

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

RSA No.2187 of 2013

Rajbir

....Appellant

Versus

Suraj Bhan and Ors.

....Respondents

And

RSA No.2377 of 2013

Madan Singh

....Appellant

Versus

Suraj Bhan and Anr.

....Respondents

Date of Order: 16.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Karan Singh, Advocate for
Mr. Jagjeet Beniwal, Advocate for the appellant in
RSA No.2187 of 2013.

Mr. Saurabh Garg, Advocate for the appellant in
RSA No.2377 of 2013.

Ms. Ashma Gill, Advocate for respondent No.1.

Mr. S.P. Chahar, Advocate for respondent No.2.

AMIT RAWAL, J (ORAL)

This common order of mine shall dispose of aforesaid two appeals arising out of two suits since common questions of law and facts are involved in the same.

Present two separate appeals have been preferred by defendant No.1-vendor and the subsequent vendee/defendant No.2 challenging concurrent judgments and decrees passed by both the courts below whereby suit of the plaintiffs seeking declaration and possession by way of specific performance of contract has been decreed vide judgment and decree dated 04.1.2013 passed by learned Civil Judge (Sr. Division), Jhajjar and the

findings affirmed in the appeal by the lower Appellate Court vide common judgment and decree dated 13.2.2013.

Respondents-plaintiffs instituted the suit seeking a decree of possession by way of specific performance of agreement to sell dated 28.1.2006 on the premise that defendant No.1 had been owner in possession of land measuring 24 kanal 2 marlas being 1/3rd share of suit land comprising in khewat no.346 rect No.45, killa no.18,19,20/1 and 23 rect No.64, killa no.3,4,6/2,7,8 & 14 and numbran 822 and 824 total measuring 72 kanal 7 marlas situated within the revenue estate of village Salhawas Tehsil & District Jhajjar. Defendant No.1 had entered into an agreement for selling the said land to the plaintiffs for sale consideration of Rs.12,25,000/- per acre out of which plaintiffs paid Rs.2,50,000/- as earnest money. The stipulated date for execution and registration of the sale deed was 28.1.2007, however, the defendant during the subsistence of the agreement to sell, sold the land i.e Khewat No.346 to defendant No.2 vide sale deed dated 09.1.2007 for sale consideration of Rs.10,84,000/-, therefore, cause of action accrued to file the suit on 16.1.2007.

Upon notice, two separate written statements were filed by defendant No.1 and defendant No.2 by denying the agreement to sell. It was stated that it was a loan transaction and he was made to sign on blank papers. Defendant No.2 submitted that defendant No.1 had entered into agreement to sell dated 13.10.2005 and received Rs.8,00,000/- as earnest money and sale deed aforesaid was registered on 09.1.2007.

Since the parties were at variance, the trial Court framed as many as seven issues.

Respondents-plaintiffs in support of their case examined PW1

Rajender Kumar, PW2 V.B Kashyap, Handwriting and Finger Print Expert, who tendered his affidavit Ex.PW2/A, PW4-Om parkash, Attesting witness, PW5-Anil Nagpal besides plaintiff No.1-Suraj Bhan as PW3 and brought on record certain documents.

On the other hand, defendants examined DW1 Rajender Parshad, Advocate, DW2 Kartar Singh, DW3 Rajender Clerk, DW4 Pankaj Kumar, DW5 Jagdish apart from appearing himself as DW6. They also tendered some documents.

On the basis of preponderance of evidence, the trial court decreed the suit of the plaintiffs and the appeal preferred by defendant No.1 and defendant No.2 against the same was also dismissed by the lower Appellate Court vide common order.

Learned counsel for the appellant submitted that the findings recorded by both the courts below are patently illegal and the same are liable to be set aside, for, suit for specific performance of agreement to sell was not maintainable as the agreement to sell *ibid* was entered for three khasra numbers i.e Khewat No.346 measuring 48 kanal 4-2/3 marlas, Khewat No.250/227 measuring 9 kanal 6 marlas out of 29 kanal 8 marlas and Khewat No.249/226 measuring 8 kanal 13-2/3 share but the plaintiffs only sought specific performance qua Khewat No.346, thus the suit was hit by doctrine of Severability. Agreement to sell dated 13.10.2005 viz-a-viz sale deed dated 09.1.2007 had been proved on record as Ex.D1, therefore the courts below could not have granted discretionary relief, for, the respondent-plaintiffs had not been able to even prove the payment of earnest money.

On the other hand, learned counsel for the plaintiff-respondent

submitted that both the courts below have rightly decreed the suit on the basis of correct appreciation of evidence, for, it has been proved on record that the other khewats were in possession of third party being plotted area. In other words, colony was carved out on the aforesaid khewats and this fact had been proved from the contents of sale deed dated 09.1.2007, for the vendor had only parted with Khewat No.346, therefore the said Khewats were not free from encumbrances. He submitted that this land was never demarcated by the defendants and in absence of the same, the plaintiffs were not bound to purchase the same. The trial Court even sent a letter to Deputy Commissioner to hold inquiry against the stamp vendor as it was a clear case of ante dating of agreement to sell with regard to sale deed dated 09.1.2007. It was intentional act on behalf of defendant Nos.1 & 2 to create an agreement to sell of a prior date in dispute in order to deny the discretionary relief to the respondents-plaintiffs.

After hearing learned counsel for the parties and perusing the paper book, I am of the view that there is no force and merit in the submissions of learned counsel for the appellants, for, the agreement to sell (Ex.P.2) had been proved by the testimonies of PW4-Om parkash and PW2-V.B Kashyap, the handwriting expert and the defendants have failed to create any doubt on the deposition of these witnesses by way of leading evidence. When the plaintiffs were ready to purchase the land of defendant No.1 at the rate of Rs.12,25,000/- per acre then why defendant No.2 sold the said land at just Rs.3,60,000/- per acre, as has been rightly observed by the lower Appellate court.

In my view, it was distress sale to non-suit the plaintiffs-respondents as it surfaced in evidence that the agreement to sell qua sale

deed dated 09.1.2007 was created ante dated on the basis of which the trial Court while decreeing the suit of the plaintiffs sent a copy of the judgment to the Deputy Commissioner, Rohtak for holding inquiry against the stamp vendor. As regards arguments of learned counsel for the appellants qua part performance of agreement to sell in respect of only Khewat No.346, it has come on record vide sale deed dated 09.1.2007 that it was only Khewat No.346 which was free from all encumbrances, in other words, was not subject matter of the plotted colony, which had been carved out. This fact has been proved on record through evidence and the appellants have failed to bring on record any material contrary to it. Readiness and willingness is also proved, for, the suit was filed on 16.1.2007 when the respondents-plaintiffs came to know about the said breach i.e sale deed dated 09.1.2007.

No other argument has been raised on behalf of the appellants enabling this Court to differ with the findings recorded by both the courts below.

In such circumstances, I do not find any reason to discard the findings recorded by both the courts below much less no substantial question of law arises for adjudication.

Resultantly, both the appeals are dismissed.

May 16, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No