

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

**Regular Second Appeal No.3636 of 2017
Date of Order:14.07.2017**

Jaskaran Singh

..Appellant

Versus

Gurdev Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sherry K.Singla, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

Defendant is in second appeal, against the judgments passed by two courts, decreeing the suit for specific performance of agreement to sell dated 26.05.2000.

Detailed facts have been given in the judgments of the courts below. However, to complete the narrative, facts in brief are:-

The plaintiff filed a suit for specific performance of agreement to sell dated 26.05.2000 with respect to land measuring 4 kanals. The plaintiff had pleaded that the defendant had executed an agreement to sell along with his mother and received Rs.85,000/- as earnest money. The land was under mortgaged with the bank. It was duly recorded in the agreement to sell that the sale deed would be executed after redeeming the property from the bank. Plaintiff further pleaded that possession of the land was delivered at the time of execution of the agreement to sell. Plaintiff has further pleaded that he came to know that defendant had redeemed the land vide Rapat No.66, dated 20.10.2013 and thereafter requested the defendants

to execute the sale deed. However, on their refusal, plaintiff filed a suit on 18.03.2014.

The trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff. An appeal filed by the appellant-defendant, was ordered to be dismissed.

I have heard learned counsel for the appellant at length.

Counsel for the appellant has raised the following issues:- i) The agreement to sell is vague and not specifically enforceable as khasra numbers of the land have not been given; (ii) attesting witness has stated that there was only agreement to return the money and therefore, there is no agreement; (iii) plaintiff in the cross-examination has stated that he has not met late Smt. Ranjit Kaur for the last 30 years, (iv) the Courts have failed to exercise their discretion as per Section 20 of the Specific Relief Act, 1963 (hereinafter referred to as 'the Act').

As far as first point is concerned, no doubt agreement to sell does not describe or identify the land through khasra numbers. However, a close reading of the agreement to sell would show that the land was identified by piece of land known as “Kehar Wala Takk Lelawala”. It is not in dispute that defendants were owner of portion of land in the aforesaid piece of land known as “Kehar Wala Takk Lelawala”. Further, parties are very closely related. The appellant is nephew of plaintiff, whereas other executant of land late Smt. Ranjit Kaur was wife of brother and mother of defendant no.2-appellant. Therefore, it cannot be said that agreement to sell is vague because khasra numbers have not been mentioned. Still further it is not the case of the appellant that the appellant was owner of any other piece of land and there was any scope of vagueness or uncertainty in the

description of the land agreed to be sold.

Learned counsel has further argued that since attesting witness Mohinder Singh has stated in his cross-examination that agreement was only for return of money, therefore, agreement to sell cannot be taken to be proved.

I have considered the argument and have also gone through the evidence of Mohinder Singh, attesting witness, who appeared as PW2. The statement of attesting witness is to be read as a whole. Attesting witness has supported the case filed by the plaintiff. He has clearly stated that on payment of entire sale consideration, agreement to sell was executed by Late Smt. Ranjit Kaur and defendant-appellant and possession was also delivered. In cross-examination, defendant has only said that Late Smt. Ranjit Kaur wanted to get the land redeemed and, therefore, wanted money. Such line cannot be read in isolation to the entire statement. Therefore, statement of Mohinder Singh, who appeared as PW2 does not help the case of the appellant.

Thirdly, learned counsel has argued that plaintiff while appearing in the witness box, has admitted that he has not met late Smt. Ranjit Kaur for the last thirty years. Again learned counsel is reading one line from the statement, which is out of context. The plaintiff when appeared in the witness box supported his case and deposed in accordance with the pleadings. No doubt, plaintiff has stated that he never met late Smt. Ranjit Kaur for the last 30 years. However, at this stage, it must be noted that the statement was recorded in December, 2015, whereas agreement to sell was executed on 26.05.2000. Therefore, there is no misreading of evidence and the entire statement of plaintiff is to be taken

into consideration rather than only one line.

Still further, learned counsel has argued that the Court has failed to exercise jurisdiction in his favour as per Section 20 of the Act. Section 20 of the Act gives discretion to the Court to grant such relief as is lawful not arbitrary but sound and reasonable guided by judicial principles. In the present case, agreement to sell was executed on 26.05.2000, the entire sale consideration was paid, possession was delivered, therefore, it would not be now appropriate to deny plaintiff-respondent the relief of specific performance of agreement to sell particularly when there is no such circumstance, having been pointed out either to the Courts below or to me.

I have also gone through the statement given by the appellant in evidence. Plaintiff has taken all possible defences in the suit. However, in cross-examination he has stated as under:-

“I cannot exactly tell that signatures on agreement to sale are mine or not voluntarily stated that my signatures was taken on blank paper by plaintiff for asking the pension of my mother.”

From the reading of the statement, it is clear that plaintiff is not disputing his signatures. A look at Ex.P1, agreement to sell, would establish that the agreement to sell bears the thumb impression of his mother late Smt. Ranjit Kaur, apart from the signatures of the appellant. The plea taken in the evidence is that papers were signed for the purpose of pension. Pension papers were not required to be signed by the appellant.

Counsel for the appellant has further submitted that the agreement to sell is not properly stamped and, therefore, was inadmissible in evidence. The agreement to sell was exhibited in evidence as Ex.P1.

Counsel for the defendant did not object to the admission of agreement to sell. As per Section 36 of the Stamp Act, the appellant cannot be permitted to raise objections to the admissibility of documents in view of the bar contained in Section 36 of the Stamp Act.

There is concurrent finding of fact by both the courts below, which is not found to be either erroneous or perverse. Therefore, finding no merit, the appeal is ordered to be dismissed.

July 14, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No