

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

RSA No.4574 of 2017 (O&M)  
Date of Decision: 17.4.2018

Jagtar Singh

---Appellant

Versus

Jagsir Singh and another

---Respondents

**Coram: Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.RVS Chugh, Advocate  
for the appellant.

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**HARINDER SINGH SIDHU, J.**

The plaintiff has filed this regular second appeal against the judgments of the Courts below whereby his suit has only been partially decreed for the alternative relief of refund of earnest money.

The plaintiff had filed the suit for possession by way of specific performance of agreement to sell dated 30.12.2005 or in the alternative for recovery of Rs.14,00,000/- including damages of Rs.3,50,000/- along with future interest @ 12% per annum till realization.

For convenience, the parties are referred to as per their status in the Civil Suit.

The case of the plaintiff was that the defendant No.1 being owner in possession of the suit land measuring 4 kanal comprised in Khasara No.33//21/2/1 (4-0) situated in Sardulgarh executed an agreement to sell in favour of the plaintiff on 30.12.2005 for a consideration of Rs.28,00,000/- per acre. A sum of Rs.10,50,000/- was given as earnest

money to defendant No.1. The sale deed was to be executed within four months of the sanction of mutation in favour of defendant No.1. The mutation was sanctioned in favour of defendant No.1 on 15.06.2007. The plaintiff had earlier filed Civil Suit No.167 dated 14.08.2007 for restraining defendant No.1 from alienating suit land to any third person. But defendant No.1 forcibly took possession of the suit land from the plaintiff, which possession has been given to the plaintiff at the time of entering into the agreement to sell. Hence the plaintiff withdrew the Civil Suit on 16.03.2009 for filing the suit of specific performance of agreement of sell.

It was also alleged that in order to defeat the right of the plaintiff, defendant No.1 in connivance with defendant No.2 got prepared another agreement to sell dated 14.06.2007 wrongly and illegally. Defendant No.2 filed a civil suit on 23.08.2007 against defendant No.1 for specific performance of that agreement to sell. The suit was decreed on 08.07.2009. The plaintiff was not impleaded as party in the said suit. Sale deed dated 31.12.2009 was got executed in favour of defendant No.2 on the basis of the wrong and illegal judgment in the said suit. Mutation dated 11.01.2010 has also been sanctioned in favour of defendant No.2. It was pleaded that neither the decision of the said Civil Suit nor the subsequent proceedings are binding or have any effect on the rights of the plaintiff and the same deserve to be set aside.

Defendant No.2 filed an application dated 17.08.2009 under Order 1 Rule 10 CPC for impleading him as a party in the present suit which was allowed on 06.01.2010. It is only thereafter that the plaintiff got to know about the alleged agreement to sell dated 14.06.2007 and the

judgment in the Civil Suit dated 18.07.2009.

Defendant No.1-Jagsir Singh did not appear to contest the Suit and was proceeded against ex-parte vide order dated 15.04.2009.

Defendant No.2 pleaded that the plaintiff had filed the present suit in connivance with defendant No.1 by preparing an ante dated agreement to sell dated 30.12.2005 in connivance with the witnesses in order to grab the suit land. It was his case that he is the owner in exclusive possession of the suit land. The plaintiff, defendant No.1 and the witnesses to alleged agreement to sell dated 30.12.2005 had knowledge about the possession of defendant No.2 over the suit land. The plaintiff never came into the possession of the suit land. Defendant No.2 filed a Civil Suit No.175 dated 18.07.2009 against defendant No.1 and order dated 23.08.2009, restraining him from alienating the suit land was passed in that Civil Suit. Regarding this Rapat No.482 dated 30.08.2007 was also got reflected in the Rapat Roznamacha. It was pleaded that defendant No.2 was a bonafide purchaser for valuable consideration and without notice. The plaintiff has no right or basis to challenge the judgment and decree dated 18.07.2009, the sale deed dated 31.12.2009 and the mutation sanctioned in favour of defendant No.2.

On 10.12.2011, on an application moved by the plaintiff, the LR's of defendant No.1 namely his widow Charanjeet Kaur and Harjinder Singh and Tejinder Singh, his minor sons, through their mother Charanjeet Kaur were impleaded as defendants. In their written statement, they denied that defendant No.1 had entered into any agreement to sell or had received any earnest money from the plaintiff. It was pleaded that the alleged

agreement to sell was a forged and fabricated document. In fact the father of the plaintiff Baldev Singh was Ex-Sarpanch of Village Meerpur. Defendant No.1 was on visiting terms with him. Baldev Singh might have got prepared the alleged agreement in connivance with its witnesses.

To prove the agreement, the plaintiff examined himself as PW-1. Jatinder Jain and Nam Chand Jain attesting witnesses to agreement to sell appeared as PW-2 and PW-3 and supported the case of the plaintiff. On behalf of the defendants, defendant No.2 appeared as DW-1 and Charanjeet Kaur widow of defendant No.2 appeared as DW-2.

Learned Trial Court referred to the written statement Ex. P-5 filed by defendant No.1 in the Civil Suit of the plaintiff against defendant No.1 for restraining him from alienating the suit land. In paragraph 6 defendant No.1 had admitted the execution of the agreement to sell with the plaintiff. He had, however disowned the agreement by stating that he did not receive Rs.10,50,000/- as earnest money but had received a much lesser amount. Defendant No.1 had stated that he signed the agreement as he used to trust the plaintiff. The plaintiff taking advantage of it mentioned an amount of Rs.10,50,000/-. As defendant No.1 had not received the said amount, he was not bound by the agreement. On the basis of this admission, Ld. Trial Court concluded that the execution of the agreement to sell was admitted by defendant No. 1. The only question that remained to be seen was whether the plaintiff had been ready and willing to perform his part of the contract. In this regard, the Ld. Trial Court referred to the fact that mutation (Ex. P-8) had been sanctioned in favour of defendant No.1 on 15.06.2007. The plaintiff evidently had knowledge about the sanction of

the mutation as in his earlier suit dated 14.08.2007, he had referred to the fact of the mutation having been sanctioned in favour of defendant No.1. As per the agreement the cause of action to file the suit for specific performance would arise four months after the sanction of mutation on 15.06.2007 i.e. on or after 14.11.2007. But the present suit was filed on 18.04.2009. Meanwhile, the plaintiff kept pursuing his earlier suit for restraining defendant No.1 from alienating the suit land. The plaintiff during this period did not send any notice to defendant No.1 calling upon him to execute the sale deed in his favour. Though he stated in his cross-examination that he had sent written notice to defendant No.1 to execute the sale deed and Panchayat had also been convened, however, neither the notice was produced nor any member who constituted the Panchayat was examined. Thereby, Ld. Trial Court concluded that the plaintiff had not been able to prove that he had been ready and willing to perform his part of contract. However, as the execution of the agreement to sell and passing of consideration to defendant No.1 had been proved, Ld. Trial Court granted the alternative relief of refund of earnest money of Rs.10,50,000/- to the plaintiff.

Two appeals were filed against the judgment of the Ld. Trial Court. The plaintiff assailed the judgment to the extent the relief of specific performance was declined. The second appeal was filed by the LR's of defendant No.1 for setting aside the alternative relief for recovery of earnest money granted against them.

The learned lower Appellate Court affirmed the findings of the learned Trial Court that the agreement to sell stood duly proved on record

both on the basis of admission of defendant No.1 in his written statement as also by the deposition of PW-1, the plaintiff and the attesting witnesses PW-2 Jatinder Jain and PW-3 Nem Chand Jain. Ld. Lower Appellate Court further held that the plaintiff was not able to establish that defendant No.2 was not a bona fide purchaser for valuable consideration. In this regard, Ld. Court discussed in detail various proceedings, Civil as well as Revenue, undertaken by defendant No.2. It was noticed that in the jamabandi Ex. P-2 in the disputed khasra number defendant No.2 was co-owner in exclusive possession of the disputed khasra number Khasra No.33/21/2 with Kirpal Singh. Kirpal Singh was the vendor of the suit land to defendant No.2. When Kirpal Singh executed the sale deed dated 25.07.2005 qua the suit land in favour of defendant No.1, defendant No.2 filed objections to sanctioning of mutation in favour of defendant No.1 on the basis of sale deed. In a civil suit filed by defendant No.1 against defendant No.2 the latter filed a counter claim to the effect that the suit land was owned and possessed by him and that the sale deed dated 25.07.2005 executed by Kirpal Singh in favour of defendant No.1 was illegal and be treated as merely a sale of share by Kirpal Singh and that defendant No.1 be restrained from taking possession of the said land forcibly. The counter claim was partly allowed vide judgment Ex D-4 dated 21.08.2008 by holding that vide sale deed dated 25.07.2005 Kirpal Singh had only sold his share in the suit land amounting to 4 kanal out of total land 53 Kanal 16 Marla. It was further held that Kulwant Singh (defendant No.2) was owner in possession of the said suit land. Ld. Lower Appellate Court thereby concluded that recital in the agreement to sell Ex. P-1 dated 30.12.2005 to the effect that

possession of the land measuring 4 Kanal had been delivered to the plaintiff was palpably false, being contrary to the judgment and decree Ex.D-2, D-4 and D-5. The evidence of PW-1 to PW-3 that possession of the land had been delivered to the plaintiff at the time of execution of agreement to sell was held to be false. Ld. Lower Appellate Court further concluded that as the plaintiff never came into possession of the suit land his deposition in the examination-in-chief that he withdrew the suit for permanent injunction as during the pendency of the said suit Defendant No.1 had taken the possession of the suit land was incorrect. Thus, it was concluded that the plaintiff had not approached the Court with clean hands. The plaintiff had agreed to purchase the land despite knowing the suit land was in possession of defendant No.2. The Ld. Lower Appellate Court held that it was natural for a co-owner in exclusive possession of the land to purchase the same from other co-owner. The sanctioning of mutation of the suit land in favour of defendant No.1 on the basis of sale dated 25.07.2005 was a result of compromise between defendants No.1 and 2 in terms whereof defendant No.1 agreed to sell the suit land on 14.06.2007 in favour of defendant No.2. The very next day defendant No.2 withdrew his objection to the sanctioning of mutation in favour of defendant No.1.

Ld. Court held that there was nothing on record to show any collusion between defendant No.1 and defendant No.2. The chain of litigation between defendants No.1 and 2 itself belied any claim of collusion between them. It was defendant No.1, who despite the mutation proceedings being contested by defendant No.2 entered into an agreement to sell with the plaintiff and received a heavy amount of Rs.10,50,000/- as

earnest money. Thereafter, to get the mutation sanctioned in his favour he entered into an agreement to sell dated 14.06.2007 with defendant No.2 and received a sum of Rs.8,00,000/- as earnest money out of a total sale consideration of Rs.14,00,000/-. He neither honoured the agreement dated 30.12.2005 (Ex. P-1) with the plaintiff nor the subsequent agreement dated 14.06.2007 with defendant No.2. Defendant No.2 had filed Civil Suit on 23.08.2007, which was decreed on 18.07.2009. He did not comply with terms of decree necessitating the filing of execution application by defendant No.2 on 12.09.2009, in which proceedings, the sale deed was executed in favour of defendant No.2. Ld. Lower Appellate Court affirmed the findings of the Ld. Trial Court regarding the plaintiff persisting with his suit for permanent injunction for about a year and a half despite being aware of the sanctioning of mutation in favour of defendant No.1 on 15.06.2007 and filing the present suit only on 08.04.2009. As the receipt of sale consideration was proved, the finding of the Trial Court regarding the alternative relief was affirmed. Thus, both the appeals were dismissed.

Findings of facts have been recorded by the courts below. Learned counsel for the appellant has not been able to establish as to how these findings are perverse or against the record.

No question of law arises for decision in this appeal.

Dismissed.

**(HARINDER SINGH SIDHU)**  
**JUDGE**

**17.4.2018**

*Atul*

Whether speaking/reasoned:

Yes

Whether reportable:

Yes/No