

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

**RSA No.2237 of 2014
Date of Decision: 19.04.2018**

Kuldeep Kaur and another

.....Appellants

Vs.

Roopinder Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Arun Jain, Senior Advocate, for
Mr.M.S.Rana, Advocate, for the appellants.

Mr.S.K.Singla, Advocate, for respondent No.1.

RITU BAHRI, J. (ORAL)

The appellants/defendants No.3 and 4 have come up in appeal against the judgment of the trial court dated 06.04.2011 and learned appellate Court dated 04.03.2014 whereby suit of the plaintiff for possession through specific performance of the agreement to sell dated 01.08.2007 regarding land measuring 26 kanal 10 marlas fully detailed and described with the head note of the plaint has been decreed.

The case pleaded by the plaintiff that on 01.08.2007, defendants No.1 and 2 entered into an agreement to sell their land. The defendant No.1 and 2 had committed breach of the terms and conditions of the agreement and subsequently it had come to the knowledge of plaintiff that defendants No.3 and 4/present appellants through sale deed dated 06.08.2007 before the stipulated dated. Hence, the present suit was filed.

Defendants also pleaded that plaintiff filed an application to the higher authorities on which a criminal case under Section 420 IPC etc. had also been registered against defendants No.1 and 2. The plea was also taken that defendants No.1 and 2 filed their written statement that suit of the plaintiff was not maintainable in the present form and plaintiff along with his maternal uncle had beaten the answering defendants and had caused injuries on the head of defendant No.2 and a criminal case under Section 307

subsequently the case was cancelled by the prosecution with the collusion of plaintiff and his maternal uncle and a criminal complaint is pending against the plaintiff.

On merits, the answering defendants denied the allegations and took the plea that they never entered into any alleged agreement to sell their land with the plaintiff and alleged agreement was forged and fabricated document and was without consideration. In the written statement, they took a plea that the suit is not maintainable and the same is also time barred. They inspected the revenue record before execution of agreement to sell and sale deed. After execution of abovesaid agreement dated 06.07.2007, in the roznamcha of Halqa Patwari rapat No.638 dated 28.07.2007 and also entered a rapat in the jamabandi for the year 2005-06 was also noted. So, they were very much in the knowledge of agreement dated 06.07.2007 of the answering defendants. Plaintiff with malafide intention got executed the agreement dated 01.08.2007 to harass the answering defendants. Answering defendants after paying full amount to defendants No.1 and 2 executed the sale deed on 06.08.2007 and have taken the possession from defendants No.1 and 2 on the basis of registered sale deed. The learned trial Court decreed the suit of the plaintiff after going through the evidence led by the plaintiff. The following issues were framed by the learned trial Court:

1. Whether the plaintiff is entitled for decree of possession through specific performance on the basis of agreement dated 01.08.2007 ? OPP
2. Whether plaintiff is entitled to recover the alleged amount alongwith interest being alternative relief ? OPP
3. Whether the suit of plaintiff is not maintainable in the present form ? OPD.
4. Whether the suit of plaintiff is time barred? OPD.
5. Whether defendants No.3 and 4 are bonafide purchaser, if so its effect? OPD.
6. Relief.

In paragraph 31 of the judgment of the trial Court, it was held that defendants No.3 and 4/present appellants did not lead any evidence to

prove the execution of the agreement dated 06.08.2007 Ex.D7 in their favour. In the absence of testimony of any witnesses, they had failed to prove that they were bonafide purchaser and since the defendants No.3 and 4 were in the knowledge of agreement which was in favour of plaintiff. So, they are in any manner cannot be said to be protected being bonafide purchasers.

In the appellate Court, defendants No.3 and 4 made an application under Order 41 Rule 27 CPC to produce the witness as additional evidence i.e. (a) Satish Kumar, Stamp Vendor, Mini Civil Secretariat, Faridkot, along with his register record for selling the stamp papers 06.07.2007 bearing entry No.1444 (b) Sh.Hardeep Singh son of Balwant Singh resident of Village Harnauli, Rajasthan (c) Sh.Hargobind Singh son of Puran Singh resident of Harindera Nagar, Faridkot (d) Sh.Dawinder Pal Singh, Advocate (Notary Public) District Complex Faridkot.(e) Concerned Clerk of Deputy Commissioner's office, who is custodian of old register of stamp vendors of Faridkot, alongwith register of Satish Kumar Stamp Vendor bearing Entry No.1444 dated 06.07.2007.

The aforesaid evidences were required to be led to prove the agreement D7 dated 06.07.2007 in favour of defendants No.3 and 4. This application was dismissed by the learned appellate Court vide order dated 04.03.2014 by holding that all the aforesaid evidences were well within the knowledge of the defendants No.3 and 4 through out the trial and they had not taken due diligence at the time of trial. One of the witnesses, Hargobind Singh had already appeared on their behalf in the trial Court but despite giving him sufficient opportunities, he did not come up for his cross-examination.

A perusal of the application shows that defendants No.3 and 4/present appellants had purchased the stamp papers from Satish Kumar, Stamp Vendor which was entered at Sr.No.1444 in his register and even the Clerk of DC Office who was custodian of all register of stamp vendors then they would be necessary to prove as to whether the stamp papers were purchased on 06.07.2007 and the witness Mr.Dawinder Pal Singh, Advocate, and the scribe of the agreement are also necessary parties to prove the execution of the agreement. Vide order (Ex.P-6) which is part of the trial

Court, plaintiff had got registered a criminal case against defendants No.1 and 2 regarding cheating and in the said criminal case, defendants No.1 and 2 were convicted by the Court. So, once the allegations of cheating stands proved against defendants No.1 and 2 and in favour of plaintiff, the present application under Order 41 Rule 27 CPC filed by defendants No.3 and 4/present appellants is required to be allowed for proper decision of the civil suit as these witnesses would be necessary for proving as to whether the defendants No.1 and 2 actually executed the sale deed and agreement in favour of defendants No.3 and 4. Subsequently, examination of agreement to sell dated 06.07.2007 (Ex.D7), original agreement to sell dated 01.08.2007 and other evidence would be very necessary for the correct decision of the civil suit.

In view of the above, the present appeal is partly allowed by setting aside the impugned order dated 04.03.2014 and the matter is remanded back to the learned appellate Court for fresh decision after calling the following witness:

(a) Satish Kumar, Stamp Vendor, Mini Civil Secretariat, Faridkot, along with his register record for selling the stamp papers 06.07.2007 bearing entry No.1444.

(b) Sh.Hardeep Singh son of Balwant Singh resident of Village Harnauli, Rajasthan.

(d) Sh.Dawinder Pal Singh, Advocate (Notary Public) District Complex Faridkot.

(e) Concerned Clerk of Deputy Commissioner's office, who is custodian of old register of stamp vendors of Faridkot, alongwith register of Satish Kumar Stamp Vendor bearing Entry No.1444 dated 06.07.2007.

The learned appellate Court shall examine the above-mentioned witnesses and pass the fresh order within 6 months. Parties are directed to appear before the learned appellate Court within one month from the date of receipt of this order.

(RITU BAHRI)
JUDGE

19.04.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No