

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

**RSA No.4818 of 2014 (O&M)
Date of decision:21.11.2018**

Jagvinder Kaur @ Jagiro and others ... Appellants

Vs.

Laxmi Devi and others ... Respondents

**RSA No.5180 of 2014 (O&M)
Date of decision:21.11.2018**

Jagpal Singh ... Appellant

Vs.

Laxmi Devi and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rishab Lohan, Advocate
for the appellants in RSA No.4818 of 2014.

Mr. V.K.Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate
for the appellant in RSA No.5180 of 2014.

Mr. Chetan Mittal, Senior Advocate with
Mr. Anuj Gupta, Advocate and
Mr. Mayank Aggarwal, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

C.M.No.12215-C-2014 in RSA No.5180 of 2014

For the reasons stated in the application which is duly
supported by an affidavit, delay of 4 days in filing the appeal is condoned.

C.M. stands allowed.

Main cases

This order of mine shall dispose of two Regular Second Appeals bearing Nos. 4818 and 5180 of 2014 preferred at the instance of LR's of defendant no.1 and defendant No.2/vendors, who have not been successful in defending the suit for possession by way of specific performance of the agreement to sell dated 24.11.2000.

The plaintiffs claimed the discretionary relief of specific performance in respect of agricultural land measuring 96 kanals 18 marlas agreed to be sold @ ₹2,33,200/- per acre against the payment of earnest money of ₹3.00 lakhs. The stipulated date for execution and registration of the sale deed was 30.04.2001. Having failed to perform the part of agreement, the suit was filed on 15.05.2001.

Defendant no.2 opposed the suit by denying the execution of the agreement to sell, in other words, it was submitted that he did not sign the agreement to sell as his brother-Iqbal Singh appended signatures in his individual capacity. The agreement of March 2000 was amongst the brothers conferring the ownership in favour of defendant no.2 and in such circumstances, defendant no.1 had no power or authority or title to enter into an agreement to sell.

On preponderance of evidence brought on record by respective parties regarding proof of agreement to sell, much less, payment of earnest money, the discretionary relief was granted by the trial Court and the appeal laid before the Lower Appellate Court was also dismissed.

Mr. V.K.Jindal, learned Senior counsel assisted by Mr. Gopal Soni, Advocate and Mr. Rishab Lohan, Advocate for the appellants submitted that power of attorney dated 17.12.1990 has not been proved on record as it was a photocopy. No doubt, defendant no.2 at earlier point of time was proceeded against ex parte but in the subsequent written statement, it was stated that agreement to sell was neither read over nor explained to the defendants. There was dispute with regard to land measuring 3 kanals 2 marlas which was not in their ownership as it belonged to the State Government. The rate was ₹3.00 lakhs per acre instead of ₹2,33,200/-. The plaintiffs offered ₹2,50,000/- which was not accepted. The defendants expressed apprehension qua passage that if the land was transferred, only then the land would be transferred in favour of the plaintiffs @ Rs.3.00 lakhs per acre. In such circumstances, the discretionary relief could not have been granted.

Mr. Chetan Mittal, learned Senior counsel assisted by Mr. Anuj Gupta, Advocate representing the respondent-plaintiffs submitted that alleged agreement to sell amongst vendors/brothers had never culminated into the specific performance. It was a forged document and on the basis of the complaint, statements of witnesses, Jagpal Singh and sons of defendant no.1, have been convicted. Jagpal Singh in cross-examination admitted regarding non-cancellation of the power of attorney dated 17.12.1990. The readiness and willingness had been proved to the hilt and supported the judgments and decrees of the Courts below, by praying for dismissal of the

appeals.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Jindal representing the appellants on account of following reasons:-

- i) In view of the categoric admission with regard to validity and existence of power of attorney dated 17.12.1990, the objection qua its mode of admissibility and proof pales into insignificance.
- ii) The conviction as noticed above, has also not been denied. The appeal was also dismissed on 15.12.2017.
- iii) On the other hand, the plaintiffs have been able to prove existence of the agreement to sell, much less passing of sale consideration and rate agreed to be sold.
- iv) During the course of hearing, Mr. Chetan Mittal, learned Senior counsel on instructions from Mr. Anuj Gupta, Advocate has informed the Court that decree has been executed and satisfied in all respects and even the possession after execution has been taken.

Be that as it may, in my view, the plaintiffs have been able to prove the ingredients of Section 16(c) of Specific Relief Act, 1963 enabling the Court below to grant the discretionary relief. The appellants have not been able to controvert the same by leading direct and cogent evidence.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeals.

Resultantly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

November 21, 2018
savita
Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No