

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

**RSA-6542-2016 (O&M)
Date of Decision : 04.10.2017**

Satnam Singh & Anr.

....Appellants

versus

Rachpal Singh & Ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. K.S. Rekhi, Advocate
for the appellants.

Mr. Kuljit Singh Bal, Advocate
for the respondent.

RAJBIR SEHRAWAT, JUDGE (ORAL)

This is an appeal filed by defendant No.2 and defendant No.6 in the original suit which was filed by respondent No.1 for specific performance of agreement to sell the properties mentioned in the head-note of the plaint, being aggrieved against the judgment and decree passed for specific performances.

The facts as mentioned in brief are that Gurdip Kaur wife of Mukhtar Singh and Manjit Kaur daughter of Mukhtar Singh entered into an agreement to sell dated 01.01.2010 with respondent No.1 regarding the sale of properties described in the head-note of the plaint as property 'A', property 'B' and property 'C' along with another land measuring 6 kanals. The property 'A' was described measuring as 8 kanals 6 marlas and it was owned exclusively by Gurdip Kaur. The property measuring 6 kanals mentioned above was exclusively owned by Manjit Kaur. But this property is not included in the present suit. The property 'B' was described as measuring 3 kanals 11 marlas which at the time of agreement was in the name of Mukhtar Singh. The executant of the agreement inherited it later

on from Mukhtar Singh along with other defendants. The next property described as property 'C' is 01 kanal 7 marlas, likewise inherited later on by above said Gurdip Kaur and Manjit Kaur from Mukhtar Singh along with other defendants. The target date in the agreement to sell was fixed as 14.05.2010. The sale consideration was agreed @ Rs.12 lac per acre. It was further claimed by the plaintiff that since Manjit Kaur had already executed the sale deed regarding land measuring 6 kanals which was under her exclusive ownership, therefore, the suit was not being filed regarding that property measuring 6 kanals. Hence the suit was only regarding the properties mentioned as properties 'A', 'B' and 'C', as described above, which were mentioned as such in the suit. It was claimed by the plaintiff that after the agreement, but before the target date Gurdip Kaur had expired. Thereafter, the plaintiff served a legal notice upon the defendants on 06.05.2010, asking them to execute the sale deed in his favour as per the terms of agreement. As per the stipulation in the agreement the target date was 14.05.2010. However, this day was declared as holiday. Next two days were holidays; being Saturday and Sunday. Thereafter, on next Monday i.e. 17.05.2010 the plaintiff remained present in the office of Sub-Registrar Ajnala for getting the sale deed executed in his favour along with the balance sale consideration. He also got his presence marked with the Sub-Registrar. However, the defendants did not reach the office of the Sub-Registrar for executing the sale deed. It is the claim of the plaintiff that on 01.06.2010 the plaintiff even offered Rs. 16,80,000/- to the defendants, which was the balance sale consideration. However, they did not agree to execute the sale deed in his favour. Hence the suit was filed on the very

next day, i.e. on 02.06.2010.

Upon notice defendant No.1, the sole surviving executant of the agreement, did not turn up to contest the suit and was proceeded ex parte. Defendant No.2 contested the suit. Besides taking other preliminary objections it was claimed by him that the land mentioned as properties 'B' and 'C' in the head-note of the plaint were earlier owned and possessed by Mukhtar Singh. He resided with Sumandeep Singh, i.e., the appellant No.2 herein, who was serving him. Therefore, Mukhtar Singh had executed a Will on 29.03.2009 in his favour. On the death of Mukhtar Singh he became the owner in possession of the land left by Mukhtar Singh. It was further pleaded that defendant No.1-Manjit Kaur and the Gurdip Kaur never entered into an agreement to sell regarding the suit land or the other land measuring 6 kanals comprising in khasra No.40//8/2. It was further alleged that the agreement was procured by way of misrepresentation, in connivance with the witnesses and the defendants who were inimicable with the contesting defendants and their family members. The execution of the agreement by Gurdip Kaur was also denied. Even the receipt of earnest money by Gurdip Kaur and Manjit Kaur were denied by him.

Defendants No.3 to 5 filed a separate written statement in which they claimed that Gurdip Kaur had never disclosed to the defendants regarding the execution of the agreement to sell in question. It was further claimed that if the agreement is proved to be executed by the defendant Gurdip Kaur, then the defendants shall execute the sale deed with respect to their shares inherited from the estate of Gurdip Kaur.

When the case was fixed for framing of issues then plaintiff filed application under Order 1 Rule 10 CPC to implead defendant No.6-Sumandeep Singh also as a party to the suit. This application was allowed. Defendant No.6 appeared and filed his written statement and admitted the fact that the property mentioned in the head-note of the plaint at 'A' was owned and possessed by Gurdip Kaur but he denied that she was exclusively owner in possession of the land mentioned at point 'A'. He also pleaded the existence of the Will dated 29.03.2009 as was mentioned by defendant No.2 in his written statement. He denied the competence of the executant of the agreement to enter into an agreement regarding the properties mentioned in the plaint.

Parties led their evidences.

To prove the agreement to sell the plaintiff/respondent No.1 himself appeared as PW-1.

Further he examined PW-2- Sukhpal Singh who was the attesting witness of the agreement to sell. Besides this he also examined Gurpreet Singh as PW-4 the scribe of the agreement to sell. Besides oral evidence the documents were also placed on record. Similarly the defendants No.2 and 6 also appeared as witnesses as DW-2 and DW-1. They also placed on record the revenue record regarding the ownership of the land.

After hearing the counsels and the appreciation of the evidence the trial Court held the agreement as proved. However, trial Court recorded a finding that the properties measuring 3 kanals 11 marlas mentioned at point 'B' in the head-note of the plaint and measuring 1 kanal 7 marlas

mentioned in the plaint, though inherited by Gurdip Kaur and Manjit Kaur along with other defendants, yet they could not have entered into the agreement to sell because they were not the exclusive owner of these properties mentioned as 'B' and 'C' in the head-note of the plaint. Resultantly the trial Court partly decreed the suit filed by the plaintiff and granted the alternate relief of returned of the earnest money. The specific performance of the agreement regarding execution of the sale deed was denied by the trial Court on the ground that out of the three properties the executant of the agreement to sell did not have the exclusive title qua two properties mentioned as 'B' and 'C' in the head-note.

Aggrieved of this judgment and decree the plaintiff filed an appeal and claimed specific performance of the agreement. The present appellants also filed cross-objection in that appeal and claimed the dismissal of the suit filed by the plaintiff. However, the lower Appellate Court dismissed the cross-objection filed by the appellants herein/defendants No.2 and 6 and allowed the appeal filed by the plaintiff/respondent No.1 herein, regarding the property 'A' mentioned in the head-note of the plaint. Regarding the properties mentioned as 'B' and 'C' in the head-note of the plaint, the lower Appellate Court did not grant any decree for specific performance, since, during the pendency of the appeal, the plaintiff had also made a statement that keeping in view the fact that the executant of the agreement i.e. Gurdip Kaur and Manjit Kaur did not have exclusive title, therefore, he is not pressing his suit qua these two properties, in view of the findings recorded by the trial Court.

Aggrieved of this judgment and decree of the lower Appellate Court granting the decree for specific performance regarding land measuring 8 kanals 6 marlas mentioned as property 'A' in the head-note, the present appellants /defendants No.2 and 6 have come in appeal.

While arguing the case learned counsel for the appellants has submitted that the lower Appellate Court has faltered in decreeing the suit against the established legal principles. It is his argument that since the agreement to sell related to three properties, therefore, the decree could not have been passed qua one property only. Such a decree would be bad for partial enforcement of the agreement. It is his next argument that the agreement in question has not been proved as per the requirement of the Evidence Act. His argument is that the agreement to sell was not scribed by a regular deed-writer. Still further; his argument is that the attesting witnesses examined by the plaintiff to prove the agreement is an interested witness, therefore, the agreement cannot be said to be proved as per the law. Still further it is his argument that the agreement in question cannot be enforced because the plaintiff was not ready and willing to get the sale deed executed in his favour. It is his further argument that the name of the stamp vendor is not mentioned on the agreement to sell. Counsel for the appellant has relied upon the judgement of the Hon'ble Supreme Court rendered in 2015 (SUPPL) Civil Court Cases 333 (S.C.) titled as ***Hanumappa Channappa Hullur (D) by LRs. Vs. Shivamaruthappa Parappa Kalli & Ors.*** To contend that once the agreement cannot be enforced in its entirety then partial specific performance cannot be granted.

On the other hand, learned counsel for respondent No.1/caveator has argued that the decree in his favour has rightly been passed by the lower Appellate Court. It is his argument that the agreement in question has been proved as having been duly executed. Regarding the property measuring 8 kanals 6 marlas of land mentioned as 'A' in the head-note of plaint, Gurdeep Kaur the executant of the agreement was the exclusive owner. Therefore, there is no obstructions in the grant of specific performance qua this property atleast. The defendants shall be bound by the agreement to sell entered into by Gurdeep Kaur being her legal heirs.

After considering the arguments of the learned counsels for the parties and perusing the record this Court find itself in agreement with the submissions made by the learned counsel for respondent No.1. The argument of the learned counsel for the appellants that since the suit has been dismissed qua two properties regarding which the specific performance was claimed , therefore, the specific performance qua third property could also not have been granted by the Court is noticed only to be rejected. The Court has recorded categoric finding that qua the property mentioned at point 'A' in the head-note of the plaint, measuring 8 kanals 6 marlas of land, Gurdip Kaur was the exclusive owner. Therefore, the suit qua this property is decreed. Even the trial Court had found the title of the Gurdip Kaur qua this property to be exclusive. The lower Appellate Court has rightly over turned the finding of the trial Court to the effect that since title qua other two properties have not been proved to be exclusive of the vendors, therefore, specific performance cannot be granted. The reliance by the counsel for the appellants on the judgement of the Supreme Court

rendered in *Hanumappa* case (supra) is also misconceived. This case rather supports the case of the plaintiff/respondent No.1 herein because this judgment says that if the property is divisible then the specific performance to the extent of the property, regarding which the title is clear, can very well be decreed by the Court.

In the present suit the plaintiff claimed the specific performance of the agreement qua three properties. Admittedly only one property out of those three, mentioned at Point 'A' in the head-note, was under the exclusive ownership of Gurdip Kaur, the executant of the agreement. The remaining two properties mentioned at Points 'B' and 'C' in the head-note were not the exclusive property of Gurdip Kaur. She has inherited these two properties only as one of the heirs of Mukhtar Singh. Therefore, the lower Appellate Court is right in holding that the title qua these two properties was not exclusive in favour of Gurdip Kaur. Therefore, respondent No.1 herein had even not pressed his appeal qua these two properties. Hence the lower Appellate Court has rightly decreed the suit of respondent No.1 to the extent of one property, described at Point 'A' in the head-note of the plaint.

The next contention of the learned counsel for the appellants that the agreement has not been proved as per the requirements of the Evidence Act, is also not sustainable. Respondent No.1 has duly proved the agreement in question by examining the attesting witness as well as the scribe of the agreement. The argument of the learned counsel for the appellants that the scribe of the deed was not registered and recognized deed-writer and the name of the stamp vendor has not been mentioned on the agreement to sell, is totally irrelevant for the purpose of proof of the

document. The agreement can even be an oral agreement.

In the present case it is a written agreement and is duly proved by examining the attesting witness. The argument of the learned counsel for the appellants that the attesting witness was an interested witness, is also to be noticed only to be rejected. In a case of agreement to sell, it is nowhere prescribed that the attesting witness has to be a person not interested in favour of the person in whose favour the agreement has been executed. The plaintiff can examine only that witness in the Court who has attested the agreement as attesting witness. Therefore, it is totally immaterial for the proof of the agreement to sell that a witness was interested witness. Such a witness comes to the Court not as representative of the plaintiff but as a witness who had put his signatures on the agreement as a mark of witnessing the factum of execution of the agreement. Therefore, testimony of the attesting witness cannot be excluded simply on the ground that the witness was an interested witness. Otherwise the counsel for the appellants has not pointed out anything in his cross-examination, to impeach the credit of witness as such. The next contention of the learned counsel for the appellants that the plaintiff/respondent No.1 was not ready and willing to get the sale deed is also rightly rejected by the Court below. Once the appellants have questioned the execution of the agreement itself then they cannot take the plea of non-readiness of the plaintiff to get the sale deed executed.

No other point was argued.

In view of the above, there is no illegality, irregularity or perversity with the findings recorded by the Courts below. The judgement

and decree passed by the lower Appellate Court, whereby it has granted the specific performance of the agreement qua the property mentioned at Point 'A' in the head-note, are upheld.

In view of the above, the present appeal fails and the same is dismissed being devoid of any merits.

4th October, 2017

Manju

**(RAJBIR SEHRAWAT)
JUDGE**

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