

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

RSA No.5163 of 2018 (O&M)

Date of Decision: 26.09.2018

Rajinder Kaur and others

.....Appellants

Versus

Raj Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Kapil Aggarwal, Advocate for the appellants.

Mr. S.K. Arora, Advocate for the caveator/respondent.

TEJINDER SINGH DHINDSA J.

A suit filed by the plaintiffs for possession by way of specific performance of an agreement to sell dated 06.12.2011 in respect of the suit property was decreed by the Trial Court on 18.09.2017. Civil appeal preferred by defendant Raj Kaur has been accepted vide judgment dated 26.07.2018, passed by the learned Additional District Judge, Firozepur and thereby setting aside the judgment and decree of the Trial Court.

Resultantly, plaintiffs/appellants are in second appeal before this Court.

Brief facts of the case are that the suit was filed by the appellants herein on the averments that defendant/respondent was the owner of the suit property and had agreed to sell the same to Balraj Singh for a total sale consideration amount of ₹1,90,000/- and agreement to sell dated 06.12.2011, was entered into. Earnest money of ₹1,72,000/- had been paid. Date of execution of the sale-deed was fixed as 05.11.2014, and which was subsequently extended to 15.07.2015. Balraj Singh had died

and as such the plaintiffs/appellants being his legal heirs were competent to institute the suit. Prior to the stipulated date for execution of the sale-deed i.e.15.07.2015, defendant/respondent threatened to alienate the suit property to a third party and whereupon plaintiffs/appellants filed a suit for injunction but the same was withdrawn on 19.03.2016. On 15.07.2015, plaintiffs/appellants are stated to have come present in the office of Sub Registrar concerned and prepared an application for marking their presence. It was alleged that defendant/respondent did not appear and under such circumstances the plaintiffs were entitled to a decree of possession by way of specific performance of the agreement to sell dated 06.12.2011, on payment of balance sale consideration amount of ₹18,000/-. A prayer in the alternative was also made i.e. a decree for recovery of ₹1,90,000/- comprising of ₹1,72,000/- paid as earnest money and ₹18,000/- as damages alongwith interest at the rate of 24% per annum.

Suit was contested by the defendant/respondent setting up a case of complete denial. In the written statement it was submitted that the house/suit property had been purchased on 05.12.2011, for ₹1,72,000/- vide registered sale-deed from Gurmit Singh and as such there was no question of selling the same on the very next day i.e. 06.12.2011. It was further asserted that Chiman Singh, attesting witness of the sale-deed dated 05.12.2011, was a close relative of the plaintiffs and had obtained thumb impression on some blank papers on the pretext that the same are required for the purpose of mutation/entry in the municipal record in favour of the defendant and such blank papers have been misused for setting up the agreement to sell.

On the pleadings of the parties following issues were framed
by the Trial Court:-

- i). “Whether the defendant executed an agreement to sell dated 06.12.2011 with regard to the suit property in favour of Balraj Singh, predecessor-in-interest of the plaintiffs and received Rs.1,72,000/- as earnest money?OPP*
- ii) Whether the plaintiffs had been still ready and willing to perform their part of the contract?OPP*
- iii) If issues no.1 and 2 are proved, whether the plaintiffs are entitled to relief of possession by way of specific performance of agreement to sell dated 06.12.211?OPP*
- iv) If issue No.3 is not proved, whether the plaintiffs are entitled to alternative relief of recovery of Rs.1,72,000/- alongwith interest?OPP*
- v) Whether the suit is barred under Order 2 Rule 2 CPC?OPD*
- vi) Relief.”*

As has been noticed hereinabove suit filed by the plaintiff was decreed by the Trial Court in toto and they were held entitled to possession of the suit property by way of specific performance of the agreement to sell dated 06.12.2011. Civil appeal preferred by the defendant has been allowed vide impugned judgement dated 26.07.2018, passed by the lower Appellate Court.

Counsel for the plaintiffs/appellants has argued that the lower Appellate Court has proceeded on conjectures and surmises and has erred in reversing the well reasoned judgment passed by the Trial Court. Further argued that the stamp papers pertaining to agreement to sell dated 06.12.2011, Exhibit P-2, were entered at serial No. 26703 in the register of the deed writer Rajesh Kumar PW3, whereas the sale-deed Exhibit D-1 was at Serial No.26628. It is urged that there was a difference of 75 digits in the the serial number of the stamp papers of the sale-deed on the one hand and the agreement to sell on the other and which in itself would rule out the possibility of purchase of the stamp papers of the agreement and that of the

sale-deed at same point of time. It is argued that such aspect has been completely overlooked by the lower Appellate Court while reversing the judgement of the Trial Court and dismissing the suit filed by the appellants.

Counsel for the appellants has been heard at length and the pleadings on record have been perused.

It is not in dispute that respondent-Raj Kaur had purchased the suit property on 05.12.2011 for a sale consideration amount of ₹1,72,000/- vide sale-deed Exhibit D1 from Gurmit Singh. Such sale-deed was scribed by Rajesh Kumar, Document Writer PW3 and was attested by Jagdish Lal and Chiman Singh as witnesses. Even the agreement to sell dated 06.12.2011, Exhibit P-2, that was set-up by the plaintiff-appellant is stated to have been scribed by the same document writer, Rajesh Kumar and attested by the same witness Chiman Singh as also by one Sohan Singh. Respondent, Raj Kaur, had set-up a case that Chiman Singh had cheated her and obtained her thumb impression on blank papers at the stage of execution of sale-deed dated 05.12.2011 Exhibit D-1. Under such circumstances, it was imperative for the appellant herein to have examined Chiman Singh, who was the alleged witness to the agreement to sell dated 06.12.2011. Chiman Singh, however, was not examined for reasons best known to the appellant. Sohan Singh had expired. Appellant had examined son of Sohan Singh but who was not in a possession to prove execution of the agreement as also with regard to making over the earnest money.

Another circumstance noticed by the lower Appellate Court to disbelieve the agreement to sell dated 06.12.2011 Exhibit P-2, is that the stamp paper for agreement to sell Exhibit P-2, was purchased on 05.12.2011 i.e.the date of execution of the sale-deed Exhibit D-1 in favour of Raj Kaur-respondent and in which Gurmit Singh was the vendor.

It has been opined that the property had been purchased by respondent-Raj Kaur vide sale-deed dated 05.12.2011 Exhibit D-1, it is quite strange that even the papers for entering into the agreement to sell dated 06.12.2011 were purchased on 05.12.2011 itself. The third circumstance that has been taken note of by the lower Appellate Court is that as per agreement to sell the total sale consideration was fixed as ₹1,90,000/- and an amount of ₹1,72,000/- was paid as earnest money. If such a major amount of the total sale consideration had already been given, there would be no plausible reason for fixing the target date for execution of the sale-deed to be after three years i.e. 05.11.2014. There was no explanation coming-forth as to why even after the expiry of the period of three years, further extension was given upto 15.07.2015.

In the considered view of this Court, the reasoning adopted by the Lower Appellate Court to discard the alleged agreement to sell dated 06.12.2011 Exhibit P-2, is valid and cogent and based on due appreciation of evidence.

No infirmity is found in the impugned judgment dated 26.07.2018 passed by the learned Additional District Judge Firozpur.

The appeal does not raise any question of law.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

26.09.2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No