

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

**RSA No.2134 of 2014**

Gurpreet Singh

....Appellant

Versus

Chamkaur Singh and Ors.

....Respondents

And

**RSA No.130 of 2014**

Gurpreet Singh

....Appellant

Versus

Chamkaur Singh and Ors.

....Respondents

**Date of Order: 26.02.2018**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. S.S. Salar, Advocate for the appellant.

Mr. Aakash Singla, Advocate for the respondents.

**AMIT RAWAL, J (ORAL)**

This common order of mine shall dispose of aforesaid two appeals since common questions of law and facts are involved in the same.

These appeals arise out of the two suits i.e (i) Civil Suit No.664 dated 26.9.2005 titled Gurpreet Singh Vs. Tara Singh, seeking declaration for cancellation of alleged agreement to sell dated 17.12.2004 in respect of land measuring 6 bighas 5 biswas with consequential relief of permanent injunction restraining the defendant from taking possession illegally (for short "Civil Suit No.1") and the another (ii) Civil Suit No.934 dated 31.10.2005 titled Tara Singh Vs. Gurpreet Singh seeking possession by way of specific performance of agreement to sell dated 17.12.2004 and writing dated 28.04.2005 of land measuring 6 bighas 5 biswas with alternative relief of recovery of Rs.3,00,000/- (Rs.1,50,000/- as earnest money and Rs.1,50,000/- as damages) with the further relief of permanent/prohibitory

injunction, restraining the defendants from alienating the suit property by way of sale, mortgage, gift, exchange etc (for short “Civil Suit No.2”). Both the suits were consolidated and decided together. Two appeals filed by Gurpreet Singh against the said judgment and decree dated 09.9.2011 passed by the trial Court, have been dismissed, hence the present two regular second appeals. For the sake of convenience, the facts are being extracted from RSA No.2134 of 2014.

In Civil Suit No.1, Gurpreet Singh, the vendor/owner of the land measuring 6 Bighas 5 Biswas comprised in Khewat No.270/434 Khasra no.1439/836/2-15, 1440/837/3-10 situated in the revenue estate of village Dhano, Tehsil Malerkotla, District Sangrur stated that defendant-Tara Singh (since deceased), the vendee who instituted the, second suit, for possession by way of specific performance of that very agreement to sell was influential person being very close to his father. Relations between the mother and father of plaintiff Gurpreet Singh were strained due to which father of the plaintiff left the home to some unknown place about 20 years back and since then, plaintiff-Gurpreet Singh along with his mother and sister came to village Benra, Tehsil Dhuri to reside in the parental house of her mother, but about 2-1/2 years back of filing suit, the maternal grand mother of plaintiff got annoyed from them and turned out plaintiff, his sister and mother out of the house, due to which they were constrained to live in a small house, purchased by maternal grandfather for plaintiff and his mother. Plaintiff-Gurpreet Singh in, Suit No.1, had borrowed an amount of Rs.20,000/- from the defendant-Tara Singh about four years back and thereafter he again borrowed Rs.40,000/- and the defendant after adding interest, got executed a pronote and receipt of Rs.95,000/- from the plaintiff

on 24.11.2002. On 17.12.2004, Tara Singh calculated the amount after adding interest to be Rs.1,14,250/-. Since plaintiff-Gurpreet Singh needed Rs.30,000/- , the defendant agreed to pay the same with the condition that the plaintiff would sign an agreement with due endorsement of receipt of Rs.1,50,000/- in lieu of the alleged pronote amount out of which Rs.20,000/- was to be paid within week and the remaining amount as additional amount of interest. Having full faith, plaintiff endorsed the receipt of Rs.1,50,000/- on the impugned agreement dated 17.12.2004, which was a money transaction. The plaintiff was also ready and willing to settle the account with the defendant but the defendant converted the same into an agreement to sell and in these background, necessity arose to seek cancellation of the same.

Afore mentioned, first suit, was contested by the defendant and the plaintiff in the, second suit, on the premise that in fact it was an agreement for sale of land @ Rs.87,500/- per bigha and the vendor-Gurpreet Singh received Rs1,50,000/- as earnest money. The stipulated date for execution and registration of the sale deed was 30.4.2005. It was stated that the pronote and receipt dated 24.11.2002 was a separate transaction and had no concern with the agreement to sell dated 17.12.2004. It was clarified that the stipulated date was mutually extended from 30.4.2005 to 25.10.2005 and a writing to this effect was also executed on the back page of the agreement to sell. It was told by vendor-Gurpreet Singh that on 03.09.2005 during the days of minority of the plaintiff, his father Chamkaur Singh tried to sell the property to some other person against the interest of the plaintiff. The plaintiff through his mother-Rajinder Kaur had filed a suit bearing No.848 dated 05.12.1991 for issuance of permanent prohibitory

injunction restraining his father from alienating the suit land before the Sub Judge, II Class, Malerkotla along with an application under Order 39 Rules 1 and 2 CPC. In those proceedings, an interim injunction was granted and a note in that regard was recorded in the jamabandi. It was necessary to get the said note deleted prior to the execution of sale deed. It was also disclosed by Gurpreet Singh that he on attaining the majority and owing to the Note given in the jamabandi filed suit bearing No.278 dated 03.09.2005, which was pending in the court of Addl. Civil Judge (Sr. Divn.), Malerkotla. He also handed over a photo copy of plaint dated 03.09.2005 to the defendant Tara Singh (since deceased). Plaintiff-Gurpreet Singh/vendor admitted that he was in dire need of money and to meet his financial problems, had entered into an agreement to sell the suit land. In the aforesaid plaint, the vendor had admitted the execution of the agreement to sell dated 17.12.2004.

From the pleadings of parties, the learned trial Court framed the following issues:

- “1. Whether the plaintiff Gurpreet Singh is entitled for declaration for cancellation of agreement to sell dated 17.12.2004?OPP*
- 2. Whether the plaintiff Gurpreet Singh is entitled to permanent injunction, as prayed for?OPP*
- 3. Whether suit is not properly valued for purpose of court fee?OPD*
- 4. Whether the plaintiff Gurpreet Singh has concealed material facts from the court, if so, its effect?OPP*
- 5. Whether the suit of the plaintiff Gurpreet Singh is liable to be dismissed under Order 7 Rule 11 CPC?OPD*
- 6. Whether the defendant Tara Singh is entitled to*

*possession of by way of specific performance of agreement to sell dated 17.12.2004 and writing dated 28.4.2005?OPD*

*7. Whether the defendant Tara Singh is entitled for alternative relief of recovery of Rs.3,00,000/- as prayed for?OPD*

*8. Whether the defendant Tara Singh is entitled to permanent injunction as prayed for?OPD*

*9. Whether the defendant Tara Singh has always been ready and willing to perform his part of agreement?OPD*

*10. Relief.”*

Both the parties adduced evidence. The trial Court on the preponderance of evidence and pleadings held that the vendor had acknowledged the execution of the agreement. The trial Court while disagreeing with the pleadings qua the cancellation of the agreement to be a money transaction, dismissed the suit of the vendor and decreed the suit of the vendee (plaintiff in Civil suit No.934 dated 31.10.2005) thereby granting the relief of specific performance of agreement to sell dated 17.12.2004.

The Vendor-Gurpreet Singh challenged the judgment and decrees passed by the trial Court, which were dismissed by the lower Appellate Court vide judgment and decree dated 09.10.2013. In this background, the present appeals have been filed.

Learned counsel for the appellant submitted that the findings of the courts below is wholly perverse and illegal as it was not an agreement to sell but a money transaction. Agreement to sell was witnessed by Jagtar Singh, who himself scribed the same but in cross examination, he admitted that there were 5 to 7 shops in the Tehsil Complex but did not remember

who typed the agreement to sell (Ex.D7). The agreement was also not entered in his register. He had witnessed the document at the instance of plaintiff-Gurpreet Singh despite the fact that he had not seen the disputed property or knew the specific khasra numbers. He had no knowledge about the prior transaction between the parties but the aforesaid piece of evidence read with the pleadings of the suit lead to an irresistible conclusion that it was not agreement to sell, but money transaction.

Learned counsel for the appellant, further submitted, that both the courts below have failed to appreciate that the vendor did not execute any agreement. It was only for securing a loan inasmuch as the vendor did not bother to place on record any material qua liability and capacity of the appellant to sell the property. The endorsement had only signatures of Jagtar Singh and Gurpreet Singh as no other person had signed the endorsement. Both the courts below failed to appreciate that admittedly the pronote was executed on 24.11.2002 for borrowing an amount of Rs.95,000/- and the agreement, dated 17.12.2004, was outcome of the same. Thus the judgments and decrees passed by both the courts below suffer from illegality and the same be set aside.

Per contra, learned counsel for the vendee submitted that the story putforth in the plaint of suit No.1 was an afterthought as the vendor had not been able to place on record any material much less cogent evidence to belie the admission in Civil suit No.278 dated 03.09.2005 wherein he admitted the execution of the agreement to sell though the suit was dismissed in default. The pleadings of the undecided civil suit can always be looked into evidence as per provisions of Section 33 of the Indian Evidence Act. The concurrent findings cannot be set aside until and unless

there is grave irregularity, which has not been pointed out during the course of hearing. There is no reason for setting aside a well reasoned judgments passed by both the courts below inasmuch as no substantial question of law arises in the present appeals.

After hearing learned counsel for the parties and appraising the paper book, with the able assistance of both the counsel for the parties, I am of the view that there is no merit in the contentions of learned counsel for the appellant. The vendor had not been able to belie the specific averments made paragraph No.6 of Civil suit No.278 dated 03.09.2005 wherein the execution of the agreement to sell dated 17.12.2004 (Ex.D2) was not denied. Paragraph Nos.6 & 7 of the plaint is reproduced hereunder:

*“ 6. That since the plaintiff has attained the age of majority the plaintiff has every legal right to alienate the suit land in any manner to any person and the judgment and decree dated 19.04.1994 has become redundant. The plaintiff is in dire need of the money and to meet his financial problems and the plaintiff has entered into an agreement to sell the suit land with Tara Singh son of Karam Singh son of Dewan Singh resident of village Dhano, Tehsil Malerkotla at the rate of Rs. 87,500-00 per bigha which is a attractive rate and has received Rs. 1,50,000-00 as earnest money from the said Tara Singh. Photostat copy of the agreement to sell dated 17.12.2004 is attached with the plaint. Original will be got produced from Tara Singh.*

*7. That since the plaintiff has attained the age of majority the above said note which still exists in the column of remarks of the jamabandi is liable to be deleted as the judgment and decree dated 19.4.1994 referred above have become redundant.”*

The first suit was instituted on 26.09.2005 whereas the vendee had instituted the suit after the expiry of the stipulated period i.e on 31.10.2005. Since the signatures on agreement to sell had not been denied and the fact that vendor failed to prove it to be a document of security, therefore the submission of learned counsel for the appellant does not, in any manner cast any doubt especially when the vendor has actually admitted to have entered into agreement to sell as he was in dire need of money. It is in that background, the suit for setting aside the entry in the jamabandi got recorded in Civil Suit No.848 dated 05.12.1991 decided on 19.4.1994 was instituted. The deposition made in the cross examination of the attesting witness Jagtar Singh rather proved the case of the vendee that it was agreement to sell. On query to a specific question in the cross examination, Jagtar Singh admitted that he had signed the agreement after admitting its contents to be correct. The aforesaid piece of cross examination was basically in a direction to prove the fact as to which of the parties had actually agreed to. It is common practice among the vendors to wriggle out of agreement to sell over a period of time from honoring their obligation or perform their part of contract owing to various circumstances like change in the price of the property and upon advice of certain other property dealers and of course influenced by an act of greed, the present case is of such kind.

In view of the aforesaid discussion, I find that the present appeals are bereft of any merit and no ground is made out to interfere with the impugned judgment and decrees of both the courts below.

Dismissed.

**February 26, 2018**  
**manoj**

**(AMIT RAWAL)**  
**JUDGE**

Whether speaking/reasoned: Yes/No  
Whether Reportable : Yes/No