

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

**ESA No.171 of 2018 (O&M)
Date of Decision: December 20, 2018.**

Gurmail Singh

.....APPELLANT(s).

VERSUS

Mukhtiar Singh since deceased through LRs and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sunny Singla, Advocate
for the appellant (s).

Mr. D.S. Malwai, Advocate
for respondent No.1.

SURINDER GUPTA, J.

Mukhtiar Singh, since deceased, now represented by LRs, filed civil suit No.249 dated 20.07.1999 for specific performance of the agreement executed by Jit Singh, respondent No.2 in his favour and the suit was decreed by the Civil Judge (Junior Division), Malerkotla vide judgment dated 24.07.2002. Jit Singh filed appeal No.150 of 12.09.2002, which was dismissed by first Appellate Court, Sangrur vide judgment dated 17.01.2003. He then filed regular second appeal No.1801 of 2003, which was also dismissed vide judgment dated 07.02.2006.

Decree-holder filed execution in which Jit Singh filed objections under Section 47 read with Section 151 CPC, which were dismissed. Sale deed was executed in favour of decree-holder on 17.08.2007 and warrants of possession of the suit property were issued. At

this stage, Gurmail Singh appellant filed objections, alleging that Jit Singh

and Sewak Singh have entered into agreement dated 04.03.1994 to sell their land measuring 6 bigha 5 biswas comprised in Khewat No.141 Khatauni No.245 bearing Khasra Nos.584(4-5), 413 (2-0) and land measuring 13 bighas 5 biswas comprising of Khewat No.156 Khatauni No.252 bearing Khasra No.1346/586 (0-15), 597(6-5), 598(6-5) situated in the revenue estate of village Khanpur, for a total sale consideration of ₹7,80,000/-. He had paid entire sale consideration to Jit Singh and Sewak Singh at the time of agreement and possession of the property was delivered. He took the plea that Judgment-Debtor(for short-JD) in connivance with decree-holder Mukhtiar Singh forged an agreement dated 10.11.1995 and decree dated 24.07.2002 was obtained at his back.

The decree-holder refuted the contentions of the objector-appellant and alleged that he (objector) in connivance with JD has fabricated the agreement dated 04.03.1994. The possession of the land was still with JD Jit Singh and was never delivered to the objector-appellant.

To decide the objections filed by the appellant-objector, learned executing Court framed issues as follows:-

- (1) Whether JD Jit Singh ceased to be owner in possession of property in dispute since 04.03.1994?OPO
- (2) Whether objector Gurmail Singh is in possession of disputed property?OPO
- (3) Whether present execution application has been filed by the decree-holder in collusion with JD Jit Singh?OPO
- (4) Whether present objection is maintainable?OPO
- (5) Whether present objection has been filed by the objector in collusion with JD Jit Singh? OPDH
- (6) Relief.

Findings on issues No.1, 2 and 5 are recorded in favour of the

objector and execution was ordered to be dismissed. Against the order of executing Court, decree-holder filed appeal, which was accepted. Judgment of the executing Court was set aside and it was ordered to restore the execution and decide the same in accordance with law.

Feeling aggrieved by the judgment of first Appellate Court, objector has filed this appeal.

I have heard learned counsel for the parties and perused the paper book with their active assistance.

Before proceeding further, it will be relevant to have a look at undisputed facts, which are enumerated as follows:-

- (i) It is admitted that agreement to sell propounded by the objector is not registered one.
- (ii) It was not scribed by the regular deed writer.
- (iii) As per the agreement, possession of property agreed to be sold was delivered to the appellant-objector but in the revenue record, possession continued to be of Jit Singh. Learned first Appellate Court has taken note of the fact that in the jamabandi for the year 2009-10 i.e. about more than 15 years after the alleged agreement, possession was recorded to be that of Jit Singh as owner. Similar entry finds mentioned in the khasra girdawari;
- (iv) Objector-appellant swung into action only after the registration of the sale deed dated 17.08.2007 in favour of decree-holder and issuance of warrants of possession.
- (v) No sale deed was got executed by the objector from JD and Sewak Singh on the basis of agreement dated 04.03.1994.
- (vi) No notice was issued by the objector to Jit Singh or Sewak Singh to get the sale deed executed.
- (vii) The first Appellate Court has taken note of the fact that on the basis of agreement to sell dated 04.03.1994, objector filed objections in execution titled "*Inder Singh Vs. Jit Singh* bearing execution No.18 of 07.06.1989", which was dismissed on 07.02.2011 and the appeal against

that order was also dismissed.

Keeping in view all these facts, learned first Appellate Court observed that the objections were filed by the appellant/objector to defeat the right of decree-holder in collusion with the JD.

Learned counsel for the appellant has argued that the land is in possession of Gurmail Singh appellant-objector under the agreement and this fact was also noted by the revenue official while considering the application for correction of khasra girdawari. He has placed reliance on the report to this effect made on 29.01.2009, which is not part of record but was shown at the time of arguments.

I find no merits in the submission of learned counsel for the appellant. The very fact that the application for correction of khasra girdwari was moved for the first time on 09.08.2008 after the issuance of warrants of possession shows the collusion of the appellant with the JD. In case, the possession had been delivered to the appellant under the agreement in the year 1994, he would not have waited for 14 years to move the application. So far as the report of the revenue authorities i.e. Patwari and Kanoongo dated 29.01.2009 is concerned, the same was obtained at the back of decree-holder and appeared to have been obtained in collusion with JD.

Learned counsel for the respondent has drawn my attention to the entry of khasra girdawari up to the crop of '*Hari, 2013*', which shows that possession over the suit land as that of Jit Singh and not of objector/appellant.

The facts of the case as discussed above reflect an attempt by

the JD to avoid the decree and for this, he has put forth Gurmail Singh appellant-objector. In case, the agreement dated 04.03.1994 had been validly executed in favour of Gurmail Singh, he would not have fixed the timing to file application seeking correction of khasra girdawari after the issuance of warrants of possession. He had also filed objections on the basis of this agreement in another execution against Jit Singh, which were also dismissed. Learned executing Court had failed to see the design and manipulation by the JD in collusion with the objector-appellant Gurmail Singh while accepting his plea that he had a valid agreement dated 04.03.1994 of the suit land in his favour. Learned first Appellate Court has committed no error while analysing and appreciating the evidence on record that the objections are mala fide attempt on the part of appellant to defeat the judgment and decree in favour of DH.

Keeping in view the above facts and circumstances, I find no legal or factual infirmity in the well reasoned judgment passed by the first Appellate Court, calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

December 20, 2018.

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No