

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

RSA No.4157 of 2016 (O&M)

Date of Decision: 09.10.2018

Hardial Singh

.....Appellant

Versus

Sukhwinder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Vikas Mohan Gupta, Advocate
for the appellant.

TEJINDER SINGH DHINDSA J.(ORAL)

A suit filed by Sukhwinder Singh for possession by way of specific performance of an agreement to sell dated 03.03.2004 regarding a plot measuring 20 marlas was decreed by the Trial Court on 21.05.2013.

Civil appeal preferred by the defendant-Hardial Singh has been dismissed vide judgment dated 10.12.2015 passed by the learned Additional District Judge Gurdaspur and thereby affirming the judgment and decree passed by the Trial Court.

Resultantly, defendant-appellant Hardial Singh is in second appeal before this Court.

Briefly it may be noticed that the suit for specific performance was instituted on the averments that on 03.03.2004 an agreement to sell had been entered into pertaining to the suit property between the parties for a total sale consideration of ₹5,00,000/- and a sum of ₹2,00,000/- was paid as earnest money. The target date for execution of the sale deed was fixed as 25.10.2004. Plaintiff (respondent herein) asserted that as per agreement to sell, the defendant had undertaken to carve out a 15 feet passage on the

northern side of the suit plot from his own land and as such the width of the front side of the suit plot was to be 30 feet. It was also stipulated that in case defendant fails to leave out the 15 feet passage on the northern side of the suit plot, then the front side of the plot that was to be sold was to be of a width of 40 feet. Case of the plaintiff was that he was always ready and willing to perform his part of the contract and went to the office of Sub Registrar, Batala on 25.10.2004 to get the sale deed executed alongwith balance sale consideration amount but the defendant did not turn up. Plaintiff stated that he got his presence marked by way of executing an affidavit before the Executive Magistrate Batala on 25.10.2014. It was further asserted that the plaintiff came to know that the defendant was making efforts to sell the suit property to some other person and under such circumstances the suit has been filed.

Upon notice, defendant contested the suit by filing a written statement setting up a case of denial. Defendant asserted that he had never entered into the agreement to sell. The market value of the suit plot was stated to be much higher and as such it was asserted that there was no occasion to enter into the alleged agreement to sell at a throwaway price.

As has been noticed hereinabove suit of the plaintiff was decreed in his favour and the judgement of the Trial Court has been affirmed by the lower Appellate Court.

Learned counsel representing the defendant-appellant has argued that the findings returned by the Courts below as regards readiness and willingness on the part of the plaintiff-respondent to perform his part of the contract are not based on due appreciation of evidence. Further argued that the alleged agreement to sell did not contain specific dimensions of the suit property and in view thereof such an agreement cannot be enforced.

Learned counsel urges that as on the date of execution of the alleged agreement to sell i.e. 03.03.2004, the appellant-Hardial Singh was not even the owner of the suit property and as such without title there was no question to have entered into the agreement to sell or having received the earnest money.

Learned counsel for the appellant has been heard at length and pleadings on record have been perused.

A concurrent finding has been recorded by the Courts below as regards due execution of the agreement to sell dated 03.03.2004 Exhibit P2. In this regard, the plaintiff-respondent had examined PW2 Ramesh Chander, deed writer and who had deposed that he scribed the agreement to sell dated 03.03.2004 on the instructions of appellant Hardial Singh. PW3 Baljeet Singh and PW4 Lakhwinder Singh were the marginal witnesses to the agreement and they have also supported the case of the vendee as regards agreement to sell having been entered into.

With regard to ownership of the suit property, Courts have taken notice of Exhibit P4 i.e. Jamabandi for the year 1999-2000 which reflected that mutation No.4416 had been sanctioned in favour of Ajit Singh and appellant herein Gurdial Singh both sons of Harsha Singh. Accordingly, it was observed that the appellant herein was owner in possession to the extent of $\frac{1}{2}$ share in khasra number 36R/5/1 and 5/2. Subsequently, mutation No.4757 was also sanctioned as regards partition on the basis of family settlement. It is upon due appreciation of evidence that a finding had been recorded that defendant-appellant was owner in possession of the suit property.

The submission raised by learned counsel with regard to the agreement to sell not containing specific dimensions of the suit property is

not well-founded. Courts below have examined the agreement to sell dated 03.03.2004 (Exhibit P-2) and have recorded that such agreement reflects that the defendant-appellant herein had agreed to alienate 20 marlas of land with specific dimensions.

Furthermore, Courts below have rightfully taken a view that when the defendant-appellant was denying the very execution of the agreement to sell, the plea that vendee was not ready and willing to perform his part of the contract would not be available.

This Court does not find any patent infirmity or irregularity in the judgments passed by the Courts below. The same are based on cogent and valid reasoning.

No interference in the matter is warranted.

Appeal dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

October 09, 2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No