

RSA No. 3933 of 2015 (O&M)

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

**RSA No. 3933 of 2015 (O&M)
Date of decision: 18.5.2018**

Banta Singh and another

... Appellants

Versus

Harjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Naresh Kaushal, Advocate
for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the appellants-plaintiffs was dismissed by the trial court, vide judgment and decree dated 22.5.2014. As even the appeal preferred against the said decree failed, and was dismissed on 13.3.2015, they are in Regular Second Appeal before this Court. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs sought possession of a land measuring 13K 4M, by way of specific performance, out of the land measuring 52K 18M, situated in village Ladhewal, Tehsil and District Kapurthala, on the basis of an agreement to sell dated 29.11.1979. The alleged agreement was executed by Joginder Singh, son of Sunder Singh (father of defendants No.1 to 3), in favour of Banta Singh (plaintiff No.1) and Kartar Singh (father of plaintiff No.2 and proforma defendant No.6). The sale consideration was fixed at Rs.56,000.98 paise. A sum of Rs.30,000/- were allegedly paid by way of

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earnest money at the time of execution of the agreement. Subsequently, a further sum of Rs. 10,000/- were also given on 16.1.1980. But, later it transpired that late Joginder Singh had even previously entered into an agreement with defendants No.4 and 5, who had since filed a suit. The said suit was decreed by the trial Court. But in appeal, the said decree was set aside and suit was dismissed. However, the Regular Second Appeal was filed by Bhupender Singh and Niranjana Singh, which was pending before this Court. But, in the meanwhile, Joginder Singh had since passed away and his son compromised the matter with defendants No.4 and 5. The Regular Second Appeal was accordingly disposed of by this Court on 7.1.2005. And pursuant to the compromise, defendant No.3 executed a sale deed dated 22.4.2005, qua a land measuring 4K out of 13K 4M in favour of defendants No. 4 and 5. Therefore, the said sale deed was invalid, and not binding upon the rights of the plaintiffs. In the alternative, plaintiffs prayed for possession of an area measuring 9K 4M, or for recovery of Rs. 56,000.98 paise, along with interest.

On a consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that the agreement to sell dated 29.11.1979 (Ex. P1) was, in fact, drawn in a Bahi. Although, the recitals therein referred to an agreement between the parties, and it even bore the signatures of Joginder Singh, but the said document was vague for multiple reasons. Particularly, for there was only a reference to a land measuring 13K 4M, but not the specific khasra numbers in which it was comprised in. Likewise, name of the village in which the said land was situated was also not mentioned. Further, the witnesses examined by the plaintiffs admitted in their statements that the said Bahi always remained

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with Kartar Singh, i.e. father of plaintiff No.2 and defendant No.6. Not just that, an analysis thereof revealed that it was not being maintained in due and regular course of business, for many pages therein were kept blank. The said Bahi was not even page marked. None other than Bhajan Singh (plaintiff No.2) conceded, in his cross-examination, that a number of pages in the Bahi were kept blank. Further, it was conceded that said Bahi had never been attested or checked by the Market Committee. Although, Karam Singh (PW2) stated that a number of persons were present at the time of execution of the agreement, but neither any such witness was examined, nor signatures of any of those witnesses were obtained in the Bahi. Even the year in which the agreement was executed was not mentioned. And the alleged extension that was granted a year later, upon payment of some additional amount, rather appeared to have been effected prior to the execution of the agreement itself. The agreement as regards sale of an immovable property being drawn in a Bahi, instead led to an inference that there, indeed, was some money transactions between the parties, and the suit land was probably kept as collateral. Thus, it was concluded that the agreement propounded by the plaintiffs was imperfect, incomplete, vague and uncertain. Therefore, there was no concluded contract either between the parties, enforceable by way of specific performance. The plea that there was an oral agreement to sell between Joginder Singh, Banta Singh and Kartar Singh, and the writing in the Bahi was recorded merely as a memorandum, was also rejected, being beyond the pleaded case of the plaintiffs. And also for lack of any cogent evidence. Not just that, the agreement to sell was executed on 29.11.1979, whereas, the present suit was filed by the plaintiffs on 23.7.2007, i.e. after a lapse of 27 years. The plea

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that defendant No.3 promised to execute the sale deed post decision of the Regular Second Appeal filed by defendants No.4 and 5, also remained unsubstantiated. Further, plaintiff-Banta Singh and late Kartar Singh did not seek specific performance of the alleged agreement dated 29.11.1979 during the lifetime of Joginder Singh. That being so, the only and the inevitable conclusion that could be reached was: the suit being devoid of merit was liable to be dismissed. On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the findings recorded by both the courts were 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.

18.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO