

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 1529 of 2017

Date of decision : January 24, 2018

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Laxmi Narayan and others

.....Appellants

Versus

Purushotam Lal and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Kuldeep Khandelwal, Advocate for the appellants.

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RITU BAHRI, J.

The appellants-defendants have come up in appeal against the judgment of the trial Court dated 18.5.2013, vide which the suit filed by respondent no.1-plaintiff was decreed and against the judgment dated 8.12.2016 passed by the Additional District Judge, Narnaul vide which the appeals filed against the judgment of the trial Court were dismissed.

The brief facts of the case are that defendant no.1 was owner in possession of land/plot measuring comprised in khewat no.255, khatoni no.286 and 287 measuring 30 kanal 10 marlas situated in village Nasibur, Tehsil Narnaul as per jamabandi for the year 2000-01 in view of sale deed no. 253 dated 8.5.2011 and mutation no. 2448 dated 4.1.2003 i.e to the extent of 21/610 share measuring 1 kanal 1 marla (635 sq. yard) (hereinafter

to be referred as total land). The defendant no.1 agreed to sell the total land to the plaintiff for total sale consideration of Rs.2,52,000/- and executed agreement to sell dated 11.12.2004 Ex.P-4. The plaintiff paid Rs.2,00,000/- to defendant no.1 as earnest money at the time of execution of agreement to sell dated 11.12.2004 and defendant no.1 made an endorsement in respect of receiving of an amount of Rs.2,00,000/- and appended his signature in the presence of witnesses. The sale deed was to be executed on 31.3.2005. Earlier plaintiff got executed sale deed from defendant no.1 in favour of Smt. Ramrati wife of Rajpal son of Harphool Singh resident of village Nangal Katha, Tehsil Narnaul for land measuring 300 sq. yard vide registered sale deed no. 3460 dated 3.1.2005. In this manner, defendant no.1 was to execute sale deed qua land measuring 335 sq. yard (hereinafter to be referred as suit property) in view of agreement to sell dated 11.12.2004, but defendant no.1 did not execute sale deed till 31.3.2005. On 31.3.2005, he received Rs.50,000/- from the plaintiff out of Rs.52,000/- and made his endorsement on the backside of the agreement in the presence of witness Jai Bhagwan Sharma and appended his signatures and got mentioned that plaintiff can get the sale deed executed at any time after making payment of Rs.2000/-. Plaintiff made requests many times to get the sale deed executed but defendant no.1 did not pay any heed. A legal notice was also issued to defendant no.1. After that, defendant no.1 disclosed that he sold remaining land i.e 335 square yards to defendant no.2 vide sale deed No.82 dated 13.4.2006 for Rs.1,68,000/-. Hence the present suit was filed.

During the pendency of the suit, defendant no.1 had died.

Therefore, his LRs were impleaded as party to the suit. On notice, joint

written statement was filed by the defendants no. 1A to 1C alleging that defendant no.1 was owner in possession of the suit property. It is wrong to say that defendant no.1 had executed any agreement to sell in favour of the plaintiff. The plaintiff has made false and frivolous story. Defendant no.2 filed separate written statement. She also prayed for dismissal of the suit. The plaintiff filed separate replications to the written statements of defendants no. 1A to 1C and defendant no.2, wherein plaintiff reiterated his stand taken in the plaint and controverted the averments of defendants.

From the pleadings of the parties, the following issues were framed:

- 1. Whether the plaintiff is entitled to get the possession of suit land by virtue of specific performance of contract dated 11.12.2004? OPP*
- 2. Whether the suit is not maintainable in the present form? OPP*
- 3. Whether the plaintiff is not come to the Court with clean hands? OPD*
- 4. Relief.*

Trial Court observed that the plaintiff proved the execution of agreement to sell dated 11.12.2004 Ex.P-4. Plaintiff also proved on file that defendant no.1 Mahender Singh agreed to sell the suit land to the plaintiff for total sales consideration of Rs.2,52,000/-. The sale deed was to be executed on 31.3.2005. The plaintiff also proved on file that an amount of Rs.2,00,000/- was paid by the plaintiff to defendant no.1 since deceased in

the presence of witness PW-4 Hari Om Sharma. The plaintiff also proved on file that on the request of plaintiff, defendant no.1 executed sale deed no.3460 dated 3.1.2005 Ex.PW8/A in favour of Ramrati qua land measuring 300 sq. yard. The execution of sale deed Ex.PW8/A by defendant no.1 Mahender Singh since deceased in favour of Ramrati for land measuring 10 marla showed that defendant no.1 executed agreement to sell dated 11.12.2004 Ex.P-4 in favour of plaintiff as sale deed Ex.PW8/A was also bearing signature of plaintiff. In this manner, plaintiff duly proved on file that plaintiff paid Rs.2,50,000/- out of Rs.2,52,000/- to Mahender Singh since deceased and plaintiff got executed sale deed for 10 marla land in favour of Ramrati for total sale consideration of Rs.100,000/-. Thus, the plaintiff paid Rs.2,50,000/- to defendant no.1 and Rs.1,00,000/- was received by the plaintiff as sale deed was executed by Mahender Singh in favour of Ramrati with the consent of Purushotam. Meaning thereby that Rs.1,00,000/- was received by plaintiff. The concurrent finding of fact was given that plaintiff was a property dealer and he used to get executed the sale deed as and when any vendee was available to the plaintiff. The plaintiff was held entitled for recovery of Rs.1,50,000/- from the legal heirs of defendant no.1 Mehender Singh since deceased along with interest at the rate of 12% per annum from the date of the filing of the suit till the realization of the decretal amount.

Against the judgment of the trial Court, both plaintiff and defendants filed appeals before the lower appellate Court. Plaintiff filed appeal challenging the part of the findings of the trial Court vide which the relief of decree of specific performance was declined. Another appeal was filed by the defendant challenging the judgment of the trial Court in totality

and for dismissal of the suit.

As per the opinion of the lower appellate Court, due and valid execution of agreement dated 11.12.2004 Ex.P4 has been very well proved by the plaintiff in his suit. The defendants never preferred to examine any expert to disprove the valid and due execution of agreement Ex. P-4 by their ancestor namely Mahender Singh. Therefore, appellate court upheld the judgment of the trial Court and held it to be not suffering from any illegality or infirmity. However, it was held that the agreement to sell Ex.P4 was never got registered with registration authority not it was got incorporated in the revenue record. Hence both the appeals were dismissed by the lower appellate Court.

In view of all that has been discussed above, the suit has been rightly decreed. No substantial question of law arises for consideration in the present regular second appeal. Appeal is dismissed.

January 24, 2018
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No