

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

RSA No.6740 of 2016

Date of Decision: 06.07.2018

Gurcharan Singh deceased through his LR Kamaljit Singh

.....Appellants

Vs.

Mangal deceased through his LRs and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Prashant Bansal, Advocate, for the appellants.

RITU BAHRI, J. (ORAL)

The appellant/plaintiff Gurcharan Singh has come up in regular second appeal against the judgment of the trial Court dated 25.02.2014 and learned appellate Court dated 18.10.2016 whereby, his suit for possession by way of specific performance has been dismissed.

The brief facts of the case are that the present suit has been filed by the plaintiff for possession by way of specific performance of agreement dated 22.04.1977 of agricultural land mentioned as per the details given in the plaint situated within the revenue limits of village Jansui, Tehsil Rajpura, Distt. Patiala on payment of Rs.9500/- to the defendant Mangal Singh. It is contended that Mangal Singh was owner in possession of the suit land and now defendants no.10 and 11 were owner in possession of the suit land as they had purchased the suit land during the pendency of dispute. Mangal Singh deceased agreed to sell the suit land above to the plaintiff for a total sale consideration Rs.22,500/- i.e. at the rate of Rs.9000/- per Kill and

executed an agreement to sell dated 22.04.1977 in his favour after receiving Rs.13,000/- as earnest money from him and further agreed to receive the balance amount of Rs.9500/- at the time of execution and registration of sale deed. The defendant agreed to execute the sale deed in favour of plaintiff on 17.01.1978 but with the mutual consent of both the parties the defendant Mangal Singh agreed to execute the sale deed on 30.06.1978. It was further averred that in the agreement to sell it was mentioned that possession of the suit land was transferred to the plaintiff, but in fact the possession was not handed over to him. The plaintiff was previously and now his legal heir was always ready and willing to perform his part of contract to get the sale deed executed after making the payment of balance sale consideration but defendant Mangal Singh will fully failed to execute the sale deed in favour of plaintiff and did not turn up before the office of Sub Registrar, Rajpura on 30.06.1978 to execute the sale deed in favour of plaintiff. It was further averred that during the pendency of present suit defendant No.9 Phunda Singh alias Partap Singh purchased the suit land and he was bound by the agreement to sell and the sale was hit by the principle of lis pendens. Said Phunda Singh son of Darshan Singh, further sold the suit land measuring 15 bighas 13 biswas to defendants No.10 and 11 vide sale deed dated 26.05.1998. the defendants No.10 and 1 also purchased the land measuring 1 bighas 17 biswas vide sale deed dated 01.02.1994 from Phunda Singh and again purchased land measuring 12 biswas from Darshan Singh son of Karam Singh vide sale deed dated 28.09.2005 i.e. during the pendency of the dispute as well as proceedings of the present suit. The defendants No.10 and 11 had intentionally purchased the suit land with an intention to deprive the rights of the plaintiff. The defendants No.10 and 11 purchased the suit land

from defendant No.9 as well as from Darshan Singh, who were defendants of present suit. It was further averred that the sale made by the defendants in favour of defendants 10 and 11 was hit by the principle of lis pendens. The plaintiff (deceased) approached Mangal Singh (deceased) in his village and requested him to execute the sale deed in his favour on receipt of balance sale consideration of Rs.9500/- but Mangal Singh flatly refused to do so. Hence, the necessity arose to file the present suit.

Upon notice, defendants had made objections that the suit was not maintainable as plaintiff has not come to the Court with clean hands, suit was barred under order 2 rule 2 CPC, plaintiff has no locus standi to file the suit and the same was barred by the principle of resjudicata, and the suit was liable to be dismissed.

After framing of issues, plaintiff has examined Sukhdev Singh, deed writer as PW-1 who deposed that he scribed the agreement Ex.P1 and he scribed the same at the instance of Gurbachan Singh and Mangal Singh . Mangal Singh had put his thumb impression upon the same after admitting the same to be true. Darshan singh and Pujari Bai were the marginal witnesses of the same. He further stated that no earnest money has been handed over to the defendant in his presence and also admitted thumb impression of Mangal Singh was obtained in the Hotel as he was old aged person. The other witnesses have been examined after the review of present suit. The original plaintiff Gurcharan Singh and defendant Mangal Singh have died and the marginal witness in respect of writing for extension of time for registration of sale deed has also been died. The only witness left is DarshanSingh son of Mangal Singh. The defendant Darshan Singh has not

agreement to sell examined Sukhdev Singh Bedi PW-1 and himself stepped into witness box as PW-2 and also examined PW-3 Mohinder Singh son of Pala Singh regarding writing in respect of sale deed.. Plaintiff examined PW-5 to prove the entry No.277 of the year 1976 in the deed writer register and further examined PW-6 to prove the signature of Darshan Singh on the agreement to sell and Vakalatnama filed by the defendant, receipt dated 13.12.2010 and affidavit dated 06.08.2010.

Learned trial Court has examined the agreement to sell and has dismissed the suit on the following grounds:-

(i) A perusal of agreement to sell dated 22.04.1977 clearly shows that the same does not describe the property and it is not clear the agreement to sell was regarding which land. This agreement clearly shows that the total area of land i.e. 15 bighas has been mentioned. It has been further mentioned that property in dispute was adjoining to the land of one Harnam Singh. It did not even show when the Mangal Singh was not having any other property in village Jansui except the suit land at that time. Thus it is clear that plaintiff has failed to show that the property was the same regarding which the alleged agreement to sell was executed between the parties. In the absence of evidence with regard to identity of the property, the suit for the specific performance could not be decreed.

(ii) The trial Court thereafter gave a finding that defendant Nos.9 to 11 were the bond fide purchaser, as the sale deed in favour of defendants No.10 and 11 was executed on 26.05.1998 and 01.02.1994. the suit was consigned to record room vide order dated 08.11.1993 and at that time no stay granted. Further stay granted by the High Court vide order dated 08.10.1990 was also not in operation as the same was dismissed by the

Hon'ble High Court vide order dated 31.05.2002. Thus it was clear that at the time of alleged sale deeds there was no stay regarding the suit property nor any litigation regarding suit property was pending. Hence, it was clear that alleged sale deed in favour of defendant No.10 and 11 were bond fide purchaser.

The learned appellate Court on appeal has affirmed the findings given by the trial Court. In paragraph 11, it has been observed that agreement to sell Ex.P1 reflects that no khasra number has been mentioned regarding the land intended to be purchased by the plaintiff. There was no specific description of the land measuring 15 bighas regarding which the agreement to sell has been entered into. However, it has been mentioned in the agreement to sell that the said land measuring 15 bighas was adjoining to Harnam Singh Mirzapur, but nothing had been proved on record by the plaintiff to establish the identity of the suit property. It was further important to mention here that in the agreement to sell it had been specifically mentioned that earnest money of Rs.13,000/- was received by respondent Mangal Singh in the presence of witnesses and the possession was delivered to the plaintiff. Since, possession had been given to the plaintiff, then the plaintiff could not have filed the present suit for possession on the basis of specific performance of agreement to sell and if the possession was not given as averred by the plaintiff then recital in the agreement to sell was not true which creates doubt about the due execution of the agreement to sell in question. The scribe of the agreement to sell Sukhdev Singh PW1 had stated that consideration was not passed in his presence. This witnesses did not support the case of the plaintiff and was

himself. However, when this witness was cross examined by the learned counsel for the defendant/Mangal Singh, he further affirmed that in his presence no money was given. Meaning thereby that deposition of this witness was contrary to the recital in the agreement to sell and he being the scribe of the agreement to sell and his statement that no consideration was passed in his presence certainly demolishes the case of the plaintiff that earnest money was given to the defendant-Mangal Singh. This witness had further deposed during his cross examination that thumb impression of Mangal Singh was obtained when he was in the hotel and not in the court. He further deposed that only Darshan Singh son of Mangal Singh attested the agreement as a witness, however, name of other witness Pujari Bai wife of Ishar Dass was got written from him and he was asked that the parties would obtain the signatures of Pujari Bai after going to the village. Not only this Karmajit Singh PW2 son of plaintiff during his cross examination had deposed that agreement to sell Ex.P1 was prepared in his presence, however, he stated that his signatures/thumb impressions were not obtained. He had stated that there was one Numbardar who signed the same along with Darshan Singh and his father and name of Numbardar was Pujari Bai, who had died but this statement of PW-2 was in clear contradiction to the statement of scribe PW-1, who stated that Pujari Bai did not put witness in his presence. He had further stated that in the agreement to sell khasra numbers were mentioned which again was not true. The necessary inference was that PW-2 was not present at the time of alleged execution of the agreement to sell. However, the plaintiff had examined Gurmit singh as PW-5, who had identified the signatures of his father Sukhdev Singh at point

entry by his father/scribe was made regarding the agreement to sell. He admitted that the agreement to sell was not prepared in his presence. In view of the above evidence on the record, it was clear that the plaintiff had failed to prove the factum of passing of consideration to the respondent Mangal Singh and even the due execution of the agreement to sell had not been proved on record. In the absence of evidence on record, learned appellate court has affirmed the findings given by the trial court by observing that plaintiff has failed to proved on record due execution of the agreement to sell, so this issue had been rightly decided by the learned trial court in favour of the plaintiff and against the defendant.

In the present case, the identity of the property has not been proved by leading evidence by the plaintiff/appellant as case of the plaintiff/appellant was that he was given the earnest money of Rs.13,000/- which was received by respondent Mangal Singh in the presence of witnesses and the possession was delivered to the plaintiff.

So in the light of the discussion, the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present regular second appeal stands dismissed.

(RITU BAHRI)
JUDGE

06.07.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No