

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

RSA No.3052 of 2012 (O&M)

Date of Decision: 08.05.2018

Amarjeet Singh and another

---Appellants

Versus

Kishan Chand

---Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.Sandeep Punchhi, Advocate for the appellants.

Mr.IPS Brar, Advocate for the respondent.

HARINDER SINGH SIDHU, J.

The defendants have filed this regular second appeal against the judgments of the Courts below, whereby, the suit for specific performance filed by the plaintiff-respondent has been decreed.

The case of the plaintiff was that the defendants had executed an agreement to sell dated 23.1.2004 in favour of the plaintiff in respect of the suit land situated in village Abholi, Tehsil Rania, District Sirsa at the rate of Rs.1,60,000/- per acre. A sum of Rs.65,000/- was received by them as earnest money. The date for execution and registration of sale deed was fixed as 10.5.2004 on which date the balance sale consideration was also to be paid. The plaintiff was given the right to get the sale deed executed either in his own name or in the name of any person of his choice after paying the balance sale consideration before the prescribed date for registration of the sale deed. It was further his case that before the date fixed i.e. 10.5.2004, he met the defendants and asked them to come present in the office of Sub Registrar, Rania for performing their part of contract. As

plaintiff went to the office of Sub- Registrar Rania along with balance sale consideration and the amount required for payment of stamp duties and misc. expenses. The plaintiff waited the whole day for the defendants, but they did not appear. The plaintiff got his presence marked by way of affidavit duly attested by the Executive Magistrate, Rania. Even after that, the plaintiff approached the defendants requesting them to execute the sale deed after accepting the balance sale consideration but they refused. Hence the suit.

The case of the defendants was that they never executed any agreement for sale of their land in favour of the plaintiff, nor had they ever intended to do so. The alleged agreement to sell dated 23.1.2004 was the result of fraud and misrepresentation. It was their case that their father was in need of money. The husband of the mother's sister of the defendants namely Baldev Singh is a neighbor of Nachhatter Singh who is a witness to the alleged agreement. Nachhatter Singh was known to the plaintiff. He managed to get a loan of Rs.65,000/- advanced by the plaintiff to the father of the defendants on interest @ 2% per month. The plaintiff purchased some stamp papers at Rania from a stamp vendor, he got typed the alleged agreement of sale at Rania and came to the defendants at their village Kotha Chet Singh, District Kapurthala along with their father and informed the defendants about the loan advanced to their father. The defendants were asked to sign on the written stamp papers as guarantors for repayment of the amount of Rs.65,000/- advanced to their father. Thus, the alleged agreement to sell was never intended for sale of the land of the defendants but was the result of fraud and misrepresentation. They further pleaded that when their

father went to the plaintiff to repay the amount received by him with interest, the plaintiff refused to take back the amount.

In order to prove his case, the plaintiff Kishan Chand examined himself as PW-1, Gurtirath Singh as PW-2, Sewa Singh Advocate as PW-3, Nachhatter Singh as PW-4 besides tendering various documents.

The defendants on the other hand examined Manjit Singh (defendant No.2) as DW-1, Chanan Singh as DW-2, Baldev Singh as DW3 besides tendering various documents.

Learned Trial court held that the agreement to sell dated 23.1.2004 had been duly proved by the plaintiff. The defendants in their written statement had also admitted their signatures on the said agreement and had also admitted that that they had appended their signatures on the sale agreement after the same had been typed. The agreement to sell was scribed by Sewa Singh Sandhu Advocate who deposed as PW-3 and proved this fact. The defendants did not cross examine him on any aspect including the payment of Rs.65,000/- to the defendants as earnest money or that the defendants were not present at the time when the agreement to sell was scribed or that the plaintiff along with the father of the defendants went to their native village i.e. Kotha Chet Singh in District Kapurthala where both the defendants marked their signatures over the stamp paper as guarantors of their father. Meaning thereby they admitted what was stated by the said witness.

The Learned Trial Court also noted that the defendants were permanent residents of village Kotha Chet Singh in District Kapurthala,

Punjab. The suit land had been purchased by them on 7.6.2002 for a total sale consideration of Rs.4,48,500/- @ Rs.1,25,000/- per acre as per sale deed Ex. PY placed on record by the plaintiff. Through the agreement to sell Ex.PW1/B, dated 23.1.2004 the defendants had agreed to sell the suit land to the plaintiff at the rate of Rs.1,60,000/- per acre, the total sale price being Rs.6,29,000/-. From this, the Learned Trial Court concluded that the land had been purchased by the defendants purely for business purpose to earn profit by reselling it. Through the instant agreement to sell, the defendants had managed to earn a profit of approximately Rs.1,75,000/- within short span of 1-2 years. The suit land was never cultivated by the defendants. DW-1 Manjit Singh admitted that the land had been lying vacant for the last two years.

The Learned Trial Court did not believe the version of the defendants that their father was in need of money and that he had taken a loan of Rs.65,000/- from the plaintiff to secure which, the alleged agreement was executed. DW-1 had admitted in his cross examination that they were a well reputed family. They owned 12 acres of land wherein two tube-wells are installed. DW-3 also admitted that Chanan Singh, father of the defendants owned about 10 acres of land and he had an agriculture income of about Rs.4-5 lacs per annum. In the light thereof the Trial Court concluded that it was highly improbable that the father of the defendants would come to Sirsa (Haryana) from his native place in District Kapurthala (Punjab) for availing a loan of Rs.65,000/- from a person (plaintiff) with whom he had no previous acquaintance and the defendants would give security of land valuing about to 5-6 lacs. DW-3 Baldev Singh admitted in

his cross examination that after purchase of the stamp papers, Chanan Singh, father of the defendants, went to his village along with the stamp papers and thereafter Nachhatter Singh witness and the plaintiff went to the said village. This admission disproved the case of the defendants that the agreement to sell was executed at Rania and the plaintiff along with father of the defendants thereafter came to their village at Kotha Chet Singh where the defendants were asked to sign the said agreement as guarantors for the loan advanced to their father.

The agreement to sell having thus been proved and the stand of the defendants having been found to be false the suit was decreed. The defendants were directed to execute and register the sale deed on payment of balance sale consideration.

The learned Lower Appellate Court has affirmed the finding of the Trial Court.

Findings of fact have been recorded by the courts below. Learned counsel for the appellants has not been able to establish as to how these findings are perverse or against the record.

No question of law arises for decision in this appeal.

Learned counsel for the plaintiff-respondent states that during the pendency of the present appeal, in pursuance of the decrees of the courts below the sale deed has been executed and possession has been delivered to the respondent.

Appeal dismissed.

May 08, 2018

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(**HARINDER SINGH SIDHU**)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No