

RSA No. 4000 of 2016(O&M)

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

**RSA No. 4000 of 2016 (O&M)
Date of decision: 21.5.2018**

Paramjit Singh

... Appellant

Versus

Harbans Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sukhjit Singh, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was decreed by the trial court, vide judgment and decree dated 12.3.2015, only qua an alternate relief for recovery of Rs.2,09,678/- along with interest. Both the parties being aggrieved against the said decree, filed their respective appeals. But, as vide a common judgment dated 17.12.2015, the appellate court dismissed both the appeals, the plaintiff-appellant is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for specific performance of the contract of sale dated 5.1.1993, executed by defendants No.1 and 2, as regards the land measuring 67K-2M, fully detailed in the cause title of the plaint. And, for mandatory injunction, directing defendants No. 3 to 6 to join hands with defendants No.1 and 2 for executing the sale deed in favour of the plaintiff, on the basis of the agreement dated 5.1.1993. And in the alternative, a decree for recovery of Rs. 2,44,937/- was claimed.

On a consideration of the matter in issue and the evidence on

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record, both the courts concurrently concluded that execution of the agreement in question was duly proved. Even otherwise, defendants No.1 and 2 had admitted the execution of the said agreement, as also the receipt of entire sale consideration. However, the case set out by defendants No.1 and 2, that they had returned the entire sale consideration to the plaintiff, along with interest, remained unsubstantiated. Nothing was brought on record to show, as to when any such amount was returned to the plaintiff and how. And had it been actually so, the defendants would have asked the plaintiff to return the original agreement dated 5.1.1993, along with receipts, to them. The plea that the plaintiff was put in possession of the suit property on receipt of the entire sale consideration, also remained unproved. None of the jamabandies or khasra girdawris showed plaintiff to be in possession of the suit land. Thus, it was established that although the agreement to sell (Ex.P1) was executed by defendants No.1 and 2 in favour of the plaintiff, and they had even received the sale consideration of Rs.2,09,678/-, but possession of the suit land was never parted with by defendants No.1 and 2. As regards defendants No.4 and 5, who claimed to be the bonafide purchasers for valuable consideration, the sale deed in their favour was executed in the year 2008. The plaintiff himself proved on record a copy of jamabandi for the year 2005-06, which did not reflect or show that owner could not alienate the suit property for a period of 20 years from its allotment. Even otherwise, had any such note been recorded in the jamabandi, existing at the time of execution of the sale deed in favour of defendants No.4 and 5, the Sub-Registrar would never have registered the same. As regards Arvind Kaur-defendant No.6, she had purchased a part of the suit property on 29.2.1996, registered on 7.3.1996, for a valuable

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consideration. In fact, the legal heirs of Arvind Kaur proved on record writings (Mark-A to Mark-C), which rather showed signatures of plaintiff-Paramjit Singh on those documents as regards transaction qua the suit property itself. Therefore, it was evident that the plaintiff had due knowledge of the sale caused by defendants No.1 and 2 in favour of defendant No.6. Thus, in the circumstances, both the courts did not deem it appropriate to grant a decree for specific performance of the agreement in favour of the plaintiff. Particularly, for the agreement in question was executed on 5.1.1993, and the plaintiff had filed the present suit on 5.5.2008, i.e. after 15 years. As a result, a decree only for an alternate relief was granted in favour of the plaintiff.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusion arrived at by both the courts was either contrary to the record or suffered from any material illegality. No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

21.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO