

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

RSA No.1385 of 2016 (O&M)
Date of Decision: 09.08.2018

Mohinder Singh

... Appellant

Versus

Dayal Chand

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Vishal Munjal, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

Plaintiff Mohinder Singh filed a suit for declaration to the effect that the sale deed dated 15.02.2008 alleged to have been executed by him in favour of the defendant Dayal Chand in respect of plot measuring 10 marlas being 10/234 share in land comprised in Khasra No.436 situated in the Revenue Estate of Village Chhatwal, Tehsil Pathankot, District Gurdaspur is illegal, null and void and is a result of fraud and as such not binding on the rights of the plaintiff. Further, relief of permanent injunction was sought restraining the defendant from alienating, encroaching thereupon and changing the nature of the suit land.

Suit was dismissed by the trial Court on 06.01.2014 and a civil appeal preferred has met the same fate in terms of judgment dated 03.11.2015 passed by the Learned Additional District Judge, Pathankot. Resultantly, plaintiff/appellant is in second appeal before this Court.

Case set up on behalf of the appellant was that he had entered into an agreement to sell dated 15.10.2007 to sell a plot for a total sale consideration of an amount of Rs.2,20,000/- in favour of the defendant and had received a sum of Rs.75,000/- as earnest money. The balance sale consideration was to be paid at the time of execution and registration of the sale deed in favour of the defendant on 15.02.2008. The allegations were that on 15.02.2008, the plaintiff came present in the Tehsil premises, Pathankot i.e. before the Sub Registrar for performing his part of the agreement but the defendant with a malafide intention and in order to cheat brought a fard jamabandi pertaining to plot comprising of Khasra No.436 instead of Khasra No.617 which he had never agreed to sell as per the agreement to sell. It was alleged that the defendant in connivance with the marginal witnesses cheated him by describing Khasra No.436 in the sale deed and thereby dishonestly induced him to deliver possession of the same.

It was the case of the plaintiff/appellant that such sale deed dated 15.02.2008 is null and void and not binding on his rights.

Learned counsel representing the appellant has argued that the findings of the Courts below are erroneous as relevant material and evidence has been ignored.

It is contended that the agreement to sell dated 15.10.2007 to which both parties had affixed their signatures was pertaining to a plot of a Khasra No.617, measuring 10 marla whereas the sale deed dated 15.02.2008 pertains to a plot

comprising Khasra No.436. It is argued that Courts below have as such misread and mis-appreciated the evidence adduced on record in the shape of agreement to sell dated 15.10.2007.

Having heard counsel for the appellant at length this Court is of the considered view that there is no merit in the instant appeal.

The agreement to sell in question dated 15.02.2008 pertaining to the suit land comprised Khasra No.436 was duly proved by the defendant (respondent herein). Apart from having examined himself, defendant also examined DW-2 J.S.Saini, Advocate and DW-3 Roop Singh and thereby proved on record the sale deed Ex.D-4. Attesting witness DW-3 categorically deposed that parties to the sale deed admitted the contents of the sale deed as correct and further deposed that the transaction of money/sale consideration took place at the house of Mohinder Singh. As per contents of the sale deed Ex.D-4, the same had been read over and explained and after admitting the same to be correct, the vendor had put his signatures on the same. Strangely, plaintiff/appellant had not raised any objection at the time of registration of the sale deed before the Sub Registrar, Pathankot. The sale deed Ex.D-4 is a registered document and there would be a presumption in favour thereof and the onus as such was upon the plaintiff to rebut such presumption and to prove such document to be not genuine. The plaintiff/appellant has failed to discharge such onus.

It would be apposite to take note that the appellant's own witness, namely, Raghbir Singh, Member Panchayat while

appearing as PW-2 had stated in his cross-examination that the sale deed for the plot in question Ex.D-4 and the agreement to sell for Khasra No.617 were two different transactions and as such had no connection with each other.

The findings recorded by the Courts below as regards execution of sale deed Ex.D-4 pertaining to 10 marla plot comprised in Khasra No.436 are based on due appreciation of evidence adduced on record and by assigning cogent and valid reasons.

No patent infirmity or perversity is found in the impugned judgments.

No merit.

Appeal dismissed.

09.08.2018

vandana

(TEJINDER SINGH DHINDSA)

JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No