

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

R.S.A. No 1305 of 2017 (O&M)

Date of decision : 19.01.2018

Joginder Singh (since deceased) through LR's & ors.Appellants

versus

Mehar Singh (since deceased) through LR's & ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Tarunveer Vashisht, Advocate
for the appellant.

RITU BAHRI, J. (Oral)

This regular second appeal is directed against the concurrent finding of facts recorded by the Court below whereby the suit of the plaintiff-appellant (herein after to be referred as 'the appellant') for specific performance of agreement to sell dated 01.02.1994 in respect of land measuring 08 bighas comprised in Khasra No. 68(4-0) 71 (4-0) situated in the revenue estate of Village Balheri, Tehsil Rajpura, District Patiala, has been dismissed.

The case of the appellant before the Court below was that he and respondent No. 1 to 6 are real brothers. Respondent No. 1 (now deceased) agreed to sell the above said land for sale consideration of Rs.1,36,000/- the appellant and an agreement to sell dated 01.12.1994 was reduced into writing. At the time of execution of agreement to sell, a sum of Rs.71,000/- was paid as earnest money. At that time, land falling in rectangle No. 68 was mortgaged with respondent Nos. 2 to 5 and respondent No. 1 agreed to get the land redeemed on or before 20.05.1995 and to execute the sale deed in favour of appellant on 16.06.1995 after getting the balance sale consideration. On stipulated date,

respondent No. 1 did not execute the sale deed nor he appeared before Sub Registrar. However, the appellant remained present in the office of Sub Registrar along with balance sale consideration and he got his presence marked by executing sworn affidavit. Further respondent No. 1 got the land of rectangle No. 68 redeemed and mutation No. 252 was sanctioned in this respect. Respondent No. 1 gave such part of suit land in exchange to respondent Nos. 2 to 5 by separate mutation No. 273 in order to defeat the rights of the appellant and to defraud him. Similarly, the land falling in rectangle No. 71 measuring 02 bighas 09 biswas was given to respondent No. 6 in partition by mutation No. 261 in order to defeat the rights of the appellant

The Courts below had given a concurrent finding of fact that the due execution of agreement to sell dated 01.02.1994 by respondent No. 1 in favour of the appellant was held to be highly doubtful, as respondent No. 1 brought sufficient evidence to prove that the appellant has sold his almost entire share of land to various persons for domestic expenses and his capacity to purchase the suit land from his brother does not appear to be probable.

Further as per deposition of P.W.1 Apar Singh he deposed that he has adopted one son of Joginder Singh-appellant and he is staying with the appellant. Thus, from this fact, it is clear that he is an interesting witness. Further in the cross examination of Apar Singh, he stated that on date of scribing he was present, he was present before the Sub Registrar and again said he had put his signatures before the Sub Registrar. But perusal of Ex P1 shows that it was scribed by Deed Writer Darshan Kumar and not scribed before Sub Registrar. Further he stated that the stamp paper on which the agreement was scribed was purchased by Mehar Singh on the same day when the agreement was written but perusal of the back side of agreement to sell shows that the stamp papers were

purchased on 15.12.1993 and the agreement was scribed on 01.02.1994.

P.W.2 who produced the photocopies of his register, in his examination in chief, he stated that Vasika Register for the year 1994 wherein he had made this entry at Sr. 183 dated 01.02.1994 has been lost and report in this regard has been lodged, as Mark A. but he further stated that he does not remember on which date his deed writer register containing entry at Sr. 183 dated 01.02.1994 was lost. This creates a doubt in the truthfulness of the statement of P.W.2. The appellant has failed to prove the DDR regarding the lost of register, as no witness from officials of police station was examined.

As per the handwriting and Handwriting and Finger Print Expert the thumb impression Mark Q1 was already present on blank paper and the body writings were written later on above the preexisting thumb impression and in this manner, the document Ex P1 was held to be forged and fabricated document. The appellant has failed to rebut the evidence of the D.W.6 Handwriting and Finger Print Expert by examination another Handwriting and Finger Print Expert Further the appellant has not produced the register of the deed writer to prove the thumb impression on agreement of sale.

D.W.1 Labh Singh has further alleged that the appellant has poor financial condition as he has to clear loan raised by him various people and thus he has sold his entire land. The details of the sale made by the appellant has been mentioned in para No. 28 of the Appellate Court judgment.

Thus, it is quite clear from the judgments of both the Courts below that the appellant was in poor financial condition and he has merely created document of his presence and there is no supporting evidence about his capacity on that date to pay balance sale consideration or to bear necessary expenses.

Further P.W.4 Joginder Singh in his cross examination deposed that the stamp

paper for sale deed was required to be purchased from Government Treasury, Rajpura and he did not purchase stamp paper on that day. Then P.W.4 came up with that excuse that he had to purchase stamp paper with respondent No. 1. The appellant miserably failed to prove his readiness and willingness.

Thus, the finding of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

January 19 2018
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No