

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

**RSA-5411-2016 (O&M)
Date of Decision:31.07.2018**

Vijay Singh

... Appellant

Versus

Ajay Kumar & another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Zorawar Singh Chauhan, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Defendant/appellant, Vijay Singh is in second appeal before this Court.

2. Brief facts of the case are that plaintiff-Ajay Kumar filed a suit against defendants, Vijay Singh and Shiv Lal for possession by way of specific performance for suit land measuring 24 kanals. It was averred that plaintiff had entered into an agreement to sell dated 06.10.2005 with defendant No.1-Vijay Singh pertaining to the suit land for a total sale consideration of Rs.5,50,000/- and out of which Rs.5,20,000/- was paid as earnest money. The target date for execution of the sale deed was fixed as 05.10.2006. Case set up on behalf of the plaintiff/respondent was that he had always remained ready and willing to perform his part of the contract but defendant/appellant, Vijay Singh in collusion with defendant No.2, Shiv Lal in order to defeat the rights of the plaintiff executed a sale deed bearing No.859 dated 19.06.2006 in favour of Shiv Lal to a certain extent of the suit

land. On 05.10.2006 i.e. the date fixed for execution and registration of the sale deed, plaintiff asserted that he remained present in the office of the Sub Registrar, Mohindergarh along with balance sale consideration and other expenses but defendant No.1, Vijay Singh did not come present. Thereafter, a legal notice dated 09.10.2006 was got served by the plaintiff upon the defendant through his counsel and having evoked no response, the suit for specific performance was instituted.

3. Having been put to notice, defendant No.1, Vijay Singh (appellant herein) took a stand that he had not received any earnest money and that the plaintiff had used certain papers upon which the defendant's signatures had been affixed and had set up a fake agreement to sell.

4. Defendant No.2, Shiv Lal contested the suit by taking a plea that he was a bonafide purchaser pursuant to sale deed No.859 dated 19.06.2006 having been executed in his favour by Vijay Singh.

5. Suit filed by the plaintiff/respondent-Ajay Kumar was decreed in toto in terms of judgment dated 21.10.2013 passed by the trial Court. Two appeals arose from the judgment of the trial Court and filed before the lower Appellate Court. One at the hands of defendant No.1-Vijay Singh and the other by defendant No.2-Shiv Lal.

6. The lower Appellate Court vide judgment dated 04.02.2016 has decided both the appeals. The judgment and decree dated 21.10.2013 passed by the trial Court has been set aside qua defendant No.2-Shiv Lal and thereby protecting his rights emanating from sale deed No.859 dated 19.06.2006. However, relief for possession by way of specific performance stands decreed against defendant No.1-Vijay Singh.

7. It is against such brief factual backdrop that Vijay Singh is in second appeal before this Court.

8. Learned counsel representing the appellant argues that the Courts below have not appreciated the evidence in its true perspective. Further urged that the appellant had never entered into the agreement to sell dated 06.10.2005 and as such, had not received any amount towards earnest money. Counsel has further submitted that the appellant had infact borrowed Rs.1,50,000/- on interest @ 1.50% per month from the plaintiff/respondent and in lieu of that loan, the plaintiff/respondent had got executed the agreement to sell being security and the appellant herein had also put his signatures on some blank papers and which had been misused by the plaintiff/respondent. It is argued that such aspect has been overlooked by the Courts below while decreeing the suit for possession by way of specific performance against the appellant.

9. Having heard counsel for the appellant at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the appeal and the same deserves to be dismissed.

10. A concurrent finding stands recorded by both the Courts below with regard to entering into an agreement to sell dated 06.10.2005 inter se the parties. In this regard, plaintiff/respondent had examined Ved Parkash Arora, deed writer as PW1 and who deposed in clear terms that the agreement to sell dated 06.10.2005 was typed by him and it was entered in his register at Sr. No.807/5. Such witness also proved the copy of his register Ex.P2 and the endorsement in the register carrying specific details of the suit land measuring 24 kanals agreed to be sold by the present appellant to the

plaintiff/respondent for a sum of Rs.5,50,000/- and receipt of Rs.5,20,000/- in cash. The endorsement also brought out the date for execution of the sale deed i.e. 05.10.2006 upon balance payment of Rs.30,000/- to be made by the plaintiff/respondent, Ajay Kumar. Plaintiff/ respondent even examined PW5 Mukesh Kumar attesting witness to the agreement to sell and who duly corroborated the version that defendant No.1 Vijay Singh (appellant herein) had entered into an agreement to sell 24 kanals land and had received Rs.5,20,000/- in cash out of the total sale consideration of Rs.5,50,000/-. Also adduced on record towards evidence was the affidavit dated 05.10.2006, Ex.P4 of the plaintiff/respondent with regard to his presence before the Sub Registrar, Mohindergarh. The legal notice having been sent by plaintiff/respondent through counsel on 09.10.2006 to the defendant/appellant was proved by PW4 Rajender Clerk, as Ex.P9 and even the postal receipt was duly adduced as Ex.P10.

11. If the facts and circumstances of the case are collated together, no infirmity is found in the view taken by the Courts below with regard to the plaintiff/respondent having remained ready and willing to perform his part of the contract as per the agreement to sell dated 06.10.2005. The agreement to sell stands duly proved by examining the deed writer as also the marginal witness. Presence of the plaintiff/respondent before the Sub Registrar concerned on the date of execution and registration of the sale deed has also been proved. Legal notice was sent immediately thereafter by plaintiff/respondent to the defendant through his counsel and the same has also been proved on record. Even the suit for possession by way of specific performance was instituted by the plaintiff/respondent without any delay

thereafter. In view of the above, the findings recorded by the Courts below as regards readiness and willingness of the plaintiff/ respondent to perform his part of the contract arising out of agreement to sell dated 06.10.2005 are affirmed.

12. Case set up by the defendant (appellant herein) was that a fraud has been committed upon him. He did not deny his signatures on the agreement to sell but to the contrary, took a plea that certain blank papers carrying his signatures have been misused by the plaintiff/respondent to set up an agreement to sell in question. Under such circumstances, the onus was on the defendant/appellant to have led cogent and credible evidence to substantiate the plea of fraud and misrepresentation. Such onus has not been discharged.

13. Insofar as protecting the interest of defendant No.2, Shiv Lal and having reversed the findings of the trial Court qua him, the lower Appellate Court in the impugned judgment dated 04.02.2016 has recorded a finding with regard to Shiv Lal being a bonafide purchaser. In this regard, it has rightfully been observed that even though, all the parties were inhabitant of the same village, yet no evidence had come forth to reflect that the agreement to sell Ex.P1 was in the knowledge of any other inhabitant of the village. Furthermore, the agreement to sell had not been recorded in the revenue record. Further, the admitted position was that possession of the suit land measuring 24 kanals had never been delivered to the plaintiff/respondent. In the light of such observations, defendant No.2, Shiv Lal rightfully was held to be bonafide purchaser vide sale deed, Ex.P3 i.e. sale deed No.859 dated 19.06.2006. Lower Appellate Court has held that

since plaintiff/respondent is entitled to specific performance of land measuring 24 kanals as per agreement Ex.P1 dated 06.10.2005 and the plaintiff/respondent has fallen short of 2 kanals 7 marlas on account of sale deed having been executed in favour of defendant No.2 Shiv Lal but since during the pendency of the suit present appellant has acquired more than 2 kanals and 7 marlas of land from his mother, as such, directions have been issued for the present appellant to execute the sale deed regarding 21 kanals 13 marlas of land from the suit land forming subject matter of the agreement to sell and to make good the short fall of 2 kanals and 7 marlas from the land that he has received by inheritance from his mother.

14. The judgment passed by the lower Appellate Court is based on cogent and valid reasoning. No infirmity or perversity is found therein.

15. Appeal does not raise any question of law.

16. Dismissed.

31.07.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No