

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

RSA No.107 of 2002 (O&M)
Date of decision : 08.01.2018

Sukhdeep Singh and others

...Appellants

Versus

Dharam Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Vikas Bahl, Sr. Advocate with
Mr. Akshay Rawal, Advocate for the appellants.

Mr. B.R. Mahajan, Sr. Advocate with
Mr. Prateek Mahajan, Advocate and
Ms. Tanika Goyal, Advocate for the respondents.

ANIL KSHETARPAL, J.

This case has been remanded back by Hon'ble the Supreme Court vide order dated 13.09.2017.

Legal heirs of the defendant are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff had filed a suit for specific performance of the agreement to sell dated 19.07.1993 on 01.06.1994 while asserting that the defendants had entered into an agreement for land measuring 40 kanals for a total sum of ₹3,00,000/-, which has been paid through a cheque drawn on a bank. The defendants contested the suit on the ground that late Gurdit Singh, the original defendant, had never executed an agreement to sell which is without consideration, result of fraud and misrepresentation. It was further pleaded that the signatures of Gurdit Singh were taken on the blank papers while executing the sale deed on the basis of the agreement to sell

dated 05.07.1993.

Both the Courts below after appreciating the evidence available on the file have decreed the suit after recording a finding that the agreement to sell is proved to have been executed by Gurdit Singh with free will and volition and he had received ₹3,00,000/-, the total sale consideration, through a cheque which was credited in the bank account of the original defendant-Late Sh. Gurdit Singh.

Both the Courts below have further held that the agreement to sell has been proved through the statement of Ajit Singh, the marginal witness who has been examined as PW4.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments and the records of both the Courts below.

Learned counsel for the appellants has submitted that in fact the signatures of Gurdit Singh, the original defendant were taken on the blank papers while executing the sale deed dated 20.07.1993. He has submitted that Gurdit Singh had sold the land measuring 40 kanals to the plaintiff vide sale deed executed on 20.07.1993 which was registered on 04.02.1994. Sale deed makes a reference to agreement to sell dated 05.07.1993.

It may be significant to mention here that the agreement to sell dated 05.07.1993 has not been produced on the file. Only an entry made by the Scribe in his register has been produced. However, a careful reading of the aforesaid entry from the register of the Scribe, would prove that the land agreed to be sold through agreement dated 05.07.1993 is different and not part of the land involved in agreement to sell dated 19.07.1993.

It may be significant to note here that pursuant to the agreement to sell dated 05.07.1993, the original defendant Late Sh. Gurdit Singh had executed the sale deed in favour of the plaintiff in the present suit, which is also subject matter of the challenge in the connected Regular Second Appeal on 20.07.1993. However, before the sale deed could be registered, children of original defendant filed a suit and obstructed the registration of the sale deed by way of injunction. The injunction order was later on vacated and the sale deed was registered in favour of the plaintiff on 04.02.1994. The aforesaid sale deed is with respect to 40 kanals of land which is not subject matter of the dispute in the present case. The total sale consideration in the aforesaid sale deed dated 20.07.1993 registered on 04.02.1994 is ₹2,25,000/-, out of which ₹1,50,000/- had been paid through bank transaction which is a separate bank transaction.

Although, the learned counsel for the appellants has submitted that in fact the agreement to sell is result of fraud, however a bare look at the pleadings would establish that the particulars of fraud were not pleaded in the written statement. Still further, both the Courts below have examined this aspect in detail while discussing issue No.2 and have concurrently held against the appellants.

Learned counsel for the appellants has submitted that the agreement to sell dated 05.07.1993, which has not been produced on file, shows that 40 kanals of land was agreed to be sold for a sum of ₹5,00,000/-. He submits that no doubt a sum of ₹3,00,000/- was received under this agreement and ₹1,50,000/- was received at the time of the sale deed. Hence, the payment of ₹3,00,000/- was for the purpose of the execution of the sale

deed only.

To find out the answer to this argument, this Court would be required to refer to the documents which have been filed in the connected Regular Second Appeal i.e. RSA No.4748 of 2001 which is also being decided by a separate judgment of even date. In that case, the original defendant-Gurdit Singh had filed a written statement in an earlier suit filed by the children of Gurdit Singh seeking injunction on the registration of the sale deed. Gurdit Singh, the original defendant had admitted the execution of the sale deed dated 20.07.1993 and had admitted that he has already received the entire sale consideration of ₹2,25,000/-. The relevant part of the written statement is extracted as under:-

“In fact, defendant No.1 is perfectly of sound mind and supporting his family. Gurdit Singh is suffering from Asthma of acute type and is in need of funds for his treatment out of compulsion. He sold the land measuring 40 K bearing Khasra No.71/18, 19, 20, 70/16, 17 and 25 min North (2K-5M) as per jamabandi for the year 1989-90 for consideration of Rs.2,25,000/- in favour of Dharam Singh s/o Bakhshish Singh and the sale deed was duly executed on 20.7.93 and as per sale deed the entire sale consideration was received by defendant No.1 as per details given in the sale deed for his treatment. The sale deed was duly presented before the Sub Registrar Baba Bakala. Before it could be registered the plaintiff obtained injunction order from this Hon'ble Court and the sale deed could not be registered. Defendant No.1 being owner in possession of the suit land is competent to sell the same to any person and the plaintiff has no right or interest in the suit land during his life time. If defendant No.1 is of unsound mind the suit

against him in his personal capacity is not maintainable.”

In view of this categorical stand of Gurdit Singh, the original defendant in Civil Suit bearing No.377 dated 22.07.1993 filed by his children, this Court does not find any substance in the submission made by the learned counsel for the appellants.

It is further significant to note here that during the pendency of the first appeal, the appellants moved two applications, one for amendment of the written statement and second for permission to lead additional evidence.

Both the applications were dismissed by the First Appellate Court. However, it may be significant to note here that the additional evidence sought to be produced was with respect to a receipt executed by Gurdit Singh in favour of Dharam Singh dated 20.07.1993 acknowledging the receipt of ₹5,00,000/-.

No other submission was made by the learned counsel for the appellants. Hence, finding no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

08.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No