

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

RSA No.690 of 1987 (O&M)
Date of decision : 02.02.2018

Gurmit Singh and others

...Appellants

Versus

Inderjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Vikas Bahl, Sr. Advocate with
Mr. N.K. Vadehra, Advocate for appellant Nos.1 to 3.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Gagandeep Singh Virk, Advocate
for appellant Nos.4 and 5.

Mr. Avinash Mittal, Advocate for the respondent.

ANIL KSHETARPAL, J.

The defendant-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court while reversing the judgment of the trial Court and decreeing the suit filed by the plaintiff for specific performance of the agreement to sell.

It would be significant to note here that the plaintiff is son of pre-deceased brother of defendant No.2-Hardayal Singh. Defendant No.1-Harjap Singh is son of Hardayal Singh is his first cousin, whereas defendant Nos.3, 4 and 5 are nephews of Hardayal Singh being sons of sister of Hardayal Singh.

The plaintiff filed a suit asserting that Harjap Singh, his first cousin, had initially entered into an oral agreement to sell in November, 1974 and had received a sum of ₹6,000/- as earnest money. The plaintiff further pleaded that thereafter, defendant No.1-Harjap Singh through his General Power of Attorney (Hardayal Singh, father) executed a written agreement to sell and received additional earnest money of ₹6,000/-. However, the defendants are now refusing to honour the agreement to sell.

A joint written statement was filed by all the defendants and it was pleaded that the land was never owned by Harjap Singh-defendant No.1.

Original agreement to sell could not be produced. However, application for permission to lead secondary evidence was filed, which was allowed and photocopy of the agreement to sell was proved on the file. The plaintiff examined himself as PW1, Dewan K.S. Puri, a Document and Finger Print Expert was examined as PW3. Sh. Ram Nath, Deed Writer was examined as PW4. On the other hand, defendant No.1-Harjap Singh appeared as DW4, whereas Hardayal Singh appeared as DW1.

Learned trial Court on appreciation of the evidence, dismissed the suit. However, the learned First Appellate Court after re-appreciation of the evidence available on the file, decreed the suit filed by the plaintiff. Learned First Appellate Court has apart from other, gave following reasons to allow the appeal:-

1. In the revenue record i.e. jamabandi for the year 1974-75, possession of the plaintiff has been shown as a prospective vendee (agreement holder).

2. Hardayal Singh-defendant No.2, General Power of Attorney of Harjap Singh was a Punjab Civil Services Officer and it is not believable that his signatures were forged on the agreement to sell by the plaintiff whose father is no more and plaintiff was living under the care and custody of his uncle Hardayal Singh.
3. Hardayal Singh has transferred the property in favour of the sons of his sister to avoid the specific performance of the agreement to sell.
4. Oral agreement cannot be disbelieved particularly when the plaintiff is son of pre-deceased brother of Hardayal Singh and the parties were closely related.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below as well as the records.

Learned counsel for the appellants has vehemently contended that since the original agreement to sell has not been produced, therefore, the suit could not be decreed. He has further submitted that the plaintiff has not challenged the sale deeds executed in favour of defendant Nos.3 to 5 and hence, the suit is not maintainable. He has further submitted that the suit filed by the plaintiff was belated as oral agreement to sell is alleged to be of November 1974 whereas the suit came to be filed on 14.01.1981.

On the other hand, learned counsel for the respondent has supported the judgment passed by the First Appellate Court.

It is not disputed that the suit land belongs to Harjap Singh-defendant No.1. It is further not in dispute that Harjap Singh was in Army and he had authorized his father to deal in the property by executing a

General Power of Attorney. It is further not in dispute that the plaintiff was initially cultivating the land on behalf of his first cousin Harjap Singh. Father of the plaintiff had died and, therefore, it is the case of defendant No.2-Hardayal Singh that he had brought the plaintiff and permitted him to cultivate the land in dispute. In the jamabandi for the year 1974-75, possession of the plaintiff is shown as *gair marusi* without payment of the rent being prospective purchaser on account of oral agreement to sell.

It is the case of the plaintiff that due to close relations, out of the total sale consideration of ₹15,000/-, amount of ₹6,000/- was paid in November, 1974 when oral agreement was entered into and another sum of ₹6,000/- was paid when written agreement to sell was executed on 09.11.1977. In the written agreement to sell, receipt of ₹6,000/- as per the oral agreement is admitted and further receipt of additional amount of ₹6,000/- is also recorded. The agreement to sell is signed by Hardayal Singh, as General Power of Attorney of Harjap Singh, the owner. As per the written agreement to sell, the sale deed was to be executed and registered by 9th of November, 1980 whereas the suit came to be filed on 14.01.1981. Hence, the argument of the learned counsel for the appellants that the suit is belated, has no substance.

Next argument of the learned counsel that the original agreement to sell has not been produced and, therefore, no relief of specific performance of the agreement to sell can be granted, is also fallacious. A photocopy of the agreement to sell by way of secondary evidence was allowed to be produced. The plaintiff has successfully proved the aforesaid agreement to sell. The plaintiff has also examined PW3 Dewan K.S. Puri,

Handwriting and Finger Print Expert who after comparing the signatures of Hardayal Singh on other sale deeds executed by him gave an opinion that the signatures are of same person. Sh. Ram Nath, Deed Writer has also been examined as PW4. The plaintiff also produced on file a copy of the Daily Diary Report filed before the Police before the institution of the suit dated 18.08.1979 reporting about the loss of the original agreement to sell.

In such circumstances, in the considered opinion of this Court, the First Appellate Court has not committed any error in decreeing the suit filed by the plaintiff for specific performance of the agreement to sell after recording a finding that the execution of the agreement to sell stands proved.

Any transaction carried out by the prospective vendor after execution of the agreement to sell would not defeat the rights of the prior agreement holder. In such circumstances, since the plaintiff is not a party to the aforesaid transaction, the plaintiff is not required to challenge the aforesaid sale deeds separately. The plaintiff has already pleaded that defendant No.2 as General Power of Attorney of defendant No.1, have executed two sale deeds in respect of the suit land in favour of defendant Nos.3 and 4 which is collusive and without consideration. It is admitted fact on the record that defendant Nos.3 to 5 are sons of the sister of Hardayal Singh. The sale deeds executed in favour of subsequent purchasers are found to be collusive. Hence, liable to be ignored. Sale deeds executed by the owner after entering into the agreement to sell are not required to be challenged while filing a suit for specific performance of the agreement. The plaintiff entitled to ignore the same and it is sufficient to plead and

prove that such sale deeds do not affect his rights. Reliance in this regard can be made to *AIR 2002 Bombay 279 titled as Dilip Bastimal Jain Versus Baban Bhanudas Kamble* and *2007(5) RCR (Civil) 298 titled as Rajinder Singh Versus Sushil Kumar and others*.

In view of the discussions made above, there is no ground to interfere with the findings of fact arrived at by the First Appellate Court.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in terms of the abovesaid judgment.

02.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No