

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM-14636-C-2015 and
RSA-5877-2015 (O&M)

Date of Decision: 7.5.2018

Gobinderjit Singh

....Appellant.

Versus

Amrik Singh and another

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

PRESENT: Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate for the appellant.

AJAY KUMAR MITTAL, ACJ.

1. Having remained unsuccessful before both the Courts below, the appellant-plaintiff No.2 has approached this Court by way of instant Regular Second Appeal challenging the judgment and decree dated 13.4.2015 passed by the District Judge, Amritsar, affirming that of the Additional Civil Judge (Senior Division), Ajnala, whereby the suit of the plaintiffs for possession by specific performance of the agreement dated 22.11.2005, was dismissed.

2. Sans unessentials, the facts of the case are that the plaintiffs filed a suit for possession and permanent injunction to the effect that the defendant-respondent No.1 being owner of the suit property entered into an agreement to sell dated 22.11.2005 with the plaintiffs @ ₹ 30,000/- per acre

and received an earnest money of ₹ 45,000/-. As per the agreement, the sale deed was to be executed and registered on or before 10.10.2006. Since the date 10.10.2006 being declared holiday, the plaintiffs along with their witnesses remained present in the office of Sub Registrar on 11.10.2006 but the defendant did not turn up. Being threatened by the defendant to alienate the property to some one else, the plaintiffs filed the suit for a decree of possession and permanent injunction. Upon notice, the defendant filed a written statement raising various preliminary objections. It was pleaded that the defendant had agreed to sell his land @ ₹ 30,000/- per acre and denied the receipt of earnest money of ₹ 45,000/-. It was further pleaded that the father of the plaintiffs was a commission agent with whom the defendant had dealings of selling his seasonal crops. According to the defendant, the father of the plaintiffs in connivance with the witnesses had prepared a document on the pretext that the said document was for a consideration of ₹ 30,000/- which was taken in advance and later on converted the said document into agreement to sell. The other averments made in the plaint were denied and a prayer for dismissal of the suit was made. The plaintiffs filed replication controverting the averments made in the written statement and reiterated that of the averments made in the plaint.

3. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether on 22.11.2005, the defendant entered into an agreement and received ₹ 45,000/- as earnest amount? OPP
2. Whether the plaintiffs remained ready and willing to perform their part of contract? OPP

3. Whether the agreement in question dated 22.11.2005 is a forged and fabricated document?
OPD
4. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD
5. Whether the suit is not maintainable? OPD
6. Relief.

4. On appreciation of the oral as well as documentary evidence led by the parties, the trial Court came to the conclusion that the alleged agreement to sell was surrounded by suspicious circumstances as the plaintiffs had failed to prove the execution of the agreement to sell by leading cogent and convincing evidence. Accordingly, the trial Court vide judgment and decree dated 22.8.2013 dismissed the suit of the plaintiffs. Feeling aggrieved, the plaintiffs took the matter in appeal and the lower appellate Court finding no illegality and infirmity in the findings of the trial Court, dismissed the appeal vide judgment and decree dated 13.4.2015. Hence, the present appeal claiming the following substantial questions of law:-

- “i. Whether the impugned judgments are result of misreading and misappreciation of evidence by the courts below?
- ii. Whether admission of title by the Vendor in pleadings, as well as in evidence, is sufficient to prove his title?
- iii. Whether inadequacy of consideration can be a ground to decline the relief of specific

performance?

- iv. whether the courts below have traversed beyond the pleadings of parties which has resulted in miscarriage of justice to the Appellant?
- v. Whether agreement in question can be split in parts, while declining the relief of specific performance?”

5. I have heard learned counsel for the appellant and have gone through the judgments and decrees with his assistance.

6. Learned counsel for the appellant has made an attempt to persuade this Court to re-appreciate the evidence led by the parties before the trial Court to differ with the opinion of the courts below which is not permissible in view of the provisions of Section 100 of the Code of Civil Procedure. The Courts below on appreciation of oral as well as documentary evidence had recorded a concurrent finding of fact that the plaintiffs had failed to prove due execution of the agreement to sell Ex.P1, by leading cogent and convincing evidence and, as such, the plaintiffs were not entitled to a decree of possession by way of specific performance of the agreement as the same was surrounded by suspicious circumstances. No misreading of evidence on record by the courts below had been shown by the learned counsel warranting interference by this Court in the regular second appeal.

7. No question of law, much less a substantial question of law arises in this appeal for consideration of this Court.

8. In view of the above, there is no merit in this appeal and the same is hereby dismissed. No costs.

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This is an application under Section 5 of the Limitation Act, 1963, for condonation of 52 days' delay in filing the appeal. Since, the appeal has been dismissed on merits, therefore, no further orders are required to be passed in the present application and the same is disposed of as such.

May 7, 2018
gbs

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No