

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

RSA No.5571 of 2017 (O&M)

Date of decision:22.01.2018

Baldev Singh

Vs.

... Appellant

Manpreet Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Munish Jolly, Advocate, for
Mr. Jasbir Rattan, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.14734-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 76 days in re-filing the appeal, is condoned.

C.M. stands disposed of.

RSA No.5571 of 2017

Appellant-defendant is in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit seeking following relief, has been decreed by both the Courts below:-

“Suit for possession by way of specific performance of the contract of sale deed dated 30.06.11 executed by the defendant in favour of the plaintiff with regard to the property mentioned at letter X below; on payment of Rs.7,85,000/- the balance sale

consideration and on payment of stamps, registration and other allied and incidental expenses through execution and registration of sale deed alongwith all the rights and share in Rasti, Pahi, Khal, Water, Motor Connection as per the share etc. and all other rights appurtenant thereto, after clearing all the charges and encumbrance of Government/Private Agency and to make payment of other bank loan or any other type of loan against the said land including redemption etc, if any, over the property in question and

In the alternative, suit for recovery of Rs.39,30,000/- (Rs.thirty nine lacs and thirty thousand) i.e. Rs.31,45,000/- (Rs.thirty one lacs forty five thousand) as refund of the earnest money, paid by the plaintiff to the defendant and Rs.7,85,000/- (Rs. Seven Lac and Eighty Five Thousand) as damages, alongwith penal interest at the rate of Rs.24% per annum from 30.06.2011, till actual and final realization of the above said amount and

Suit for permanent injunction restraining the defendant, his agents, servants, mukhiars etc., on his behalf, from alienating the property in question by way of sale, mortgage, gift, exchange, lease etc., or to dispose it off in any other manner to anybody else other than the plaintiff, by discarding the agreement to sell in question.

Description:

X) Land measurin g 24 kanals being 480/1989 share of the

land measuring 99 kanals 9 marlas, comprising in khewat/khatoni no.24/57, khasra no.18//5/2 (1-6), 6(8-0), 7(5-16), 14(1-15), 15(8-0), 19//1/1(4-7), ½(3-0), 10(8-0), 11(8-0), 25//7(6-18), 8(5-15), 13(7-12), 14(8-0), 17(8-0), 18/1(1-15), 24/1(6-16), 29//4/1(3-8), 7/2/1(1-5), 49//2(0-2), 50//11(0-2), 68 (0-8), 64/5(1-4) situated at village Wazirabad, Tehsil and District Fatehgarh Sahib, as per copy of Jamabandi for the year 2002-03.”

Learned counsel for the appellant-defendant submitted that the appellant had never agreed to sell the land as per the alleged agreement to sell dated 30.06.2011 at the rate of ₹13 lacs per acre for which alleged earnest money of ₹31,45,000/- was made. In fact, it was a loan transaction, for, the value of the said land proved through the testimony of Ujagar Singh sold on the same date was much more, i.e., agreement executed by Baljit Singh in favour Avtar Singh @₹ 1 crore per acre. No sane person would agree to sell the land at the lower price except for necessity that too for the purpose of obtaining the loan but not parting with the title. The contents of the agreement, examination of the witnesses and filing of the suit on 07.10.2011, had not been controverted. The Courts below did not avert to the statement of Ujagar Singh-PW2, who in cross-examination admitted that price of the land in the vicinity in the same year was about ₹80 lacs to one crore per killa and therefore, the discretionary relief under Section 20 of the Specific Relief Act, could not have been granted. Both the Courts below

have also abdicated in granting the relief without noticing hardship and thus, urged this Court for formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellant-defendant, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Jolly. The reason is not only one but many:-

The agreement to sell in respect of some other land has been executed between Baljit Singh and Avtar Singh on the same date, i.e., on 30.06.2011, which has been marked as Mark-A, but has not been proved on record in the absence of examination of vendor and vendee, Baljit Singh and Avtar Singh, therefore, rates of land could not be ascertained. If at all, some fraud had been played upon the defendant, nothing prevented him to prove the ingredients as enumerated under Order 6 Rule 4 CPC enabling the Court to form an opinion that a document of loan transaction had been converted into an agreement to sell.

Defendant has also not made any complaint against the plaintiff to the police to lodge an FIR with regard to the aforementioned fraud or having to agreed to sell the land at lower price. Per contra, the respondent-plaintiff has proved the execution of the agreement to sell through the testimony of Mandeep Kumar, attesting witness and also payment of earnest money of ₹31,45,000/-.

No ground is made out for interference in the findings of the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 22, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No