

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

RSA No.3519 of 2010

Date of decision:- 25.01.2018

Gurranditta

...Appellant

Versus

Chamba Ram and Anr.

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Radhe Shyam Sharma, Advocate,
for the appellant.

Mr. Ashok Singla, Advocate,
for respondents.

RITU BAHRI J. (Oral)

The present appeal has been filed by the appellant against the judgment dated 20.04.2010 passed by the Additional District Judge, Fatehabad and judgment dated 16.09.2008 passed by the Additional Civil Judge (Senior Division), Fatehabad, whereby the suit of the plaintiff has been dismissed by both the courts.

Brief facts of the case are that, Chamba Ram son of Chanan Ram i.e., defendants no.1 was owner of possession of land in dispute measuring 26 kanals 5 marlas, and situated within the revenue estate of village Hizrawan Khurd, Tehsil and District Fatehabad. Vide an agreement of sale deed dated 27.05.2003, he agreed to sell that land with the plaintiff at the rate of Rs.1,38,000/- per acre and received Rs.4,00,000/- as earnest money. It was agreed upon while executing the agreement of sale, that sale deed of the land in dispute would be executed on or before 28.05.2004. The possession of the land in dispute was delivered to the plaintiff at that time.

He was given liberty to get executed the sale deed either in his favour or in favour of the person of his choice. It is the further case of the plaintiff that he was always ready and willing to perform his part of contract. Even on 28.05.2004, he alongwith remaining sale consideration went to the office of Sub Registrar, Fatehabad and waited for defendants no.1 for execution of sale deed of land in dispute. However, defendants No. 1 did not turn up. Later on after inspection of revenue record, it transpired that defendant no. 1 had already exchanged land measuring 4 kanals, being 80/129 share of the land comprised in khasra no. 277//5/2(6-9), out of the land in dispute with defendants no. 2 with his land measuring 4 kanals i.e. 1/6 share of land measuring 24 kanals, comprised in khasra no. 276//11, 12 and 13 situated within revenue estate of village Hizrawan Khurd on the basis oral exchange in case bearing no. 188-C of 2002 dated 24.01.2004. The said decree passed in favour of defendant no.2 is wrong, illegal and is a result of collusion. Moreover, defendant no. 1 had already executed an agreement of sale of that land in favour of plaintiff and who was ready and willing to perform his part of contract. It is further the case of plaintiff that though on the basis of decree dated 24.01.2004, mutation bearing no. 2122 dated 11.05.2004 has been sanctioned but the same is a result of fraud and is not binding upon his right. He also served a legal notice through his counsel asking the defendants to execute sale deed of the land in dispute in his favour on receipt of remaining sale consideration but without any positive result.

From the pleading of the parties, following issues were framed:

1. Whether the defendant No.1 had executed the agreement to sell dated 27.05.2003 in favour of the plaintiff for sale

consideration @ Rs.1,38,000/-per acre and had received Rs.4 lacs as earnest money. If so its effected?OPP.

2. If issue no.1 is proved, then whether the defendants No.1 is bound to get the sale deed regarding the suit property executed in favour of the plaintiff?OPP

3. If issue No.1 and 2 are proved, then whether the judgment and decree dated 24.1.2004 passed in civil suit No.188-C of 2002 is illegal, null and void etc., and liable to be set aside as prayed for?OPP

4. Whether the suit of the plaintiff is false and frivolous and liable to be dismissed as such?OPD.

5. Relief.

On the basis of evidence produced by the plaintiff as well as defendant, both the lower courts dismissed the appeal of the plaintiff. Feeling aggrieved with the same, he filed the present appeal.

Heard. File perused from which it reveals that, Ex. P9 to Ex. P11 shows that Chamba Ram defendant No. 1 was owner of certain land. He gave a part of that land to his daughters as well as Son Des Raj on, his son Des Raj sold a part of that land in favour of Sewa Ram and mutation of the same as Ex. P13 was sanctioned in his favour. The plaintiff is basing his claim against defendant No.1 by taking a plea that the later agreed to sell the land in dispute in his favour by executing agreement of sale Ex. P1 on 27.05.2003. It is also mentioend that on the basis of that agreement, defendant no.1 received a sum of Rs.40,000/- as earnest money and the land in dispute was agreed to be sold at the rate of Rs.1,38,000/- per acre. The target date for the execution of the sale of the land in dispute was fixed as

28.05.2004. Whether from the oral as well as documentary evidence led by the plaintiff, it is proved that defendant No.1 agreed to sell the land in dispute in his favour at the rate of Rs.1,38,000/- per acre by receiving Rs.4 lacs as earnest money. The execution of agreement of sale Ex. P1 is proved to be doubtful. No doubt, there is an oral evidence in the shape of testimony of plaintiff coupled with a testimony of Sewa Ram PW3 and Jeet Singh PW5 but in view of the circumstances, explained and coupled with report Ex. DW2/1 given by Anil Kumar Gupta DW2, it can safely be said that document Ex. P1 did not come into existence on 27.05.2003 and appeal was dismissed by the lower Appellate Court. It is further observed that Desh Raj was son of defendant No.1 against whom the later leveled certain allegation of obtaining his thumb impression on some blank papers but there is nothing on the record to show that any complaint in this regard made by Chamba Ram defendant either with the police or civil authorities at Fatehabad.

Learned Counsel for the respondent informed this court, that the suit filed by the father of defendant No.1-Chamba Ram against son in a criminal appeal by Desh Raj Father-in-law of Guranditta(plaintiff) and Jeet Singh and Sewa Singh they were acquitted by judgment dated 31.04.2013 by the trial Court and the appeal was dismissed on 7.09.2016 by the appellate court. He has further informed that revision filed in this court also dismissed by this Court vide order dated 31.10.2017.

Keeping in view the facts and circumstances of the case and further supports the findings of the Lower Appellate Court the existence of Ex. P1 was proved to be doubtful. Since, the paper for scribing this document Ex. P1 and agreement in question was scribed only on one paper,

leaving no space for writing the names of witnesses as well as of the scribe. Even the thumb impression does not bear the name of any person. Defendant No. 1 allegedly agreed to sell only share of his land. It is not proved that he was in actual possession of his share and was competent to deliver possession of that area to the prospective vendee.

Moreover, the plaintiff being in close relationship with defendant no. 1 was in a fiduciary capacity and his father-in-law i.e. Des Raj might have obtained his thumb impression on some blank papers and converted into an agreement of sale. So keeping in view all these facts, it can safely be said that when defendant No.1 has already exchanged a part of land in dispute with defendant No.2 and there was no occasion for him to enter into an agreement of sale of the land in favour of the plaintiff, then the same is held to be a result of fraud and both the courts were rightly dismissed the suit of the plaintiff.

Hence, No illegality, much less perversity has been pointed out in the judgments of the lower courts below, warranting interference by this Court.

No substantial question of law arises for consideration in this appeal.

Hence, appeal stands dismissed.

25.01.2018

Riya Grover

(RITU BAHRI)

JUDGE

Whether speaking/reasoned Yes

Whether reportable No