

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

RSA No.4623 of 2015 (O&M)

Date of Decision: August 06, 2018

Gurpreet Singh

...Appellant

Versus

Kulwant Singh and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.G.S.Nagra, Advocate for the appellant.

HARINDER SINGH SIDHU, J.

The plaintiff has filed this Regular Second Appeal impugning the judgments of the courts below, whereby, his suit for specific performance of agreement to sell dated 17.6.2009 has only been decreed for the alternative relief of recovery of the earnest money and damages.

The case of the plaintiff was that the defendants had entered into an agreement to sell dated 17.6.2009 with the plaintiff for land measuring 16 Kanals along with 1/3rd share of tube-well connection i.e. 320/1372 share of the land measuring 68 Kanals 12 Marlas, bearing Khasra No.3//8 (7-3), 9(8-0), 10(8-0), 11/1(2-0), 22/1 (6-0), 12//9(5-18), 11(7-11), 12(8-0), 19(8-0), 20(8-0), Khata Khatauni No.74/120, 206/333, as entered in the Jamabandi for the year 2004-05, situated at village Nissoke, Tehsil Ajnala, District Amritsar, along with passage at the rate of ₹ 4,25,000/- per acre. The defendants received a sum of ₹ 6,00,000/- at the time of executing the agreement to sell. The sale deed was agreed to be executed on or before 20.5.2010. On 20.5.2010, the defendants further received an amount of ₹ 80,000/- and the receipt thereof was scribed at the backside of the agreement. The date of execution of the sale deed was extended to

28.4.2011. On 28.4.2011, the plaintiff remained present before the office of Joint Sub Registrar, Ramdas till 5.00 pm, but the defendants did not turn up. He then got marked his presence through application as well as by way of affidavit. A legal notice dated 9.5.2011 was served upon the defendants requesting them to execute the sale-deed, but in vain. Hence, the suit praying for a decree of possession by way of specific performance of agreement to sell dated 17.06.2009 or in the alternative, suit for recovery of ₹ 6,80,000/- as earnest money and ₹ 6,00,000/- as damages as agreed in the agreement to sell and for permanent injunction restraining the defendants or their agents from alienating the suit property in any manner.

The case of the defendants was that the plaintiff had not approached the Court with clean hands and was guilty of suppression of material facts. It was averred that he was a commission agent. The defendants were agriculturists and selling their crops through him. The defendants used to take some money in advance from the plaintiff for their agricultural operations and the accounts used to be settled at the time of every harvesting season. The plaintiff while advancing the amount to the defendants used to get their thumb impressions and signatures on blank papers as token of security and after settlement of accounts at the time of harvesting season he used to return the blank papers. The plaintiff made some illegal entries in his account books. When the defendants objected to it a dispute arose between them, which could not be resolved. Thereafter, the defendants started selling their crops at another commission agent's shop. The plaintiff had prepared a bogus agreement to sell using the blank papers signed and thumb-marked by the defendants. It was denied that the

defendants had entered into the agreement to sell their land to the plaintiff, and received the earnest money as alleged.

On behalf of the plaintiff, the plaintiff Gurpeet Singh appeared as PW1 and reiterated the contents of the plaint. In cross-examination, he admitted that he was a commission agent. He could not disclose the name of the scribe of the agreement to sell. PW3 Jagir Singh deposed about the execution of agreement to sell. He further deposed that on 20.5.2010, the defendants received a sum of ₹ 80,000/- from the plaintiff in his presence. He identified his signatures on the endorsement Ex.P2. He deposed that he was attesting witness only to the endorsement at the back of the agreement, but was not present at the time of execution of agreement. He also admitted that the plaintiff is working as a commission agent and that the defendants used to sell their crops at the shop of the plaintiff and the defendants used to obtain advance amount from the plaintiff to be adjusted while selling the crop. He also admitted that the plaintiff used to obtain thumb impression/ signatures of the persons to whom he advanced money. He deposed that the market value of the land in the village was about ₹ 20,00,000/- per acre. PW4 Rahul Sharma deposed about the legal notice Ex.P6 sent to the defendants by the plaintiff through his advocate. PW5 Randhir Singh deposed about the execution of the agreement to sell Ex.P1 and identified his signatures on the same. He however could not disclose the name of the deed writer. He admitted that the plaintiff was his uncle in relation. PW6 Harpinder Singh deposed about the execution of the agreement to sell and that on 20.5.2010, the defendants had further received an amount of ₹ 80,000/- in his presence. He identified his signatures over the endorsement

Ex.P2. He also admitted that the plaintiff is working as commission agent.

The defendants examined Gurcharan Singh as DW1, who deposed that the plaintiff was running a commission agency. He deposed that the defendants were agriculturists and had been selling their crop at the shop of the plaintiff for the last more than 10 years. The defendants used to take advance money from the plaintiff, which was adjusted at the time of selling the crop. He deposed that in the year 2009 a dispute arose between the parties regarding settlement of accounts. Thereafter the defendants stopped selling their crops through the commission agency of the plaintiff. He deposed that at the time of advancing money to the defendants the plaintiff used to obtain their thumb impression on blank papers as security for the advance amount. He deposed that the plaintiff had filed similar suits against his other customers in different courts. He further deposed that defendant No.1 and his son did not own any other land and that the land in dispute was their only source of livelihood. Defendant Kulwant Singh appeared as DW3. He identified his photographs in circle 'A' and signature and thumb impressions 'B' 'C' 'D' and 'E' over the agreement Ex.P1.

The learned Trial Court on appreciation of the evidence concluded that the plaintiff had proved that the defendants had executed the agreement to sell dated 17.06.2009 in his favour. However, as the plaintiff had concealed the material fact that he was a commission agent and that the defendants used to sell their crop at his shop and he used to obtain signatures/ thumb impression of the defendants and other persons at the time of advancing money on blank papers and he had further failed to prove that the defendants executed the agreement to sell their land with intention to sell

their land, the plaintiff was not entitled to the relief of specific performance of the agreement to sell. But as he had proved the agreement to sell Ex.P1 and endorsement Ex.P2 as per which a sum of ₹ 6,80,000/- had been received by the defendants and the defendants had agreed to repay this amount along with damages of ₹ 6,00,000/- in case of violation of terms and conditions of the agreement, the plaintiff was held entitled to recovery of earnest money ₹ 6,80,000/- and ₹ 6,00,000/- as damages from the defendants. Thus, the suit for possession by way of specific performance of the agreement to sell was dismissed but the alternative relief for recovery as aforementioned was decreed.

The plaintiff filed an appeal against the judgment of the Trial Court to the extent of not granting the relief of specific performance. The defendants filed cross-objections against the judgment of the Trial Court, whereby it had decreed the suit of the plaintiff for alternative relief of recovery. Both the appeal and the cross-objections were dismissed by the Additional District Judge, Amritsar vide judgment dated 20.5.2015. The findings of the learned trial Court were affirmed.

Findings of fact have been recorded by the courts. It has not been shown as to how those findings are perverse or against the evidence on record. No substantial question of law arises for decision in this case.

Accordingly, there is no merit in the appeal and the same is dismissed.

August 06, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No

