

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3542 of 2015

Date of Decision: May 15, 2018

Gurcharan Singh

...Appellant

Versus

Lal Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.D.S.Malwai, Advocate,
for the appellant.

AMIT RAWAL, J.

Appellant-plaintiff is in Regular Second Appeal against the concurrent findings of fact and law, whereby the suit seeking mandatory injunction directing defendant No.1 to get the sale deed registered by appearing before the Sub Registrar, Dhuri duly scribed by him from the deed writer on the stamp papers in respect of the suit property with declaration declaring the sale deed registered dated 18.6.2004 executed by defendant No.1 in favour of defendant No.2 in respect of land measuring 10 bighas 15 biswas with permanent injunction restraining defendant No.2 from further alienating and mortgaging the property, has been dismissed by the trial Court and affirmed by the Lower Appellate Court in appeal.

Mr.D.S.Malwai, learned counsel representing the appellant-plaintiff submitted that the appellant-plaintiff instituted the suit on the premise that defendant No.1 was owner of the property described in the head note of the plaint and entered into an agreement to sell on 25.5.2001 for sale of suit property @ 45,000/- per bigha and in lieu thereof, received ₹3,24,000/- as earnest money. Even the possession of the suit property was

delivered to him. The stipulated date for registration and execution of the sale deed was fixed as 30.6.2001. Defendant No.1 refused to execute the sale deed at less than ₹58,000/- per bigha and for that, the plaintiff had to file a suit for permanent injunction restraining him from alienating the suit property, though plaintiff orally agreed that he would purchase the property @ ₹58,000/- per bigha. Accordingly, stamp papers were purchased in the name of defendant No.1 for execution of the sale deed. Even the sale deed was got scribed from a deed writer and the contents of the same were admitted by defendant No.1 when he received full payment of ₹6,28,000/-. He also thumb marked the sale deed in the presence of the witnesses. When the sale deed was produced before the Sub Registrar for registration purpose on 20.5.2004, defendant No.1 slipped away from the office of the Sub Registrar and during the pendency of the present suit, which was filed on 3.6.2004, respondent-defendant No.1 alienated the suit property vide sale deed dated 18.6.2004 *ibid*, which was without consideration. Repeated requests made to defendant No.1 to appear before the Sub Registrar and executed the sale deed fell to the deaf ear and the cause of action arose to seek claim aforementioned and as well as the declaration vis-a-vis the sale deed.

It was next contended that the suit was contested by defendant No.1, whereby the execution of the agreement to sell was emphatically denied. It was averred that the entire version of the plaintiff was fraudulent, for, an FIR No.142 dated 21.5.2004, under Sections 365/383/342 IPC was registered against the plaintiff and his associates. Market value of the property was much more than the one allegedly shown in the agreement to sell. The factum of payment of the amount was also denied, for, plaintiff had

not produced any copy of the receipt of ₹6,28,000/-.

Defendant No.2 filed separate written statement by denying execution of agreement to sell dated 25.5.2001 with plaintiff nor received earnest money which resulted into sale deed dated 18.6.2004.

Appellant-plaintiff examined as many as eight witnesses, whereas the defendants six witnesses in support of their respective claims.

The trial Court, on the basis of the evidence brought on record, dismissed the suit on the premise that the plaintiff failed to show that defendant No.1 voluntarily executed sale deed Ex.P17 and other documents Ex.P18 to Ex.P20 and Ex.P22 and denied the relief of mandatory injunction for directing defendant No.1 to appear before the office of Sub Registrar. The appeal laid before the Lower Appellate Court was also dismissed.

Mr.D.S.Malwai, learned counsel representing the appellant-plaintiff submitted that the judgments and decrees of the Courts below are not sustainable, for, both the Courts have abdicated in not examining the statements of the witnesses, namely, PW-2 Sanjiv Kumar Stamp Vendor, who proved the purchase of the stamp papers worth ₹37,700/- vide Ex.P3. Jarnail Singh Madahar endorsed that the Deed Writer drafted the sale deed. Lal Singh defendant No.1 appeared as DW-4 and defendant Sukhwinder Singh DW-5 to support the stand as set up in the written statements.

It was next contended that both the Courts have taken a negative view of all the admissions in favour of the appellant, for, the execution of the agreement to sell Ex.P1 had been proved. The Courts below lost sight of the fact that Ex.D3 is the statement of Raj Kumar, whose mother Sarfi Devi had filed a suit for recovery on the basis of the pronote against Lal Singh. It was suggested that he had nothing to do with the

execution of the agreement to sell. The defendants have not been able to belie the thumb impressions on the agreement to sell, for, the appellant had already been acquitted in the criminal case and had been cultivating the land owing to the possession handed over at the time of execution of the agreement to sell.

The alleged story of oral statement was not pertaining to the agreement in question. It was some previous transaction. There was no impediment for the defendants to execute the sale deed @ ₹58,000/- per bigha, for, the value of the land @ ₹1.5 lacs per bigha had not been proved on record, thus, urged this Court for setting aside of the judgments and decrees under challenge.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel, for, the suit aforementioned was filed on 3.6.2004. No explanation has come forth as to why for all period, the appellant-plaintiff remained silent as the stipulated date for execution and registration of the sale deed was 30.6.2001. It is also not understandable why the stamp papers were purchased on 18.6.2004, for, the FIR was lodged on 21.5.2004. During all this period, plaintiff remained silent with regard to his part of the performance. It is only few days after the lodging of the FIR, the suit aforementioned was filed.

The defendants have examined DW-3 Harbaksh Singh Mander, Handwriting Expert, opined that the line on the second page of the agreement to sell had later on been added. There is no evidence on record to prove that originally the agreement to sell was written for land measuring 8 bighas 11 biswas. The plaintiff, as per the averments in the plaint, filed a

suit for permanent injunction against the defendants and when defendant No.1 refused to abide by the terms and conditions of the aforementioned, decided to file the present suit for land measuring 10 bighas 11 biswas.

No explanation has also come forth with regard to the short fall of the land. The injunction suit was withdrawn on 18.5.2002, yet for a period of two years, the plaintiff remained in slumber. Even the payment of the sale consideration of ₹6,28,000/- has not been proved, for, it was alleged to have been paid in the presence of PW-8 Raj Kumar, but when subjected to cross-examination, he feigned ignorance regarding payment in his presence. That was the turning point for declining the relief as sought for.

On the contrary, the sale deed dated 18.6.2004 Ex.P24 had been proved on record, for, defendant Sukhwinder Singh submitted that he made a reasonable enquiry before purchasing the property, therefore, he was bonafide purchaser for valuable consideration.

As an upshot of the aforementioned observations, there is no illegality or perversity in the concurrent findings under challenge. No ground interference is made out, much less any substantial question of law arises for determination by this Court. Resultantly, the appeal stands dismissed.

May 15, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No