

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

1. XOBJC-16-C-2018 in/and
RSA No.1482 of 2017 (O&M)
Date of decision : 31.05.2018

Jasvinder Singh

...Appellant

Versus

Satnam Singh (deceased) through LRs and others

...Respondents

2. RSA No.1527 of 2017 (O&M)
Date of decision : 31.05.2018

Jasvinder Singh

...Appellant

Versus

Surender Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Inderjeet Singh, Advocate for the appellant.
(In both appeals)

Mr. G.C. Shahpuri, Advocate
for respondent No.1(i)/Cross-Objector.
(In RSA No.1482 of 2017)

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The

judgment is being released.

CM No.8259-C of 2018 in XOBJC-16-C-2018 in RSA No.1482 of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 271 days in filing the cross objections in RSA No.1482 of 2017 is condoned.

Application is allowed.

Main cases

By this judgment, RSA Nos.1482 and 1527 of 2017 and Cross-Objection No.16-C of 2018 shall stand disposed of as both the appeals and cross-objections arise out of the same suit between the same parties and issues which arise for determination are also common. Learned counsel for the parties have agreed that these appeals can be disposed of by a common judgment.

The plaintiff-appellant has filed these two appeals against the judgment passed by the First Appellate Court, partly decreeing the suit for possession by way of specific performance of the agreement to sell while granting the alternative relief of refund of the earnest money alongwith interest, whereas cross-objections have been filed by the defendants claiming that even refund could not be ordered.

Late Sh. Satnam Singh was owner in possession of the land. He is alleged to have entered into an agreement to sell with the plaintiff with respect to the land measuring 11 kanals and 8 marlas on 03.05.2003 for a total sale consideration of ₹12,00,000/- out of which ₹2,00,000/- was received as an earnest money. It is further pleaded case of the

plaintiff that Satnam Singh subsequently on 17.11.2003 delivered the possession of the land measuring 9 kanals and 8 marlas to the plaintiff.

The defendants contested the suit and pleaded that in fact Satnam Singh was under the influence of liquor and his signatures were obtained on blank stamp papers. It was further pleaded that the sister of Satnam Singh had filed a suit for permanent injunction and in violation of the injunction order, the agreement to sell was executed. Some part of the property during the pendency of the case was also sold in favour of defendants No.2 and 3 who were also impleaded as party.

Learned trial Court decreed the suit for specific performance of the agreement to sell.

Learned First Appellate Court found that the details of the land as given in the agreement to sell are erroneous. Thereupon, the plaintiff filed an application for rectification of the agreement to sell. It may be noticed that in the agreement to sell, the land has been described in the following manner:-

“Khewat and Khatauni No.304/1, 409/1, Khasra No.57//31/1 (1-19), measuring 1K-19M to the extent of half share i.e. 1 kanal and khewat and Khatauni No.343/411, Khasra Nos.57//31/1 (8-1), 34/4 (2-5) measuring 10K-6M and Khewat and Khatauni No.344/412, khasra Nos.57//29 (0-8) measuring 8 marla to the extent of half share i.e. 2 marlas and as per details given above total area measuring 11K-8M, situated within revenue estate of Chhachhrauli, Tehsil Chhachhrauli vide Fard Jamabandi of year 2000-01 owned and possessed by

first party.”

In the agreement to sell, there is a reference to the jamabandi for the year 2000-01, which was admittedly available with the plaintiff at the time when the agreement to sell was executed. As per the jamabandi, correct numbers would be Khewat and Khatauni No.341/1, 409/1, half share in Khasra No.57//31/3 (1-19), Khewat and Khatauni No.343/411, Khasra Nos.57//31/1 (8-1), 31/4 (2-5) measuring 10 kanals and 6 marlas and Khewat and Khatauni No.344/412, Khasra No.57//29 (0-8).

Learned First Appellate Court after noticing these facts ordered that the specific performance of the agreement to sell would not be appropriate relief particularly when the agreement to sell is with respect to different land and it is not a mere case of typographical error and, therefore, the learned First Appellate Court has ordered the refund of the earnest money alongwith interest.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the photocopy of the record, produced by the respective counsels, correctness whereof is not being disputed.

Learned counsel for the appellant has submitted that as per Section 26 of the Specific Relief Act, it is permissible for the Court to rectify the instrument/agreement to sell and thereafter grant the decree for specific performance of the agreement to sell. He submitted that an application was submitted before the First Appellate Court which should have been allowed by the Court. He further submitted that defendant

No.1 was not the owner of any other land and, therefore, there was no dispute about the identity of the property. In the alternative, learned counsel for the appellant has submitted that the specific performance of the agreement to sell can be granted at least with respect to the land measuring 8 kanals 1 marla, khasra number whereof was given correctly.

On the other hand, learned counsel for the respondents has pointed out that the plaintiff while appearing in the cross-examination has admitted that the plaintiff had seen the copy of the jamabandi for the year 2000-01 and, therefore, it is not the case of mistake. In fact, the agreement has been subsequently drafted and, therefore, there is error.

After considering the arguments of the learned counsel for the parties, this Court is of the view that the learned First Appellate Court has correctly refused to grant the specific performance of the agreement to sell. No doubt, the power to rectify the instrument is available with the Court under Section 26 of the Specific Relief Act, however, such power can be exercised only if the Court comes to a conclusion that either through fraud or by a mutual mistake of the parties, the instrument in writing does not express their real intentions.

Here is a case where the defendant has pleaded that the agreement to sell was got signed when Satnam Singh was under the influence of liquor. The argument of the learned counsel that the Court should grant the relief of specific performance of the agreement to sell with respect to the land measuring 8 kanals 1 marla, cannot be accepted because such prayer would fall within the scope of Section 12(1) of the

Specific Relief Act. Sub-Section 2, 3 and 4 of Section 12, operates entirely in different situation. The eventualities as carved out in Sub-Sections 2, 3 and 4 do not apply in the facts of the present case. The reasons given by the First Appellate Court to refuse the relief of specific performance, can be summarized in the following manner:-

1. The agreement to sell does not give correct details of the land sought to be purchased.
2. The agreement to sell is alleged to have been executed in Jagadhari whereas the land is situated in Chhachhrauli and there is a Office of Sub-Registrar and Tehsil in Village Chhachhrauli. No reason has come as to why the parties travelled approximately 14 km to enter into the agreement to sell.
3. There were two marginal witnesses to the agreement to sell. Only one marginal witness has been examined who is the father-in-law of the plaintiff. He also states that he came by chance. The Court has found that in such circumstances, the execution of the agreement to sell becomes doubtful.
4. The plaintiff has alleged that for paying the consideration amount, he borrowed the amount from Balbir Singh and Gurmeet Singh, another relatives, however, no one has been produced on evidence.

In view of the aforesaid discussion, this Court does not find any good ground to interfere with the discretion exercised by the First Appellate Court.

As far as the cross-objections filed by the defendants, learned

counsel for the Cross-objector has argued that once the correctness of the agreement to sell has not been established, no refund could be ordered.

This Court has considered the submission. The agreement to sell as such has not been found to be void and illegal. The Court while granting the discretionary relief has chosen to grant only alternative relief of refund of the amount received. Satnam Singh had received ₹2,00,000/- which are being ordered to be refunded.

In view of the aforesaid, both the appeals as well as the Cross-objections filed, are dismissed.

31.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No