

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.190 of 2018 (O&M)

Date of Decision: May 15, 2018

Mohd.Abid & another

...Appellants

Versus

Gurdev Singh (since deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Amarjit Markan, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

CM No.405-C of 2018

For the reasons mentioned in the application, which is supported by an affidavit, delay of 48 days in re-filing the appeal is condoned.

CM stands disposed of.

CM No.406-C of 2018

Prayer in the application is for bringing on record the L.Rs of Gurdev Singh-respondent No.1. The application is supported by an affidavit.

For the reasons mentioned in the application, the same is allowed subject to all just exception and the persons mentioned in Para 3 of the application are impleaded as L.Rs of respondent No.1 for the purpose of prosecuting this appeal only.

RSA No.190 of 2018

Appellant-plaintiffs are aggrieved of the concurrent findings,

whereby the suit seeking specific performance of the agreement to sell dated 10.8.2010 in respect of the suit property, has been dismissed and affirmed by the Lower Appellate Court.

Appellant-plaintiffs instituted the suit claiming specific performance of the agreement to sell dated 10.8.2010 in respect of land measuring 20 Bighas against total sale consideration of ₹3,60,000/- per bigha by paying earnest money of ₹20,00,000/-. The aforementioned agreement to sell was stated to be attested by Hafij Sharif and Mohd.Shabir. It was stated that the stipulated date for execution and registration of the sale deed was 10.5.2011, but the defendants did not come forward and during the existence of the agreement to sell had entered into two transactions, i.e., executed a registered sale deed dated 21.9.2010 in favour of defendant No.2 by defendant No.1 and also a transfer deed dated 11.11.2010 in favour of his son-defendant No.3, therefore, there was a breach. The suit was filed on 31.3.2011.

Respondent-defendant No.1 appeared and filed written statement denying the execution of the agreement to sell. It was stated that he was called in the office of the plaintiffs to purchase some property in the name of his wife and since the appellant-plaintiffs were property dealers, got the signatures and converted the same into agreement to sell. Defendant Nos.2 and 3 filed their separate written statements and stated that they are bonafide purchasers for valuable consideration.

Since the parties were at variance, the trial Court framed the following issues:-

- 1) Whether the defendant no.1 entered into agreement to sell dated 10.08.2010 in favour of the plaintiffs regarding suit property? OPP*

2) *If so whether the defendant no.1 received any earnest money of ₹20,00,000/- on dated 10.08.2010 from the plaintiffs? OPP*

3) *If so, whether the plaintiffs were always ready and are still ready and willing to perform their part of agreement? OPP*

4) *If so, whether the plaintiffs are entitled to relief of specific performance of agreement to sell dated 10.08.2010? OPP*

5) *If so, whether the plaintiffs are entitled to the relief of declaration regarding setting aside the sale deed dated 21.09.2010 executed in favour of defendant no.2 and transfer deed dated 11.11.2010 executed in favour of defendant no.3 being illegal, null and void? OPP*

6) *If so, whether the plaintiffs are entitled to recover the possession of the suit property from defendant no.2 and 3? OPP*

7) *If the plaintiffs are not entitled for relief of specific performance?*

8) *Whether the agreement to sell dated 10.08.2010 is result of fraud and misrepresentation and is forged and fabricated document? OPD1*

9) *Whether defendants No.2 and 3 are bonafide purchasers, having no knowledge about the agreement to sell dated 10.08.2010? OPD 2 & 3.*

10) *Whether suit of the plaintiffs is not maintainable? OPD*

11) *Relief.”*

Appellant-plaintiffs examined Mohd.Shabir as PW-1, attesting witness, who was none else but the father of plaintiff No.2 and plaintiff No.2 Abdul Sattar himself stepped into the witness box as PW-2 and placed on record jamabandi for the year 2007-08 Ex.P2, sale deed dated 29.9.2010 Ex.P3, jamabandi for the year 2007-08 Ex.P4 and transfer deed dated 11.11.2010 as Ex.P5.

On the other hand, the defendants examined as many as five witnesses, i.e., DW-1 Gurdev Singh, DW-2 Ranjit Singh, DW-3 Meharban Singh Stamp Vendor, DW-3A Bhupinder Singh, DW-4 Major Singh and DW-5 Shahabudin.

The trial Court, on the basis of the evidence brought on record, dismissed the suit on the premise that the plaintiffs failed to prove the execution of the agreement to sell, much less passing of the sale consideration and appeal laid before the Lower Appellate Court was also dismissed.

Mr.Amarjit Markan, learned counsel for the appellant-plaintiffs submitted that no doubt the appellant-plaintiffs had not examined the other attesting witness, namely, Hafij Sharif, but there had been a compliance of Section 68 of the Indian Evidence Act as one of the attesting witnesses has been examined and during his lengthy cross-examination, nothing contrary surfaced. In fact, the plea taken in the written statement cannot be believed, for, a sum of ₹20,00,000/- was parted by the appellants in favour of the defendants as earnest money for execution of the agreement, for, the agreement to sell also bore photographs of all the defendants, including that of Charanjit Kaur. Charanjit Kaur, claimed to be daughter of Gurdev Singh vendor, had also appended her signatures, but the Courts gave a finding that Gurdev Singh did not have any daughter.

It was next contended that the stamp papers were also purchased on 10.8.2010 and DW-2 admitted his signatures on the agreement to sell. Readiness and willingness had also been proved, for, in view of the breach of the terms and conditions, the suit was filed before the expiry of the stipulated date. All these factors have not been looked into in correct

perspective and, thus, there is illegality and perversity.

I have heard the learned counsel for the appellant-plaintiffs, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel.

During the course of the hearing, photocopy of the agreement to sell has been shown to this Court. The same bears the photographs on the first page, which did not have signatures of the plaintiffs, defendant No.1 or Charanjit Kaur. Only one attesting witness Mohd Shabir, who is none else but father of plaintiff No.2, was examined, therefore, being interested witness, his evidence has been brushed aside. No explanation has come forth in not examining Hafij Sharif as it remained a mystery whether the aforementioned witness had sided with the other side or refused to depose in the Court. Once Gurdev Singh did not have the daughter, how and in what circumstances, the agreement to sell bore the signatures of Charanjit Kaur by branding her to be daughter. This fact also remained mystery.

The best piece of evidence, which has been withheld, was examination of the stamp vendor himself, for, to prove that the person had actually purchased the stamp papers. Normally, the stamp papers are purchased in the name of the vendor and his signatures are also appended in the register. Even the plaintiffs also failed to spell out as to who typed and drafted the agreement to sell. All these factors weighed in the mind of the Courts below in forming an opinion that the agreement was actually not entered into between the parties, but the same was prepared on blank papers bearing thumb impression, otherwise, the thumb impressions would have been on the photographs also.

Concurrent findings of fact and law arrived at by the Courts

below, much less the arguments of the learned counsel is not able to bring the case within the realm of perversity to form a different opinion than the one arrived at.

For the reasons stated above, there is no illegality or perversity in the findings under challenge. No ground for interference is made out, much less any substantial question of law arises. Resultantly, the appeal is dismissed.

May 15, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No