

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

RSA No.615 of 2015 (O&M)

Date of decision : 18.07.2017

Joginder Singh

...Appellant

Versus

Dhan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Vikram Singh, Advocate with
Mr. Abhinav Sood, Advocate for the appellant.

Mr. R.K. Gupta, Advocate for respondent(s).

ANIL KSHETARPAL, J.

The defendant No.6-appellant namely Joginder Singh has filed the present Regular Second Appeal against the judgments passed by the Courts below, whereby the suit filed by the plaintiff (Dhan Singh) for possession by way of specific performance of agreement to sell dated 17.08.1999 had been decreed by the Courts below.

The plaintiff-Dhan Singh had filed suit against defendant Nos.1 to 5 seeking specific performance of the agreement to sell dated 17.08.1999. It was pleaded that the total sale consideration was already received by defendant Nos.1 to 5. It was agreed that the sale deed would be executed as and when the land will come out of the Yamuna river as at the time of execution of the agreement to sell, the land was submerged in

the Yamuna river. The defendant Nos.1 to 3 appeared and denied the execution of the agreement to sell. The defendant Nos.1 to 3 claimed that they are owner in possession and the agreement to sell is a result of fraud and fabrication. The defendant Nos.4 and 5 filed a separate written statement wherein also execution of the agreement to sell was denied. The defendant No.6 (Joginder Singh) was added as a party in 2013. The defendant No.6 claimed that there was an agreement to sell by defendant Nos.1 to 5 in his favour dated 08.06.1994. The defendant No.6 further pleaded that there was fresh agreement by defendant Nos.1 to 5 in his favour on 04.04.2006 on the same terms and conditions.

The defendant No.6 also filed a counter claim and claimed protection of his possession under Section 53-A of the Transfer of Property Act. The learned trial Court decreed the suit filed by the plaintiff against the defendant Nos.1 to 3 as defendant Nos.4 and 5 were not found to be signatories of the agreement to sell dated 17.08.1999. The counter claim filed by the defendant No.6 was found to be without merit and it was found that the defendant No.6 is not entitled to protect his possession under Section 53-A of the Transfer of Property Act because he did not take any steps in furtherance of agreement to sell in his favour in the year 1994.

Two appeals were preferred. One by Joginder Singh-defendant No.6-appellant and another by defendant Nos.1 to 3. The learned First Appellate Court after re-appreciating all the evidence available on the file affirmed the decree passed by the trial Court and

dismissed both the appeals with a slight modification that the defendant Nos.1 to 3 will execute the sale deed in favour of plaintiff-respondent-Dhan Singh as per their share, out of total land measuring 24 kanals as per the agreement to sell dated 17.08.1999.

I have heard learned counsel for the appellant and with his assistance gone through the judgments and paper book.

Counsel for the appellant has mainly stressed upon a decree for permanent injunction passed by the trial Court in Civil Suit No.214 of 2000 dated 01.02.2001. It has been contended by the learned counsel for the appellant that since there was a decree for permanent injunction in favour of the appellant wherein the defendants were restrained from alienating the suit property to anyone else except the appellant, therefore, the Courts below could not have decreed the suit filed by the plaintiff-Dhan Singh.

I have closely examined the decree for permanent injunction passed by the Civil Judge (Junior Division), Karnal in Civil Suit No.214 of 2000. I am afraid that such decree would come to the rescue of the appellant. The suit filed by the Joginder Singh-defendant No.6 for specific performance of the agreement to sell in the year 1994 and another agreement in the year 2006 has already been dismissed. The decree passed by the Courts below, has been confirmed by me today vide separate judgment passed in RSA No.6313 of 2014. Once appellant-defendant No.6 has not been found to be entitled to specific performance of agreement to sell in his favour, the decree dated 01.02.2001 would not

debar the Court from passing decree for specific performance in favour of the plaintiff-Dhan Singh. The decree for permanent injunction was passed during the pendency of the suit for specific performance of agreement to sell from which this Regular Second Appeal has been filed.

Learned counsel for the appellant has further argued that the agreement to sell in favour of the plaintiff is vague and unnatural as the plaintiff-Dhan Singh had paid the entire sale consideration at the time of entering into agreement to sell. Both the Courts below have examined the contention of the appellant and found that the agreement is not vague and payment of entire sale consideration does not put in shadow on the validity of the agreement.

I have considered the arguments of learned counsel. I do not find any ground to interfere in the finding of the Courts below on this issue.

Learned counsel for the appellant has further argued that since defendant Nos.4 and 5 are not signatories, therefore, qua their share, the suit could not be decreed. As already noticed, the learned First Appellate Court has modified the decree and has passed the judgment only against the defendant Nos.1 to 3. The specific performance of the agreement to sell has been ordered only against the defendant Nos.1 to 3.

Counsel for the respondent has further brought to my notice that pursuant to the decree passed by the Courts below, sale deed has already been executed in favour of the plaintiff.

Taking into consideration the documents available on the file

and the judgment passed by the Courts below, I do not find any ground to interfere in the concurrent findings of fact arrived at by the Courts.

Counsel for the appellant has not been able to point out any substantial question of law. Counsel for the appellant has further not been able to point out any ground for interference in the Regular Second Appeal on the grounds available under Section 41 of the Punjab Courts Act, 1918. Hence, the present appeal is dismissed.

18.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No