

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

RSA No.1225 of 2013 (O&M)

Date of Decision:11.12.2018

Balbir Singh and another

...Appellant(s)

Versus

Kewal Krishan and another

...Respondent(s)

RSA No.4157 of 2013 (O&M)

Kewal Krishan

...Appellant(s)

Versus

Balbir Singh and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.H.S.Dhandi, Advocate for the appellants in
RSA No.1225 of 2013 and for the respondents in
RSA No.4157 of 2013.
Mr.Gopal Sharma, Advocate for the appellant in
RSA No.4157 of 2013 and for the respondents in
RSA No.1225 of 2013.

ANIL KSHETARPAL, J.

By this judgment, RSA Nos.1225 of 2013 and 4157 of 2013 shall stand decided as both these appeals arise from a suit filed for possession by way of specific performance of the agreement to sell dated 23.10.1996.

Three brothers namely Balbir Singh, Gursharan Singh and Gurdev Singh (since deceased) entered into an agreement to sell for sale of 8 biswas land on their behalf as well as on behalf of their fourth brother

namely Kirpal Singh and their minor nephew, son of 5th brother.

Rs.40,000/- was received as earnest money and in the agreement it was agreed that it shall be the responsibility of three brothers who have entered into an agreement to sell to ensure that fourth brother as well as a minor as on board for completion of deal failing which these three brothers will be liable to make up the deficiency from their own land. As per the agreement to sell, the target date for execution and registration of sale-deed was fixed as 30.4.1997, which is alleged to have been extended by a writing dated 17.4.1997 when additional amount of Rs.60,000/- has been paid and it was recorded therein that the sale-deed would be executed within one month from the date of information given by the proposed vendor to the proposed vendee, when permission of the Guardian Judge and power of attorney of 4th brother has been received. The plaintiff after waiting for sufficiently long time, sent a notice to the defendants on 24.3.2000, calling upon them to come and execute the sale-deed. Thereafter he even visited the office of Sub Registrar on 11.4.2000 and marked his presence but defendants did not turn up.

The defendants denied the execution of the agreement to sell and claimed that agreement to sell is illegal, null and void. They also took a stand that the signatures of the natural guardian, i.e. Charan Singh, the 5th brother has not been taken, therefore, agreement to sell is not enforceable.

The learned trial court on appreciation of evidence, decreed the suit qua the share of three brothers namely Balbir Singh, Gursharan Singh and Gurdev Singh, who were signatory to the agreement to sell and declined the specific performance of the remaining share. Two first appeals were preferred one by the plaintiff and second by the defendants.

Both the appeals on reappreciation of evidence have been dismissed by the learned first appellate court.

This Court has heard the learned counsel for the parties at length and with their able assistance have gone through the judgments and decrees and the record available in the file.

Learned counsel appearing on behalf of the defendants-appellants in RSA No.1225 of 2013 has submitted that agreement to sell was attested by two marginal witnesses namely Harmeet Singh and Ramesh Kumar, whereas the endorsement by which the time was extended was witnessed by two witnesses namely Ramesh Kumar and Subhash (one of them was not attesting witness to the agreement to sell as executed) but the plaintiff did not examine any of the witness and therefore, the agreement to sell is not proved.

On the other hand, learned counsel for the respondent has pointed out that Ramesh an attesting witness has been examined by the defendant who has admitted his signatures on the document. However, he has taken a plea that these signatures are on blank stamp papers. Ramesh Kumar is a commission agent, who has signed the agreement to sell on 23.10.1996, as a witness and also endorsement dated 17.4.1997 which is on the reverse of the first page. Once Ramesh Kumar admits his signatures, his evidence that these signatures were obtained when the document was blank cannot be believed.

On the other hand, learned counsel for the appellant in RSA No.4157 of 2013 has submitted that as per the terms of the agreement to sell dated 23.10.1996 defendants No.1 and 2 i.e. Balbir Singh, Gursharan Singh and Gurdev Singh (since deceased) were liable to make up the deficiency in

the property agreed to be sold from their own land if remaining two owners do not come on board and hence the first appellate court erred in granting decree only qua the share of these three brothers noticed above.

This Court has considered the submissions and requested the learned counsel to point out any evidence which may prove that these three brothers were owners of any other land. He has submitted that only a copy of jamabandi for the year 1998-99 has been produced on the file but other piece of land is not connected to the property in dispute.

In such circumstances, both the courts have rightly decreed the suit qua the share of three signatories of the agreement to sell noticed above.

It was the duty of the plaintiff to prove that other land apart from the land agreed to be sold was connected or available for sale on the date agreement to sell was executed. The evidence in this respect is lacking.

In view of the above, there is no ground to interfere. Hence, both these appeals are dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

11.12.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No