

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

RSA No.695 of 2015

Date of decision: 25.09.2017

Lakha Singh and others

.....Appellants

Versus

Chander Parkash

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vishal Yadav, Advocate,
for Mr. Ajay Ghangas, Advocate,
for the appellants.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 04.09.2014 passed by the Additional District Judge, Panipat, dismissing an appeal filed by plaintiff-appellants against the judgment and decree dated 06.09.2012 passed by the Civil Judge (Senior Division), Panipat, whereby suit filed by plaintiff-appellants for specific performance of agreement dated 30.12.1977, has been dismissed.

Lakha Singh etc.-plaintiffs (appellants herein) filed a suit for specific performance of agreement dated 30.12.1977 in respect of the agricultural land measuring 28 Kanals 16 Marlas, as detailed in the head note of the plaint. It was alleged in the plaint that Tulsi Dass son of Jasha Ram, owner of the suit land, had agreed to sell the same to Lakha Singh (appellant No.1) and his father Bahadur Singh in equal shares at the rate of Rs.8000/- per acre and received a sum of Rs.1,00,000/- as earnest money on 30.12.1977. Sale deed was to be executed on or before 28.06.1978 and

remaining sale consideration was to be paid at the time of execution and registration of the sale deed. After some time, Tulsi Dass died leaving behind defendant as his only legal heir. Possession of the suit land was handed over to the plaintiffs on 30.12.1977. Later on, Bahadur had also died and after his death, his three sons namely Lakha Singh, Kashmir Singh and Jaswant Singh-plaintiffs (appellants) became owners in possession of the suit land. As per agreement dated 30.12.1977, Lakha Singh was entitled to the extent of 2/3rd share out of the suit land, whereas Jaswant Singh and Kashmir Singh were entitled to the extent of 1/3rd share. Mutations were also sanctioned in favour of the plaintiffs. Initially, the defendant had promised to get the sale deed executed and registered in favour of the plaintiffs, but later on, he refused to do the same. Hence, the suit.

Upon notice, defendant-respondent filed written statement by taking preliminary objections with regard to maintainability of suit, locus standi, cause of action, estoppel, mis-joinder and non joinder of necessary parties etc. On merits, it was stated that the suit land was given to the plaintiffs on lease by the defendant and they were cultivating the same as lessees. Taking advance of this fact, the plaintiffs had filed false application for correction of khasra girdawari against the defendant. In that application, plaintiffs got the defendant and other respondents exparte by mentioning their wrong addresses. Vide order dated 30.10.2003, the Tehsildar-cum-Additional Collector Second Grade, Madlauda, illegally corrected the khasra girdawari of land measuring 15 Kanals 8 Marlas only. It was denied that Tulsi Dass had agreed to sell land measuring 20.5 acres along with other land to Lakha Singh and his father Bahadur Singh in equal shares. Execution of the alleged agreement to sell was also denied. All other

allegations made 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 plaintiffs are entitled to a decree for possession by way of specific performance of agreement to sell dated 01.06.2010? OPP
2. Whether the plaintiffs were and are still ready and willing to perform their part of the contract? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiffs have no cause of action and locus standi to file and maintain the present suit? OPD
5. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Heard.

As per the case pleaded by plaintiff-appellants, father Tulsi Dass, father of defendant, had executed the agreement to sell dated 30.12.1977, Ex.P1. However, this agreement did not carry any signature or thumb impressions of the parties or witnesses. Moreover, as per jamabandi for the year 2003-04, Ex.P18, the defendant has been recorded as owner of the suit property, whereas plaintiffs have been recorded to be in possession as *gair marusi*.. Plaintiffs have failed to lead any evidence to show that at any point of time, they had been recorded as owners of the land or any steps had been taken by them to get the revenue entries changed from *gair marusi* to owners.

After going through the impugned judgments, it is apparent that plaintiffs (appellants) are not the owners of the suit land. In the absence of

any evidence of ownership, suit of the plaintiffs has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

25.09.2017
ajp

(RITU BAHRI)
JUDGE

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