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

**RSA-1385-1988[O&M]**  
**Date of Decision : April 18, 2018**

Harnek Singh and another .....Appellants.

Versus

Bhag Singh .....Respondent.

**CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

**Argued by:-** Mr. Kanwal Goyal, Advocate for  
Mr. Amarjit Markan, Advocate  
for appellant No.1.

Mr. Ankush Singla, Advocate  
for appellant No.2.

Mr. A.P. Bhandari, Advocate  
for the respondent.

**SHEKHER DHAWAN, J.**

Present Regular Second Appeal is directed against the concurrent findings recorded by both the Courts below, whereby the suit filed by the plaintiff (respondent herein) for specific performance of agreement of sale, dated 01.07.1982 was decreed by the Court of first instance vide judgment and decree dated 15.11.1985, and the appeal filed by appellants-defendants was also dismissed by learned District Judge, Sangrur vide judgment and decree dated 14.01.1988.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Facts relevant for the purpose of decision of this appeal; that plaintiff, Bhag Singh had filed a suit for specific performance of agreement

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of sale, dated 01.07.1982 in respect of agricultural land measuring 8 bighas 15 biswas comprising in Khata/Khatoni No.311/480, 481, Khasra No.110 min/2-19, 112 min/2-17 and 11 min/2-19, situated in the revenue estate of village Ferozepur Kuthala (hereinafter referred to as '**the suit land**'). As per the plaintiff, Kaushalya Devi, defendant No.1 is owner in possession of the suit land and she had agreed to sell the suit land for a sum of Rs.26,250/- and received Rs.17250/- at the time of execution of agreement dated 01.07.1982 and a sum of Rs.9000/- was to be paid to the mortgagee Kartar Kaur wife of Teja Singh. The sale deed was to be executed on 08.06.1983. It was also stipulated in the agreement that in case defendant No.1 failed to perform her part of contract, the plaintiff would be at liberty to get the sale deed executed from defendant No.1 through due process of law. The plaintiff had been ready and willing to perform his part of contract. There were sufficient resources with the plaintiff to meet the expenses for registration of the sale deed. However, defendant No.1, with *mala fide* intention, tried to back-out of the contract and failed to execute the sale deed in favour of the plaintiff. Thereafter, defendant No.1 sold one half share of suit land to defendant No.2, Harnek Singh, vide sale deed dated 28.12.1983 and the said sale deed is null and void and ineffective qua the rights of the plaintiff. Request was made to defendant No.1 to get the sale deed executed in terms of the agreement dated 01.07.1982, but to no effect.

4. Defendant No.1 contested the suit on the ground that she had neither received a sum of Rs.17,250/- from the plaintiff. In fact, defendant No.1 had borrowed certain amount from the plaintiff and at that stage the plaintiff had obtained her thumb impressions on certain blank papers with

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respect to loan. The loan was to be repaid on or before 08.06.1983 alongwith interest. The said loan was repaid, but the plaintiff refused to issue any receipt and, as such, suit for specific performance of agreement of sale was not maintainable. The sale made by defendant No.1 in favour of Harnek Singh, defendant No.2, is perfectly valid and legal.

5. Defendant No.2 filed separate written statement, inter-alia, taking the plea that defendant No.1 never entered into any agreement of sale with the plaintiff. In fact, she had sold 1/2 share in his favour for a valuable consideration of Rs.10,000/- on 28.12.1983 and defendant No.2 is a bonafide purchaser for valuable consideration. Defendant No.2 had no notice regarding agreement of sale between the plaintiff and defendant No.1 and the sale is protected under the law. He prayed for dismissal of the suit.

6. The Court of first Instance settled the following issues and the parties were put to trial:-

- i). Whether defendant No.1 executed agreement dated 1.7.1982 with plaintiff? OPP.
- ii). Whether defendant No.1 received Rs.17250/- in cash at the time of execution of agreement? OPP.
- iii). Whether plaintiff had been and is ready and willing to perform his part of contract? OPP.
- iv). Whether defendant No.2 is a bonafide purchaser for valuable consideration without notice? OPD-2.
- v). Whether plaintiff is entitled to specific performance of agreement of sale? OPP.
- vi). If issue No.5 is not proved whether plaintiff is entitled to refund Rs.17250/-? OPP.
- vii). Relief.

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7. After leading evidence by both the parties, learned trial Court, vide judgment and decree dated 15.11.1985, returned findings on Issues No.1 to 3 in faovur of the plaintiff. Findings on Issues No.4 and 5 were also returned in favour of the plaintiff and against the defendants. However, Issue No.7 was held to be redundant and consequently, the suit of the plaintiff for specific performance of agreement of sale Ex.P1 was decreed. The sale deed dated 28.12.1983 executed by defendant No.1, Kaushalya Devi, in favour of defendant No.2, Harnek Singh, was declared null and void and ineffective qua the rights of the plaintiff.

8. Defendants preferred appeal against the judgment and decree dated 15.11.1985 passed by Sub Judge Ist Class, Dhuri and the said appeal was also dismissed by learned District Judge, Sangrur vide judgment and decree dated 14.01.1988 and, as such, the present Regular Second Appeal.

9. I have heard learned counsel for the parties at length and perused the record.

10. At the time of hearing arguments, following question of law was framed for consideration by this Court:-

*“Whether the findings returned by the Courts below are based on misreading and mis-appreciation of evidence resulting into substantial injustice to the parties?”*

11. Mr. Kanwal Goyal, Advocate appearing for appellant No.1, Harnek Singh contended that the Courts below have misread the entire evidence and misinterpreted the documentary evidence available on the file. If at all, the contention of the plaintiff that total sale consideration of Rs.26,250/- was paid at the time of execution of agreement of sale itself, is

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taken to be correct, there was no question of deferring the date for execution of sale deed to 08.06.1983. As per the case of the plaintiff, Rs.17,250/- was paid by him to defendant No.1 and the balance amount of Rs.9000/- was to be paid to the mortgagee Kartar Kaur as the land was subject to the charge of mortgage. Thereafter, appellant No.1 purchased 1/2 share of the suit land. No legal notice was issued to appellant No.1 at any stage regarding execution of agreement of sale dated 01.07.1982 (Ex.P/1). The sale deed was executed in favour of appellant No.1 on 28.12.1983.

12. While arguing further, learned counsel for appellant No.1 also contended that request for adducing additional evidence was not allowed by the Court of first appeal though the same came into existence after the passing of judgment by the Court of first Instance.

13. Mr. Ankush Singla, Advocate, learned counsel for appellant No.2 contended that the plaintiff was not ready to purchase the land. He was not having sufficient money. Moreso, he was not present in the Office of Sub Registrar on the target date. In fact, it was a loan transaction. Otherwise also, there was no ground not to execute the sale deed on the same date when the alleged agreement of sale was executed.

14. While arguing on these points, Mr. A.P. Bhandari, Advocate, learned counsel for respondent-plaintiff contended that both the Courts below have appreciated the evidence in its true spirit and recorded concurrent findings which do not require any interference by this Court. As regard to fixation of future date for execution of sale deed. It was contended that the land in question was subject to mortgage and was to be redeemed and that is why the target date was fixed to be 08.06.1983. Both

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the Courts below have held the agreement of sale dated 01.07.1982 (Ex.P/1) to be perfectly legal and valid document and to have been proved in accordance with law by examining parties to the agreement and the attesting witnesses.

15. As regard to the execution of sale deed, it was contended that oral notice was given because parties to the litigation are residents of the same area and there was no question of issuance of any legal notice or notice in writing. So the present regular second appeal is absolutely without any merit and the same be dismissed.

16. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that both the Courts below have returned specific findings that the agreement of sale dated 1.7.1982 (Ex.P1) was duly entered into between the plaintiff and defendant No.1 and that was for consideration and in fact, that was the intention of both the parties. Both the Courts below have given the finding that the agreement, Ex. P1 was duly proved as per statement of PW-3, Mohd. Aitaf, who had deposed about the due execution of the agreement of sale dated 1.7.1982 (Ex.P1) and passing of consideration amount of Rs.17,250/- at the time of execution of the agreement in his presence and a sum of Rs.9,000/- having been left with Bhag Singh for payment to the mortgagee, Kartar Kaur. Plaintiff, Bhag Singh (PW-1) had also proved due execution of the agreement. The said agreement was also proved as per the statement of PW-2, Gurnam Singh, who had scribed the document and he deposed that the parties to the agreement are Bhag Singh and Kaushalya Devi and she had put her thumb impression. Attesting witnesses, namely, Mohinder Singh and Altaf Khan (PW-3) had also proved the signatures and the entry

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was duly recorded in the register at Sr.No.51, a copy of which has been proved on record as Ex. P2.

17. The contention raised by Kaushalya Devi, defendant No.1 (appellant No.2 herein) that the agreement was not executed, rather the same was a loan-transaction, was duly negated by the Courts below because there is no support or substance to the same, except mere denial. Had it been a case of re-payment of loan and that too if there was dispute, there is no question for defendant No.1 to make the repayment without getting any written receipt, especially when she had put her thumb impression on the agreement, Ex. P1 in the presence of the witnesses. The said contention has been simply taken to avoid her liability as Kaushalya Devi only wanted to wriggle out of the agreement of sale, Ex.P1. The Courts below have also rightly discarded the testimony of witnesses examined by the defendants making statement on the point that it was an issue of repayment of loan amount.

18 As regards to leading of additional evidence, the Court of first Appeal duly considered the nature of additional evidence and its stage, i.e. Copy of statement of Bhag Singh made in the suit titled Bhag Singh Vs. Suraj Mal. The Court of first Appeal has rightly disallowed the said application on the ground that the said statement was not in existence when the present suit was pending before the Court of first instance because the suit was filed against defendant No.1, Kaushalya Devi on 16.1.1984 and the alleged statement was made by Bhag Singh on 24.03.1986. More so, it cannot be said to be any admission in unequivocal terms and if the request for additional evidence was allowed by the Court below, the same was not going to effect the decision of the litigation

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because the agreement of sale, Ex. P1, has been duly proved on the file and there was positive evidence to return the findings that the plaintiff and defendant No.1 had entered into agreement of sale and that was a conscious agreement having been entered into between the parties in the presence of witnesses who had put their signatures.

19. As regards the plea of Harnek Singh, defendant No.2 (appellant No.1 herein) that he had no knowledge about the earlier agreement of sale (Ex. P1) having been entered into between the plaintiff and defendant No.1, and he was a *bona fide* purchaser for valuable consideration, the same has also been rightly disbelieved by the Courts below. Harnek Singh is none else but resident of the same locality in the same village. Rather, his house is situated quite close to the house of Bhag Singh, plaintiff. The Courts below have relied upon the testimony of DW-3, Shish Kaur, who had admitted in her cross-examination that the agreement of sale entered into between the plaintiff and defendant no.1 was known to almost every resident of the village. So, the contention of Harnek Singh being *bona fide* purchaser has been rightly negated by the Courts below. The substantial question of law is answered in favour of the respondent and against the appellants.

20. In view of the above, there is no merit in the present Regular Second Appeal and the same stands dismissed.

**(SHEKHER DHAWAN)**  
**JUDGE**

**April 18, 2018**  
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