

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.590 of 1996 (O&M)

Date of Decision:21.03.2018

Harpal Singh

...Appellant

Versus

Rohtas and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.O.P.Goyal, Senior Advocate with
Ms.Radhika, Advocate for the appellant.
Ms.Vibha Tewari, Advocate for respondents No.1, 2, 4 & 5.

ANIL KSHETARPAL, J.

The plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court, reversing the judgment passed by the learned trial court, decreeing the suit for possession by way of specific performance of agreement to sell dated 15.10.1987.

Plaintiff-Harpal Singh filed a suit for possession by specific performance of the agreement to sell. The plaintiff also challenged the sale-deed executed by defendant No.1 in favour of defendants No.2 to 5 on 12.11.1987.

Defendant No.1 admitted the execution of the agreement dated 15.10.1987 but alleged that the plaintiff was not ready to pay balance sale consideration and since he was in dire need of money, therefore, he sold the property on a lesser price to defendants No.2 to 5.

Defendants No.2 to 5 contested the suit and pleaded that they are bonafide purchasers and in possession of the suit land. It was pleaded

that the agreement to sell dated 15.10.1987 is fabricated to deceive their interest.

The learned trial court after permitting the parties to lead evidence, decreed the suit filed by the plaintiff. Defendants No.3 and 4 filed the first appeal. The learned first appellate court after reappreciating the evidence available on the file recorded following findings:-

(i) The agreement to sell between the plaintiff and defendant No.1 dated 15.10.1987 is result of collusion between them as they are closely related.

(ii) Defendants No.2 to 5 are in the cultivating possession of the land and the plaintiff although claimed that he was delivered possession is not found in possession. The alleged stamp paper for execution of the agreement to sell dated 15.10.1987 was purchased on 30.9.1987. The defendants had pleaded that it was a result of fabrication. However, neither the stamp vendor was produced, who sold the stamp paper nor his register was produced to prove that it was in fact purchased on 30.9.1987.

(iii) The agreement to sell is alleged to have been scribed in Tehsil Premises from petition writer Raj Singh. However, neither agreement to sell bears the name of any professional petition writer nor any petition writer has been produced in the evidence to prove that such agreement was executed on 15.10.1987. The learned first appellate court has also noticed that when Harpal Singh-plaintiff appeared, he stated that all the

witnesses had gone to Tehsil Premises at the time of execution of the agreement to sell but none of the witnesses had affixed their signatures or thumb impressions in Tehsil Premises. The plaintiff stated that they all had gone to field and after making payment of Rs.8,000/- the signatures of the witnesses were taken on the document.

Learned senior counsel for the appellant has vehemently argued that the agreement to sell is proved on the file as defendant No.1 has admitted execution thereof. He has further submitted that since defendants No.2 to 5 are also related to defendant No.1, therefore, defendants No.2 to 5 cannot claim to be bonafide purchasers. He has further submitted that property has been sold for Rs.6,000/- whereas agreement to sell in his favour is for Rs.12,000/-. Hence, he submitted that genuineness of the sale-deed is doubtful.

Substantial questions of law as proposed by the learned senior counsel for the appellant are as under:-

- (i) Whether the appellate court has misread the evidence and based its findings on inadmissible evidence while arriving at the conclusion for acceptance of the appeal?
- (ii) Whether the appellate court has drawn wrong inference from facts which constitutes a substantial question of law?
- (iii) Whether construction of a document which is the foundation of the rights of the parties, raises a substantial question of law?
- (iv) Whether on the facts and circumstances of the case,

defendants No.2 to 5 are bonafide purchaser for consideration without notice?

In the present case, defendant No.1 has taken a strange stand. On the one hand, he admits execution of the agreement to sell but pleads that he was in dire need of money and since the plaintiff was not willing to pay, hence he sold the property to defendants No.2 to 5. The sale-deed executed in favour of defendants No.2 to 5 is dated 12.11.1987 that is less than one month after alleged agreement to sell. If the agreement to sell dated 15.10.1987 was genuine and bonafide transaction then he had already received Rs.8000/- on 15.10.1987 and remaining payment to be received was only Rs.4000/-. It is admitted fact that plaintiff and defendant No.1 are closely related. It is not expected that defendant No.1 would defraud with the plaintiff. All the parties are residents of same village, related to each other. If any particular piece of land is agreed to be sold, it is known to everybody of the village immediately.

Still further, learned first appellate court as noticed above has given various reasons while doubting the validity of the agreement to sell dated 15.10.1987. Although, learned senior counsel for the appellant has tried to persuade this Court to take a different view, however, the reasons given by the learned first appellate court does not appear to be suffering from any error. PW-1 Deepak has admitted that the plaintiff has closely related to defendant No.1. Defendants No.2 to 5 have been put in possession on registration of sale-deed and stand taken by the plaintiff that he is in possession has been found to be false. Revenue record does not show that the plaintiff is in possession of the property. It is proved on file

that defendant No.1 obtained actual physical possession of the property vide Rapat dated 2.7.1987 and he delivered possession to defendants No.2 and 5 and to Smt.Ramesh.

In the alternate, learned senior counsel for the appellant has submitted that the plaintiff-appellant would be at least entitled to refund of the earnest money. In this regard, the learned first appellate court has held that since the agreement to sell is not found to be genuine and there is no evidence to the effect that Rs.4000/- was paid as earnest money, no refund can be ordered.

No other argument was raised.

Questions of law proposed by the learned senior counsel for the appellant are questions of fact which stand answered.

In view of what has been discussed hereinabove, this Court does not find any good ground to interfere in the impugned judgment passed by the learned first appellate court. The Regular Second Appeal is dismissed. Pending application, if any, shall also stand disposed of.

21.03.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No