

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

RSA No. 4980 of 2017 (O&M)

Date of Decision:18.12.2017

Jagir Singh (since deceased) through LRs and others

.....Appellants

Versus

Jang Bahadur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

**Present: Mr. Raman Singh Dhanda, Advocate
for the appellants.**

AVNEESH JHINGAN, J.

The present regular second appeal has been filed at the behest of the defendants being aggrieved of suit of the plaintiff being decreed.

The parties for the sake of convenience are being referred to as per their status in the original suit.

The plaintiff filed a suit for symbolic possession by way of specific performance of agreement to sell dated 10.4.2002 in respect of a portion of land measuring 8 Marlas, as detailed in the head-note of the plaint.

The plaintiff alleged that the defendants executed an agreement to sell dated 10.4.2002 after receiving the entire sale consideration of Rs.1,50,000/-. The agreement to sell was executed in favour of the plaintiff and sale deed was to be executed as and when desired by the plaintiff. It was stated that the possession of the suit property was delivered to the plaintiff on the same day. The sale deed could not be got registered because there was a ban by the Haryana Government vide notification dated 15.1.2002. It was further averred that defendants in collusion with each other and their

sisters filed a suit for permanent injunction against the plaintiff with regard to the same suit land. On the pretext of litigation being pending, they kept on lingering the execution of sale deed.

After the removal of ban by the Haryana Government, even on request when defendants failed to execute the sale deed, the suit was filed.

On notice, defendant No.1 was proceeded against ex-parte. Defendants No. 2 and 3 filed written statement and controverted the contents of the suit in toto. It was pleaded that Sher Singh, father of defendants No. 1 to 3, was owner in possession of the suit property. After his death, the defendants alongwith other legal heirs of Sher Singh became joint owner in possession of the suit property to the extent of 1/8th share each. They pleaded that they have no right to enter into agreement to sell more than 1/8th share. Defendants denied having entered into agreement to sell or having received sale consideration.

The learned Trial Court framed the following issues.

1. Whether the plaintiff is entitled for symbolic possession by way of specific performance of agreement to sell dated 10.04.2002 in respect of portion of land measuring 8 Marlas? OPP
2. If issue No.1 is proved, whether plaintiff is entitled for permanent injunction restraining the defendants from alienating the suit property in any manner? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff is liable to be stayed under Section 10 C.P.C.? OPD
5. Whether the plaintiff has no cause of action? OPD
6. Whether the defendants are entitled of special costs under Section 35-A C.P.C.? OPD
7. Relief.

The plaintiff in order to prove the claim in the suit examined Satpal attesting witness as PW1. He deposed about the execution of agreement as well as regarding payment of the entire sale consideration. He testified the agreement to sell as well as the receipts Ex.P1 and P2 respectively. Plaintiff himself appeared as PW2. Documentary evidences were exhibited as Ex.P1 to Ex.P24.

In order to rebut the claim of the plaintiff, Parminder Singh son of defendant No.3- Gurdial Kaur @ Dayal Kaur, deposed as DW1. Defendant No.2 appeared as DW2 and Bharat Bhushan was examined as DW3. The defendants produced copy of jamabandi for the year 1996-97 and copy of mutation No. 3769, copy of demarcation report as Mark-A1 to A3 respectively.

The learned Trial Court after appreciating the facts and considering the evidence, decided issues No. 1 and 2 in favour of the plaintiff. Issues No. 3 and 5 were decided against the defendants. Issues No. 4 and 6 were decided in favour of the plaintiff.

The net result was that vide judgment and decree dated 15.12.2011, the suit was decreed.

Being aggrieved of judgment and decree, defendants filed an appeal. Learned Additional District Judge, Yamuna Nagar at Jagadhri dismissed the appeal vide judgment and decree dated 27.1.2017. Hence, the present regular second appeal.

Learned counsel contended that the Courts below erred in decreeing the suit as the agreement to sell and the receipt were not proved by the plaintiff because the subscribe and typist were not examined. He argued that the defendants have taken loan from plaintiff of Rs.50,000/- for

the marriage of his son, at that time certain blank papers were got signed by the plaintiff on which the said receipt and agreement had been made. He further argued that the agreement to sell is a suspicious document as if the entire consideration was paid at the time of agreement, there was no occasion for the plaintiff to wait all along for execution of the sale deed. No other issue was raised.

In the grounds of appeal four substantial questions of law have been framed but the counsel at the time of argument of the appeal raised only the above said contention.

The contention raised by learned counsel that the receipt and the agreement had not been proved as the typist and the scribe were not examined, cannot be accepted. The attesting witness Satpal PW1 deposed and proved not only the agreement but also the receipt. There is no requirement in law that the agreement to sell must be typed or written by a deed writer. The plaintiff himself in his deposition proved the said agreement and the receipt.

The second issue raised by learned counsel that the agreement to sell was not entered but was result of signatures taken by the plaintiff on blank papers while advancing the loan of Rs.50,000/- is extended the limb of the issue raised above. The case put up is that the agreement to sell and the receipt of consideration was not entered into rather the defendants had taken Rs.50,000/- loan and not Rs.1,50,000/- consideration from the plaintiff. At the time of loan certain blank papers were got signed from the defendants. The defendants never raised this issue in their pleadings. It was only in their statement that this case was set up. Apart from that, only a bald statement was made in this regard but this allegation was never

substantiated. At the same time, as discussed above the plaintiff was able to prove not only the agreement but the receipt also. Once the receipt of Rs. 1,50,000/- is proved, the claim of the defendants that only Rs. 50,000/- was received is also belied.

There is another aspect of the matter i.e. on one hand there was an attesting witness produced by the plaintiff and on the other hand, the witnesses produced by the defendants were not worth reliance. Firstly DW1 Parminder Singh son of Dayal Kaur @ Gurdial Kaur, denied the agreement to sell. He was an interested witness. Moreover in his cross examination he admitted that he is making a statement on the basis of facts told by his mother. DW3 Bharat Bhushan was not a witness to the transaction and he only stated that defendants and other co-sharers are in possession and are not owner of the suit property. His statement was contrary to Jamabandies Ex.P16 and Ex.P17. As per the revenue records, the defendants and others inherited the property of Sher Singh and were co-owners as per mutation Ex.P15 and they had 1/8th share each. By the oral evidence as well as the exhibits, it was proved that at the time of execution of agreement to sell, the defendants were owner in possession of the suit property and they could have sold their respective shares. The execution of agreement to sell Ex.P1 had also been duly proved. The legal notices sent by the Registered post Ex.P6 to Ex.P13 establish the willingness on the part of the plaintiff to comply with the agreement to sell.

The plea raised by learned counsel that if the entire sale consideration was paid, there was no occasion for the plaintiff to have waited from April 2002 till 2005 to get the sale deed executed, has no basis.

The notification issued by Haryana Government was exhibited as Ex.P3,

according to which there was ban on sale or lease of vacant land. Apart from this, the sister of the defendants had filed the suit. It was only on the dismissal of the said suit that the agreement to sell was acted upon for execution of sale deed. Even otherwise, from perusal of the agreement to sell it transpires that it was open for plaintiff to get the sale deed registered at his will.

No other issue has been raised.

Moreover, during the course of hearing, learned counsel for the appellants could not point out any illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also could not refer to any question of law, much less substantial question of law, which is sine-qua non for entertaining regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure, 1908.

The findings recorded by the First Appellate Court as well as the trial court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgments and decrees passed by the Courts below and the same deserve to be upheld.

No ground for interference has been made out.

Resultantly, with the above-said observations made, the instant regular second appeal stands dismissed, being bereft of any merit, however, with no orders as to costs.

18.12.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No