

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

**RSA No.2734 of 2015 (O&M)
Date of decision: 22.12.2017**

Avtar Singh

.....Appellant

Versus

Shingara Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Deepak Arora, Advocate,
for the appellant.

Ritu Bahri, J.

Plaintiff-appellant has come up in appeal against the judgment dated 27.02.2015 passed by the Additional District Judge (Adhoc), Fast Track Court, Gurdaspur, whereby on an appeal filed by defendant-respondent Nos.2 to 5, judgment and decree dated 11.05.2011 passed by the Additional Civil Judge (Senior Division), Gurdaspur, has been modified and it was held that respondent No.1 (appellant herein) was entitled to recover Rs.1,00,000/- i.e. Rs.50,000/- as principal amount plus Rs.50,000/- as damages, along with interest @ 6% per annum from the date of decree till realization, from Shingara Singh-defendant No.1 in alternative relief.

Avtar Singh-plaintiff filed a suit for specific performance of agreement to sell dated 21.10.2003 executed by defendant No.1-Shingara Singh for sale of land measuring 2 Kanals, out of land measuring 8 Kanals, comprised in Killa No.21, Khewat No.72, Khatauni No.212, situated in the revenue estate of village Alwalpur, H.B. No.378, Tehsil and District

Gurdaspur or in the alternative relief for recovery of Rs.1,00,000/- as

damaged. Plaintiff and defendant No.1 were real brothers. As per above said agreement, defendant No.1-respondent No.1 had agreed to sell the land in suit for a consideration of Rs.1,00,000/- and had received a sum of Rs.50,000/- as earnest money in the presence of witnesses. The remaining amount of consideration was to be paid at the time of execution and registration of the sale deed on or before 20.10.2004. However, defendant No.1 had failed to execute the sale deed in favour of the plaintiff as per terms and conditions of the agreement to sell dated 21.10.2003. However, he executed sale deed in favour of defendant Nos.2 to 5 on 13.06.2005 and sold his entire share out of the joint holding, including the suit land. Hence, the suit.

Upon notice, defendant-respondents filed joint written statement taking preliminary objections with regard to maintainability; concealment, cause of action, estoppel, non joinder of necessary parties etc. On merits, it was admitted that defendant No.1 had entered into an agreement to sell the land measuring 2 Kanals out of land measuring 8 Kanals, as detailed in the head note of the plaint. However, it was stated that defendant No.1 was not competent to sell the land in favour of the plaintiff. It was further stated that since the plaintiff was not having sufficient funds for purchasing the suit land, therefore, the agreement to sell stood cancelled. Plaintiff got the sale deed executed with regard to the land measuring 1 Kanal only on 18.10.2004 in the name of his son Harjit Singh on the basis of sale agreement. Earnest money of Rs.50,000/- was adjusted at the time of execution and registration of sale deed dated 18.10.2004. All other allegations levelled by the plaintiff 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 the plaintiff is entitled for possession by means of specific performance of agreement of sale dated 21.10.2003?
OPP
2. Whether plaintiff is ready and willing to perform his part of contract? OPP
3. Whether the plaintiff is entitled to recover Rs.1 lac along with interest from the defendants in alternative? OPP
4. Whether the suit is not maintainable? OPD
5. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD
6. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit. However, on appeal, the decree has been modified to alternative relief of return of earnest money.

While passing the impugned judgment, the lower appellate Court has observed that Shingara Singh while appearing as DW-1, had admitted regarding execution of the agreement to sell dated 21.10.2003 with his brother Avtar Singh-plaintiff. He further admitted that this agreement was executed for sale of land measuring 2 Kanals out of land measuring 8 Kanals for a consideration of Rs.1,00,000/- and he had received a sum of Rs.50,000/- as earnest money. However, well before the date of execution of sale deed, Avtar Singh-plaintiff had informed him that he was not having remaining amount for getting the sale deed executed and registered in his favour as per terms and conditions of the agreement to sell dated

21.10.2003. He had requested Shingara Singh to execute the sale deed only in respect of 01 Kanal of land in favour of his son. Therefore, Shingara Singh-defendant No.1 had executed the sale deed in favour of son of plaintiff-Avtar Singh on 18.10.2004 for 01 Kanal of land and the remaining land falling to the share of Shingara Singh had been sold in favour of defendant Nos.2 to 5 vide registered sale deed dated 13.06.2005, who were *bona fide* purchasers.

Moreover, no evidence was led by the defendants to prove the sale deed dated 18.10.2004 executed by Shingara Singh in favour of Harjit Singh son of Avtar Singh-plaintiff. Since there was no evidence with regard to this sale deed, defendant Nos.2 to 5 were not aware in this regard. Hence, they were rightly held to be *bona fide* purchasers of the suit land. The plaintiff did not place on record any document showing that on the stipulated date of execution of the sale deed as per agreement to sell dated 21.10.2003, he was present before the office of Sub Registrar. This in itself cast a doubt about readiness and willingness of the plaintiff to get the sale deed executed in his favour.

After going through the impugned judgment, this Court is of the view that the lower appellate Court has rightly recorded the finding to the effect that defendant Nos.2 to 5 were *bona fide* purchasers of the suit land, as they had no knowledge about the agreement to sell dated 21.10.2003 Ex.P1. Accordingly, it has modified the judgment of the trial Court and decreed the suit of the plaintiff by granting alternative relief of recovery of Rs.1,00,000/- along with interest i.e. Rs.50,000/- as principal amount (earnest money) and Rs.50,00/- as damage. No illegality, much less perversity, has been found in the impugned judgment, warranting

interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

22.12.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No