

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

RSA No.1018 of 2015 (O&M)

Date of decision : 13.09.2018

Jitender Singh and others

...Appellants

Versus

Subhash Chaudhary

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Keshav Pratap Singh, Advocate and
Mr. Sanjeev Kumar Panwar, Advocate for the appellants.

Mr. Arun Jain, Sr. Advocate with
Mr. Sushil Jain, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for possession by way of specific performance of the agreement to sell.

While admitting the present appeal, this Court had framed the following substantial questions of law:-

- “1) Whether there is misreading/non-reading of evidence by the learned courts below, while passing the impugned judgments and decrees.*
- 2) Whether the agreement to sell surrounded by suspicious circumstances may be enforced specifically?*
- 3) Whether the agreement to sell and receipt (Ex.P1 and*

Ex.P2) are result of fraud and misrepresentation?

- 4) *Whether both the courts below have passed the impugned judgments and decrees in a casual manner, which deserve to be set aside?”*

Some facts are required to be noticed before the substantial questions of law are answered.

The plaintiff-respondent filed a suit for possession by way of specific performance of the agreement to sell dated 29.07.2005 through which the land measuring 51 kanals and 14 marlas was agreed to be sold for a sum of ₹59,77,821/-. The plaintiff claimed that the earnest money of ₹6,77,821/- was paid. As per the agreement to sell, the sale deed was to be executed and registered on 31.12.2005. The plaintiff claims that since 31.12.2005 and 01.01.2006 were holidays and, therefore, he visited the office of Sub-Registrar alongwith the balance sale consideration on 02.01.2006 but the defendants did not come forward. He got his presence marked before the Sub-Registrar. The plaintiff also claims that he sent a notice even before the target date but the defendants did not come forward to execute the sale deed. The suit was filed on 10.01.2006.

In the written statement, the execution of the agreement to sell was denied. It was pleaded that the plaintiff and the defendants are close relatives as mother of the plaintiff belongs to Village Amarpur, native village of the defendants. In alternative, it was pleaded that in fact, the defendants had borrowed ₹6,00,000/- for purchase of the land in the State of Uttar Pradesh.

Both the Courts below after examining the evidence available on the file, decreed the suit filed by the plaintiff.

The Courts noticed four following substantive facts:-

1. The amount of the earnest money received is proved to have been deposited in the account of mother of the defendants.
2. Appellant No.1-defendant No.1/Jitender Singh admits that he is running a shop dealing in the Arms and ammunitions and also deals in the property.
3. The agreement to sell is not only signed but is also thumb marked by all the defendants. The agreement to sell spread over the two pages and each page has been signed and thumb marked by each of the defendants. Still further, a separate receipt of the amount received has also been executed which is again not only thumb marked but also signed by all the defendants.
4. When Jitender Singh appeared in the witness-box, he has admitted his signatures on the agreement to sell and the receipt.

Now the stage is set for considering the substantial questions of law, which are reproduced above.

1) Whether there is misreading/non-reading of evidence by the learned courts below, while passing the impugned judgments and decrees:-

With regard to the first question of law, learned counsel for the appellants pointed out that the plaintiff when appeared in the evidence as PW3 has claimed that the agreement to sell was registered. He submitted that the agreement to sell is unregistered.

Learned counsel has further pointed out that the agreement to sell was scribed at Ballabhgarh, although, the property is situated at District

Palwal. The agreement to sell was scribed by an Advocate who was not a Professional Scribe.

In the considered view of this Court, as also, found by the learned Courts below, the agreement to sell which is in writing, cannot be thrown out only on such minor contradictions. Both the Courts have noticed that the statement of the witnesses were recorded after number of years. Still further, the attesting witnesses namely Phirey Ram, has been examined as PW1 and Scribe-Subhash Verma, Advocate has also been examined as PW4 apart from statement of the plaintiff himself as PW3.

As regards the argument of the learned counsel that the agreement to sell was not scribed at District Palwal, it may be noticed that Ballabhgarh is even 30 KM from the residence. It is not disputed that defendant No.1-appellant No.1 is resident of District Faridabad and Ballabhgarh is part of District Faridabad.

In the considered view of this Court, there is no mis-reading or non-reading of the evidence by the Courts below.

2) Whether the agreement to sell surrounded by suspicious circumstances may be enforced specifically?:-

Second question of law, which has been framed by the Court is also not proved in the present case as the defendants are not proved to be the rustic villagers. Defendant No.1-appellant No.1 is a Businessman dealing in the Arms and the properties. All the defendants are residents of National Capital Region. All the defendants have signed as well as thumb marked the agreement to sell. The agreement to sell is written in Devnagri (Hindi) and the three defendants have signed in Devnagri (Hindi) whereas three

defendants have signed in English. In such circumstances, the agreement to sell which is in writing, cannot be said to be suspicious.

3) Whether the agreement to sell and receipt (Ex.P1 and Ex.P2) are result of fraud and misrepresentation?:-

Next question of law as framed by the Court, also does not arises in the present case as no evidence has been led to prove that the agreement to sell is result of fraud or misrepresentation.

Although, learned counsel for the appellants has submitted that both the parties have examined the Handwriting and Finger Print Expert and both have given contradictory report, however, keeping in view the fact that there is direct evidence is available on the file, the statement of attesting witness i.e. Phirey Ram and admission of Jitender Singh-defendant No.1, admitting his signatures on the agreement to sell as well as on the receipt and the amount received by way of earnest money has been deposited in the account of mother of the defendants, the agreement to sell cannot be said to be result of fraud or misrepresentation.

4) Whether both the courts below have passed the impugned judgments and decrees in a casual manner, which deserve to be set aside?:-

With regard to the fourth question of law, it may be noted here that both the Courts have passed the judgments after appreciating the evidence available on the file. The trial Court as well as the First Appellate Court have discussed the evidence, both documentary as well as oral, and after appreciating the evidence, the judgments have been passed and, therefore, it cannot be said that the judgments and decrees passed by the Courts are in casual manner.

Learned counsel for the appellant further submitted that it would cause undue hardship to the defendants-appellants if the decree for specific performance is granted as this is the only agricultural land which they have.

It may be noted at the cost of repetition that defendant No.1 has admitted that he is dealing in the Arms and the properties. Still further, the defendants have failed to lead any evidence to prove that the decree for specific performance of the agreement to sell would cause hardship. The specific performance of the agreement to sell can only be denied if the Courts are satisfied that the specific performance of the agreement to sell would cause hardship which was not thought of by the defendants. In the present case, this Court finds that no such evidence has been led.

In view thereof, this Court does not find any ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

13.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No