

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

**Regular Second Appeal No. 5761 of 2016 (O&M)
Date of Decision: January 18, 2018.**

Ajmer Singh

.....APPELLANT(s).

VERSUS

Sarwan Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sarabjit Singh Khaira, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

Plaintiff, his mother and sister, who were co-sharer to the extent of 4 kanals 4 marlas of land in suit agreed to sell the same in favour of defendant. On the basis of that agreement, a suit for specific performance was filed, which was decreed on 25.07.2006 and registered sale deed in favour of defendant was executed through Local Commissioner on 17.12.2008. The plaintiff filed the present suit on 03.03.2010 with the plea that vide agreement dated 26.10.2006, the defendant agreed that plaintiff will continue to cultivate the suit land and he would raise boundary wall on his plot. The plaintiff sought declaration of title and possession over the suit land on the basis of this compromise and also modification of the judgment and decree dated 25.07.2006 passed in the civil suit filed by the defendant.

This fact is admitted that as per the decree dated 25.07.2006, sale deed dated 17.12.2008 (Ex.D1) was executed in favour of defendant and vide rapat (Ex.D2), possession of the suit land was also handed over to him.

Now, the question which arise for consideration is as to whether the compromise dated 26.10.2005 invalidate the decree dated 25.07.2006 and the sale deed executed on the basis of that decree. Plaintiff never propounded this compromise before the executing Court. Even otherwise, this compromise, which was not duly proved, is not a document of title. In order to seek title of the suit property based on this document, plaintiff was required to file suit for specific performance of the agreement, which was also not duly proved. Reference in this regard can be made to the observations of learned trial Court in para 13 and 14 of the judgment, which reads as follows:-

13. Now coming to the testimony of PW-2 and PW-3; Examination in chief of both these witness in the shape of affidavit is cut-copy-paste each other. Whereas, in his cross-examination, PW-2 has admitted that he has not signed the alleged compromise Ex. P-2.

Also, there is specific admission by him that in Ex. P-2, there was description regarding Khasra number of suit land given by at the time of execution on 26.10.2006. But perusal of Ex. P-2 clearly falsify his claim as there is no such reference of any Khasra number therein. Rather, PW-2 has admitted that about 10-20 days before alleged compromise dated 26.10.2006, the

plaintiff had executed sale deed in favour of the defendant. In his further cross-examination, PW-2 has admitted to the extent that no compromise between the parties was effected in his presence. Hence, the deposition of PW-2 is clearly not of any use for the purpose of proving issues, with which plaintiff was burden.

14. Similarly, PW-3 Satwinder Singh has admitted in the very first of his cross-examination that he knows nothing about alleged compromise dated 26.10.2006 i.e Ex. P-2. Further, the alleged compromise Ex.P-2 was not effected between the parties in his presence. He has also admitted that on the basis of Judgment and decree between plaintiff and defendant, the suit land was conveyed in favour of defendant Sarwan Singh and thereafter, the defendant was entered into the possession on the suit land on 08.10.2009. Hence, what to talk of aiding the plea of plaintiff, even testimony of PW-3 is badly injuring the case of the plaintiff.

Learned counsel for the appellant could not rebut the observations of the Court below that compromise propounded by the plaintiff is not duly proved and even otherwise, this compromise vests no title over the suit land, particularly when the sale deed in respect of suit land has already been executed in favour of the defendant. It is also admitted that plaintiff has not filed any appeal against the judgment and decree dated 25.07.2006, which has attained finality.

Keeping in view the above facts that both the Courts below

have not committed any error of law while observing that plaintiff has miserably failed to prove his title and possession over the suit land.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

January 18, 2018.
Jyoti-II/Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>