

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

RSA No. 1923 of 2015 (O&M)

Date of decision : December 07, 2018

Maghar Singh

.....Appellant

Versus

Mohan Singh

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sunil Agnihotri, Advocate
for the appellant.

Mr. K.S. Dadwal, Advocate and
Ms. Neha Jain, Advocate
for the respondent.

LISA GILL, J.

Appellant – defendant is aggrieved of concurrent findings rendered against him by the learned Civil Judge (Junior Division), Dasuya vide judgment and decree dated 19.03.2010 as well as by the learned Additional District Judge (Adhoc), Fast Track Court, Hoshiarpur vide judgment and decree dated 06.02.2014. Suit filed by the plaintiff was consequently decreed.

Plaintiff – respondent filed a suit seeking confirmation of possession by way of specific performance of an agreement to sell dated 17.11.1998 stated to be executed by the present appellant – defendant in favour of the plaintiff regarding land measuring 20 kanal 1 marla out of 60 kanal 7 marlas i.e. his share in the land as detailed in the plaint. It was pleaded by the plaintiff – respondent that defendant – appellant is the owner of land measuring 20 kanal 1 marla being his share out of 60 kanal 7 marlas in the suit land as detailed. Agreement to sell dated 17.11.1998 was executed by the defendant in favour of the plaintiff. Possession of the land

was delivered by the defendant in respect to which writing dated 18.11.1998 in the presence of the marginal witnesses was executed as well. Sale consideration was fixed as ₹10,500/- per kanal. A sum of ₹30,000/- was received by the defendant as earnest money at the time of execution of agreement to sell in the presence of marginal witnesses. It was stipulated that sale deed would be executed on or before 01.04.1999 after receipt of balance sale consideration. It is further stipulated that in case sale deed is not executed within the stipulated period, the plaintiff would have a right to get the sale deed registered through a Court of law and in case the plaintiff failed to carry out his part of the contract, earnest money received by the defendant would stand forfeited. The plaintiff pleaded that on 01.04.1999 he was present at the Tehsil complex Garhdiwala alongwith balance sale consideration, stamp fee, registration expenses, witnesses etc. but the defendant did not come present. The plaintiff on the next day went to the defendant's house and asked him to execute the sale deed but proper reply was not given. Defendant is stated to have made an endorsement on 24.08.1999 on the back of agreement dated 17.11.1998 to the effect that the sale deed in question would now be executed in favour of the plaintiff on 3.04.2000 on the pretext that partition of the land in dispute had yet not taken place. Plaintiff remained present at the Tehsil complex, Garhdiwala but the defendant did not come present. It is pleaded that the defendant – appellant refused to execute the sale deed on one pretext or the other and ultimately notice dated 19.02.2001 was served through registered AD calling upon the defendant to execute and register the sale deed within 15 days from the date of receipt of notice. This notice was duly served upon the defendant who surprisingly sent a letter dated 27.02.2001 to the plaintiff

wherein he demanded a copy of agreement to sell dated 17.11.1998 and endorsement dated 24.08.1999 but did not give any reply to notice dated 19.02.2001. It was claimed that the plaintiff was already ready and willing to perform his part of the contract but the defendant intentionally did not come forward for registration of the sale deed due to his mala fide intention of negotiating with some other persons for sale of the suit land. Plaintiff pleaded that the defendant forcibly dispossessed him from the suit land on 01.02.2008 in an illegal manner. An amendment in the plaint was sought and allowed. Relief for possession of the suit land in addition to the execution or registration of the sale deed was prayed for. Relief for permanent injunction had earlier been sought at the time of filing of the suit as it was pleaded that the defendant being a strong headed person wanted to dispossess the plaintiff in an illegal manner. Sale deed was not being registered and possession had also been forcibly taken from the plaintiff. Hence the suit was filed.

Defendant – appellant resisted the suit. Written statement was filed raising various preliminary objections and averments on merits were controverted. It was pleaded that the defendant was a simple, illiterate person. He sold 19 marlas of land to the plaintiff with three mango trees thereon. A dispute regarding these trees arose with Chunni Lal, who filed a case for partition as well. The plaintiff asked the defendant to hand over a power of attorney to contest the partition case as well as for settling the dispute regarding the mango trees. Blank papers, it was contended, were signed by defendant, who never agreed to sell his land to the plaintiff, which is the only source of income. It is further stated that the plaintiff refused to settle the matter with Chunni Lal. Panchayat was convened. Defendant was

called in the Panchayat and was asked to pay ₹7,000/- to Chunni Lal as the price of the mango trees which were standing on the land measuring 19 marlas purchased by the plaintiff from the defendant. It is further stated that land worth ₹40,000/- per kanal could not have been sold at the rate of ₹10,000/- per kanal. Prayer for dismissed of the suit was made.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the defendant executed an agreement to sell of suit land on 18.11.1998 in favour of plaintiff after receipt of Rs.30,000/- as earnest money?OPP
2. Whether the defendant delivered the vacant possession of the suit property vide writing dated 18.11.1998?OPP
3. Whether the plaintiff is entitled for confirmation of possession by way of specific performance of agreement to sell in question as prayed for?OPP
4. Whether the plaintiff is entitled for permanent injunction as prayed for?OPD.

Another additional issue was framed vide order dated 10.02.2006:-

- 4A. Whether the plaintiff is ready and willing to perform his part of contract?OPP

Following additional issue was framed vide order dated 12.09.2006:-

- 2A. Whether on 01.02.2008 defendant took forcible possession of suit land in the absence of plaintiff ?OPP
- 2B. Whether plaintiff is entitled to possession of suit land on the alternative”OPP

5. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the facts and circumstances of the case decreed the suit filed by the plaintiff – respondent. Appeal filed by the appellant was also dismissed by the learned Additional District Judge, (Adhoc) Fast Track Court, Hoshiarpur vide judgment dated 06.02.2014. Aggrieved therefrom, present appeal has been filed.

It is relevant to note that notice of motion had not been issued in this case. The matter was being adjourned on request of learned counsel for the appellant since 07.05.2015 primarily on the pretext that the parties may be heading for an amicable settlement. In the meanwhile, Mr. Dadwal, Advocate appeared on behalf of the respondent on 26.10.2017. It is noticed by this Court on 25.04.2018 that no such talks for an amicable settlement as projected seem to have been initiated. The matter was ultimately listed for arguments.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in decreeing the suit for confirmation of possession by way of specific performance of agreement to sell dated 17.11.1998. It is contended that the plaintiff - Gobind did not appear for his cross examination, therefore, an adverse inference be drawn against the plaintiff. Readiness and willingness to execute the agreement to sell is not proved. It is further contended that evidence on record does not indicate that any consideration passed in this case or that the possession of the suit property was delivered.

Learned counsel for the appellant contends that in case there was any truth in the averment that possession had been taken forcibly on 01.02.2008, the same would necessarily have found mention in the legal

notice dated 09.02.2001 issued by the plaintiff – respondent. It is further

contended that earlier the appellant – defendant had duly executed sale deed dated 30.09.1996 (Ex.P7) in respect to 19 marlas of land in favour of the plaintiff – respondent. There is no reason whatsoever to firstly execute a subsequent agreement to sell for another part of his land and in case it is so accepted to be executed, there was no reason why it would not have been executed. Passing of the earnest money is not proved. Therefore, facts and circumstances of the case do not indicate execution of the sale deed.

It is argued that after sale of 19 marlas of land by the defendant to the plaintiff on 30.09.1996, there arose a dispute regarding mango trees with Chunni Lal who had filed a suit for partition. Plaintiff had asked the appellant – defendant to give him a power of attorney for contesting the partition case and for settling the dispute regarding the mango trees. It is submitted that it is proved on record that the defendant did not agree to sell his land but signed blank papers in respect to the dispute regarding the mango trees and for defending the partition matter initiated by Chunni Lal. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 19.03.2010 passed by the learned Civil Judge (Junior Division), Dasuya as well as judgment and decree dated 06.02.2014 passed by the learned Additional District Judge, (Adhoc) Fast Track Court, Hoshiarpur be set aside.

Learned counsel for the respondent per contra submits that both the learned courts below have rendered concurrent findings of fact against the appellant based on sound appreciation of evidence on record. It is submitted that plaintiff – Gobind had passed away and it is on this account that he could not be present for his cross examination. Mohan Singh son of Gobind Singh has deposed before the learned trial Court as PW6. Therefore, no benefit can accrue to the defendant - appellant on this count and there is

no question of any adverse inference being drawn. It is further proved on record that possession of the suit property was delivered at the time of execution of the agreement to sell. Possession of the suit property was delivered on the next day of the agreement to sell. Specific writing, Ex.P2 was drawn up on 18.11.1998. Plaintiff had always remained ready and willing for execution of the agreement to sell. He remained present at the Tehsil Complex, Garhdiwala on 01.04.1999 but it is the defendant who did not turn up to fulfil his part of the contract. When contacted by the plaintiff, defendant carried out an endorsement on 24.08.1999 at the back of agreement dated 17.11.1998 to the effect that the defendant would execute the sale deed in favour of the plaintiff on 03.04.2000 on the pretext that the partition of the land had not yet taken place. The plaintiff, it is submitted, again remained present for execution of the sale deed but the defendant did not turn up. Legal notice dated 19.02.2001 was duly served upon the defendant. Defendant while not replying to the notice sent by the plaintiff sent communication dated 27.02.2001 to the plaintiff demanding a copy of agreement to sell dated 17.11.1998 and endorsement dated 24.08.1999. The plaintiff was illegally dispossessed of the suit property by the defendant on 01.02.2018. It is, thus, prayed that this appeal be dismissed.

I have heard learned counsel for the parties at length and have gone through the record, which was requisitioned.

Plaintiff – respondent has set up a specific case that agreement to sell dated 17.11.1998 was entered into by the defendant with him for sale of 20 kanals one marla of the land as detailed in the suit. Sale consideration was fixed at the rate of Rs. 10,500/- per kanal. Rs. 30,000/- was received by the defendant as earnest money. It was agreed that the sale deed would be

executed on 01.04.1999. Vide endorsement dated 24.08.1999, date for execution of the sale deed was extended to 03.04.2000 on the ground that partition of the land had not been finalised. Possession of the land was given after execution of the agreement to sell and writing in this respect was drawn up on 18.11.1998 (Ex.P2). The plaintiff – respondent proved that the defendant was the owner of the suit property with reference to the jamabandi for the year 1995-96 (Ex.P8). PW1 Mukesh Puri, the Deed Writer, deposed that agreement dated 17.11.1998 is in his hand writing and it was scribed at the instance of Maghar Singh in favour of Gobind Singh. Ranjit Singh (PW2) is one of the witness of the agreement to sell alongwith Naresh Kumar DW1. A sum of ₹30,000/- was handed over to Maghar Singh at the time of execution of agreement to sell. PW1 deposed that entry regarding said agreement to sell was made in his register at serial No. 267. PW1 further deposed that endorsement dated 24.08.1999 at the back side of the agreement to sell was carried out by his father Mohinder Pal Puri (Mark A). Ranjit Singh (PW2) has testified regarding execution of the agreement to sell dated 17.11.1998 and writing dated 18.11.1998. Naranjan Singh (PW3) clearly stated that writing dated 18.11.1998 (Ex.P2) was scribed by him at the instance of Maghar Singh in favour of Gobind Singh. Parties appended their signatures after admitting its contents as correct after being read out to them. PW3 explained that as there was no mention regarding possession being handed over in EX.P1, Ex.P2 dated 18.11.1998 was drawn up.

PW4 Rawal Singh deposed that stamp paper for the agreement (Ex.P1) was sold to Maghar Singh by him. Entry in this regard was carried out by him at serial No. 2865 on 17.11.1997. PW4 proved the signatures of

Maghar Singh and endorsement of the same in his register as Ex.P4 to Ex.P6. Plaintiff – Gobind Singh himself appeared as PW5. Affidavit (Ex.PW5/A) was tendered in examination-in-chief but before he could be cross examined, he passed away. Mohan Singh (PW6) son of the plaintiff - Gobind Singh specifically deposed regarding execution of the agreement to sell as well as writing dated 18.11.1998 between the appellant and his father. PW6 deposed that he was present at the time of execution of the said documents and his father was always ready and willing to execute the sale deed in terms of agreement to sell. Forcible possession of the suit property was stated to have been taken by the defendant. PW7 Malkit Singh proved that possession of the property was forcibly taken by the defendant – appellant.

Defendant - appellant examined DW1 Naresh Kumar, who has admitted his signatures on the agreement (Ex.P1). It is stated that he appended his signatures on the asking of Gobind Singh. Maghar Singh – defendant appeared as DW2. While denying execution of agreement to sell or writing dated 18.11.1998, it is admitted that he sold 19 marlas of land to Gobind Singh. Power of attorney was given by him to Gobind Singh only for contesting the partition case and regarding the dispute about the mango trees with Chunni Lal. The matter regarding the mango trees was decided by the Panchayat and he was asked to pay ₹7,000/- for the mango trees which were standing on the land measuring 19 marlas purchased by Gobind Singh.

It is relevant to note that DW2 has admitted his signatures on the agreement to sell as well as writing (Ex.P2). Though at one stage it is sought to be explained that his signatures were obtained on blank papers, at the same time defendant admitted that he appended his signatures upon the

two registers produced by the plaintiff. Though defendant sought to explain

the same by saying that a partition suit was filed by him and it is due to this he appended his signatures on the registers, the said explanation is not acceptable. This is so for the reason that there is no evidence regarding any such suit for partition. The dispute regarding the mango trees was purportedly settled in the Panchayat. However, there is no evidence on record to substantiate the oral testimony of the defendant to the effect that there was any dispute regarding mango trees or its settlement in the Panchayat. The defendant has indeed failed to prove that agreement to sell dated 17.11.1998 or writing dated 18.11.1998 is a result of fraud or forgery as alleged by him. Execution of agreement to sell dated 17.11.1998 as well as delivery of possession of the property on 18.11.1998 is duly proved by the evidence on record. The defendant has merely denied that possession was not handed over to the respondent on 18.11.1998, therefore, the question of dispossessing him does not arise. The plaintiff on the other hand has led clear and cogent evidence on record to substantiate his case. The factum of divesting the plaintiff of possession by the defendant on 01.02.2008 is borne out from the evidence on record and amendment to this effect was permitted by the learned trial Court and the same was not challenged by the appellant. Appellant cannot derive any benefit from non-mentioning of wresting of possession in the legal notice dated 19.02.2001 (Ex.P4). This fact by itself cannot lead to an inference of the possession not being taken over illegally by the defendant. It is not denied that no reply to his legal notice was sent by the appellant – defendant. Evidence of DW3 is not helpful to the appellant in any manner. It is relevant to note that the defendant admittedly sold some land earlier to the plaintiff – respondent. The defendant was well aware of the procedure and methodology to be

followed for execution of the agreement to sell, execution of the sale deed etc. Once the defendant – appellant admitted his signatures on agreement to sell dated 17.11.1998 and writing dated 18.11.1998, it was incumbent upon him to have explained and proved that the said documents were fraudulent or that his signatures were taken on blank papers. Defendant – appellant has failed miserably in this regard.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 19.03.2010 passed by the learned Civil Judge (Junior Division), Dasuya as well as judgment and decree dated 06.02.2014 passed by the learned Additional District Judge (Adhoc), Fast Track Court, Hoshiarpur which calls for any interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

December 07, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No