreement to sell and permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 17.5.2014. Feeling aggrieved, plaintiff filed his first appeal, which was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 11.3.2015. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

Mortgage of the land in question by defendant No.1 in favour of defendant No.2-Bank was a matter of record. Pursuant to this mortgage, having been created by the true owner of suit property-defendant No.1, there was a special note given at the end of relevant revenue record that suit land cannot be sold for the next 20 years. In this view of the matter, defendant No.1 was not competent to enter into an agreement to sell with the plaintiff. It does not appeal to reason that plaintiff would not have enquired from the relevant revenue record, whether the suit property was free from all encumbrances or not. The moment plaintiff would have enquired from the revenue official, he would have immediately come to know that suit land was not free from encumbrances, because it was already under mortgage with the defendant-Bank.

However, since the plaintiff was bent upon to grab the suit land

owned by defendant No.1 by resorting to illegal means, he misused the signatures of defendant No.1, which he put on blank papers, at the instance of Panchayat convened to resolve the dispute amongst defendant No.1-Jagga Singh, Chhinder Singh, Kakku Singh and Chiman Singh. That is how, plaintiff-appellant miserably failed to prove his pleaded case. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction in passing their respective impugned judgments and decrees and the same deserve to be upheld.

A bare perusal of the agreement to sell (Ex.P1) would show that it was attested by as many as six marginal witnesses, which was certainly unusual. This extra care taken by the plaintiff was also indicative of the fact that he was proceeding on a malafide intention to grab the suit land owned by defendant No.1. It is so said because to get the agreement to sell attested by six witnesses was not the requirement of law. Further, out of these six marginal witnesses, plaintiff produced only one witness-Harjinder Singh as PW2 in support of his case.

No explanation, whatsoever, is forthcoming as to why the plaintiff got attested the agreement to sell (Ex.P-1) from six marginal witnesses and also as to why he did not produce any other witness in the court out of remaining five marginal witnesses. Under these undisputed facts and circumstances of the case, it can be safely concluded that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective.

Relevant and cogent findings recorded by the learned first appellate court in para 12 to 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“The agreement to sell, on the basis of the present suit was filed by the appellant, has been proved on record as Ex.P1. A bare perusal of this document shows that it was got attested from six marginal witnesses. The names of five marginal witnesses along with the plaintiff Bhagwan Singh and the defendant Jagga Singh can be seen at the end of the agreement in question, whereas, the signatures of one marginal witness, namely Harjinder Singh, were obtained on the extreme left hand side of page No.2 and the agreement to sell in question. No explanation has come on record for obtaining the signatures of attesting witness Harjinder Singh on the extreme left hand side of document in question, whereas there was sufficient place at the end of the document Ex.P1 where he could have put his signatures along with other witnesses. It was only this witness Harjinder Singh, who has stepped into the witness box as PW-2 in order to support the case of the plaintiff. Despite the fact that other five witnesses have also been shown to have put their signatures as attesting witness of the agreement to sell in question, none of them was examined on behalf of the plaintiff in support of his case. Although, an argument has been raised on behalf of the appellant that there is no legal bar for attestation of a document by more than two witnesses, but some reasonable explanation should have been tendered on behalf of the appellant as to what necessity had arisen for getting the agreement to sell in question attested by as many as six attesting witnesses, out of which only one attesting witnesses has appeared into the witness box in support of the case of the plaintiff and that too, whose signatures seems to be doubtful on the agreement to sell in question.

The respondents have taken plea from the very beginning of the case that respondent No.1 had put his signatures on the blank stamp papers at the instance of panchayat convened to dissolve

land dispute pending amongst defendant Jagga Singh, Chhinder Singh, Kakku Singh and Chiman Singh and it was in that context, that defendant No.1 had put his signatures on blank stamp papers and the said blank papers were later on misused by the plaintiff in connivance with Bishamber Singh, who had stood as candidate for the election of Sarpanch and the defendants had failed to extend their support in the said elections of Sarpanch and the blank stamp papers were later on handed over by Bishamber Singh to plaintiff-Bhagwan Singh

A perusal of the revenue record Ex.P2 shows that the suit land was mortgaged by defendant No.1 in favour of defendant No.2 and a special note was given at the end of the revenue record that land in dispute cannot be sold for the next 20 years and surprisingly, this fact does not stand mentioned at the time of executing the agreement to sell in question. Had there been any intention on the part of respondent No.1 to execute any agreement to sell in favour of appellant, then clarification should have been in the agreement to sell in question regarding mortgage of the land in question and the special note should have been given by the end of the jamabandi Ex.P2 regarding a rider for not selling the land in question for the next 20 years but nothing such has been explained by the learned counsel for the appellant regarding all these facts during the course of arguments

Perusal of the statement made by PW-3 Bhagwan Singh shows that the plaintiff did not know as to what was the date fixed up for execution of the sale deed on the basis of agreement of sell Ex.P1. The plaintiff had not even gone through the revenue record before executing the agreement to sell in question. The said contention of the cross-examination of PW3 has rightly been relied upon by the learned lower court at the time of passing the impugned judgment. Proper reasoning has been given by the learned lower court, while dismissing the suit of plaintiff and I do not want to interfere in the judgment passed by the learned lower court, as such, the appeal in question is ordered to be dismissed and the impugned judgment passed by the learned lower court is

ordered to be upheld.....”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon’ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

24.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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