

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

RSA No.1193 of 2014(O&M)
Date of decision: 21.05.2018

AND

RSA No.1081 of 2014(O&M)

Paramjit Kaur and another

... Appellants

Versus

Amandeep Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Deepak Bhardhwaj, Advocate for the appellants.

ARUN PALLI, J. (Oral)

Vide this order and judgment, I shall decide RSA No.1193 as also RSA No.1081 of 2014, though arising out of two separate suits, but as both the suits were consolidated, and decided by a common judgment, these are being disposed of together. However, the facts are being culled from RSA No.1193 of 2014.

Respondent-plaintiff (Nirmal Singh) filed a suit bearing No.437/16.3.1991, for possession by way of specific performance of the agreement dated 10.01.1990 as regard the plot, measuring 325 sq. yards, comprised in khasra Nos.4719/465, 4720/465, as depicted in the site plan, and also for a declaration that the sale deed dated 21.09.1990, executed by defendant No.1 in favour of defendant No.2, was null and void, and not binding upon the plaintiff. In the suit No.339/14.6.1991, appellant-defendant No.1 (Prem Singh) sought a declaration that he was the owner in possession

of plots bearing Nos.4 & 5 with Chardwari in Gali no.24, Mohalla Kot Mangal Singh, Ludhiana.

In brief, the case set out by the plaintiff (Nirmal Singh) was that defendant No.1-Prem Singh had entered into an agreement to sell dated 10.01.1990 as regards the plot measuring 325 sq. yards @ Rs.1120/- per sq. yard. A sum of Rs.1,00,000/- were received by defendant No.1 by way of earnest money and the plaintiff was put in possession in part performance of the agreement. The balance sale consideration was to be paid on 20.03.1990 at the time of execution and registration of the sale deed. As the plaintiff was put in possession, he constructed a boundary wall and raised some construction upon the plot in question. However, defendant No.1 sold a site measuring 25-5/9 sq. yards to defendant No.2 for a consideration of Rs.25,000/- on 21.09.1990. Defendant No.1 was served with a notice dated 15.03.1990 to perform his part of contract, for the date fixed for execution of the sale deed was soon approaching. However, on receipt of the said notice, defendant No.1 instead filed a suit against the plaintiff.

In defence, defendant No.1 denied the execution of the agreement dated 10.01.1990, as also the receipt of Rs.1,00,000/- as earnest money. Further, the plaintiff was never put in possession of the suit property pursuant to the alleged agreement.

In a separate written statement filed on behalf of defendant No.2, he was claimed to be the bona fide purchaser of a plot measuring 25-5/9 sq. yards for a consideration of Rs.25,000/-, pursuant to a sale deed dated 21.09.1990.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that defendant No.1 (Prem

Singh) did execute the agreement to sell dated 10.01.1990 regarding the suit property in favour of the plaintiff. And also received a sum of Rs.1,00,000/- as earnest money. It was also proved that in part performance of the agreement, the plaintiff was even put in possession of the suit property. Further, as the plaintiff was always ready and willing to perform his part of the contract, he was entitled to seek a decree for specific performance of the agreement. As regards the plea of defendant No.2 being a bona fide purchaser for consideration, it was held that post execution of the agreement dated 10.01.1990, and the plaintiff having been put in possession of the suit land, defendant No.1 was merely holding the suit property as trustee of the plaintiff. Thus, transfer of the site measuring 25-5/9 sq. yards out of the suit property in favour of defendant No.2 had no binding effect upon the rights of the plaintiff. And, though no separate issues were framed in the suit titled **“Prem Singh v. Nirmal Singh”**, but from the evidence on record, and findings recorded as regard issues No.1, 2 & 8 in the other suit i.e. Case No.437/16.3.1991, it was established that Nirmal Singh was put in possession of the suit property, pursuant to the agreement dated 10.01.1990, and he had even raised construction. Thus, the claim of Prem Singh, in the suit filed by him, that he was the owner in possession of plot Nos.4 & 5 was vitiated. In so far as the plea that although plaintiff-Nirmal Singh deposed that agreement (Ex.P1) was got typed by PW3, but he was not aware as to who was typist, likewise even PW3 had stated that he did not remember the name of the Scribe, was also rejected, for the alleged discrepancies were inconsequential once the execution of the agreement (Ex.P1) was duly proved. In fact, least the defendant could do, to substantiate his defence, was to get his signatures appended upon the agreement compared with his

admitted signatures by examining an expert, but as no such evidence was led the minor discrepancies in the statements of the plaintiff and PW3 were of no consequence. The argument that no receipt was proved by the plaintiff to show that a sum of Rs.1,00,000/- were given to the defendant by way of earnest money was equally erroneous, for the recitals in the agreement itself proved that the said amount was given by the plaintiff to defendant-Prem Singh. Undoubtedly, defendant No.1 examined six witnesses, but in the wake of the agreement (Ex.P1), which was duly proved, their testimonies paled into insignificance. Further, the plea that in the suit filed by Prem Singh, no separate issues were framed, was also rejected, for all what Prem Singh had claimed was that he was in possession of the plot in question, therefore, Nirmal Singh be enjoined from causing any interference in his peaceful possession, but all those questions were duly covered in the issues framed and dealt with in the suit filed by Nirmal Singh. No prejudice was shown to have been caused to the defendant No.1 either. On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality.

Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

21.05.2018
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO