

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.5585 of 2015 (O&M)

Date of Decision: May 14, 2018

Joginder Singh

...Petitioner

Versus

Mohinder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Naresh Kaushal, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-defendant No.1 is in Regular Second Appeal against the concurrent findings of facts and law, whereby the suit preferred by the respondent-plaintiff seeking specific performance of the agreement to sell dated 5.12.2000, instead of granting discretionary relief, has been decreed by ordering the defendant-appellant to pay the earnest money along with interest @ 9% per annum.

Respondent-plaintiff instituted the suit for specific performance of the agreement to sell, ibid against the payment of ₹10,00,000/- in respect of land agreed to be sold @ ₹2,60,000/- per acre. The stipulated date for execution and registration of the sale deed was 24.2.2003. The suit was filed on 11.3.2003. It was alleged that during the pendency of the suit, one sale deed was executed amongst defendant Nos.1 and 2, i.e., father and son on 9.6.2003, one during the subsistence of the agreement to sell, i.e., 13.2.2003 and another one dated 23.5.2001. The appellant-defendant did not disclose

the aforementioned fact and, therefore, cause of action, according to the averments, accrued for filing the suit.

The appellant-defendant contested the suit by denying the execution of the agreement to sell. Rather, it was stated that it was forged and fabricated document as the respondent-plaintiff in connivance with Lakhwinder Singh (son-in-law) had prepared the agreement to sell and for that, an FIR was got registered, though after going trial for ten years, Jaswant Singh etc. were acquitted. The payment of earnest money had also not been proved and, therefore, the Court should not have ordered for refund of the earnest money along with interest.

Mr.Naresh Kaushal, learned counsel appearing on behalf of appellant-defendant No.1 submitted that there was a complete nexus between Lakhwinder Singh (son-in-law), Mohinder Singh respondent-plaintiff and one Pritam Singh. There was a compromise between the parties in which consideration had been paid to Lakhwinder Singh on 5.10.2001 by the appellant-defendant No.1. The same had been brought on record, but the Courts below gave a different colour by holding it to be in connivance with the appellant. The said findings are totally perverse and result of misdirection. The appellant-defendant had a clear title as it was not subject to any terms of the agreement, *ibid* and, thus, urged this Court for setting-aside the findings under challenge.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel, for, the alleged FIR resulted into acquittal of the defendants and the revision filed, as per the submission of Mr.Kaushal, has also been dismissed. The alleged compromise dated

5.10.2001, as per the findings of the Courts, was not a genuine document, for, certain lines with regard to payment of amount paid to Lakhwinder Singh (son-in-law) of appellant-defendant No.1, who was instrumental in playing fraud on behalf of the appellant-defendant No.1, had been disbelieved. It was rather found that the agreement was result of fraud. Nothing prevented the appellant-defendant No.1 to execute the sale deed dated 9.6.2003 during the pendency of the suit and another one during the subsistence of the agreement to sell. All these factors weighed in the mind of the Courts below, for, in granting alternative relief, for, the defendant had lost the title in the aforementioned property.

In my view, the findings of the Courts below are based upon appreciation of evidence. The argument of the learned counsel is not able to bring the case within the realm of perversity to enable me to form a different opinion than the one arrived at.

For the reasons stated above, there is no illegality or perversity in the findings under challenge. No ground for interference is made out. Resultantly, the appeal is dismissed.

May 14, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No