

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5816 of 2017(O&M)

Date of Decision: 13.8.2018

Karan Singh and others

---Appellants

versus

Jagmal

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Sanjay Verma, Advocate
for the appellants**

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for symbolic possession by way of specific performance of agreement to sell and for permanent injunction was decreed by the trial court vide judgment and decree dated 30.1.2014. The appeal preferred by unsuccessful defendants (successors-in-interest of Budh Ram) did not find favour with the Court of Additional District Judge, Yamuna Nagar at Jagadhri.

The case of the respondent-plaintiff is that land measuring 11 kanals situated in Mauza Ranipur Tehsil Jagadhri, District Yamuna Nagar, detailed in para 2 of the judgment of trial court, was owned by Sh. Budh Ram being co-sharer out of land measuring 33 kanal 1 marla. Budh Ram entered into an agreement to sell the same in favour of the respondent on 20.12.2005 for sale consideration of Rs. 5 lakhs. It was agreed that joint land would be partitioned and the sale deed would be executed and got registered within 15 days from the date of partition and attestation of mutation on the basis thereof. The respondent has always been ready and

willing to get the sale deed executed and registered in his favour. He served legal notice through registered post on 24.11.2006 calling upon the defendants to come present in the office of Sub Registrar, Bilaspur on 22.12.2006 but they sent a false and frivolous reply, denied the agreement to sell and refused to perform their part of the contract. Hence the suit.

The appellants filed the written statement and denied the averments that Budh Ram entered into agreement of sale in question in favour of the respondent or any terms and conditions of sale having been settled between the respondent and Budh Ram. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The trial court framed issues, reproduced in para 5 of the judgment of the Court. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial court answered the material issues i.e. issues No. 1 and 2 in favour of the respondent-plaintiff whereas issues No. 3 to 5, onus whereof was placed upon the appellants were answered against them and as a consequence, suit of the respondent-plaintiff was decreed and he was allowed specific performance of agreement of sale and the defendants were restrained from transferring the suit land and creating any charge thereon.

As has been noticed hereinbefore, the judgment and decree passed by the trial court were affirmed in appeal without any variance.

Counsel for the appellants has assailed judgments of the courts by raising few submissions. It is argued that agreement to sell propounded by the respondent-plaintiff records payment of entire sale consideration and

delivery of possession in favour of the proposed vendee, therefore, the same is not admissible in evidence for want of registration and the courts have committed a serious error by relying upon such a document. It is further argued that suit land is ancestral coparcenary property in the hands of Sh. Budh Ram in which sons of Budh Ram acquired right by way of birth, thus, Budh Ram was not competent to alienate the suit land except for legal necessity or benefit of estate. Another submission made by counsel is that market value of the suit property is much more than what is agreed to be paid by the respondent-plaintiff, sufficient to create doubt qua genuineness and validity of the agreement of sale. The last submission made by counsel is that agreement of sale is not attested by a witness of the village of the parties namely Mauza Ranipur Tehsil Jagadhri.

I have heard counsel for the appellants, perused the paper book particularly the judgments impugned.

The plea of the appellants with regard to admissibility of agreement of sale for want of registration is highly misconceived and liable to be rejected. In this context, reference can be made to Division Bench judgment of this Court **Ram Kishan and another vs. Bijender Mann alias Vijender Mann and others 2013(2) RCR (Civil) 419**. The appellants have sought to assail the agreement of sale on the premise that Budh Ram was not competent to sell the land in question except for legal necessity or benefit of estate. The court in Appeal has held that there is no evidence adduced by the appellants to substantiate their plea that suit land was joint Hindu family coparcenary property in the hands of Sh. Budh Ram. It has further been held that even if it is so, the appellants, at best, can challenge the sale, in accordance with law, after the sale deed is executed in favour of

the proposed vendee but they cannot be allowed to raise such a plea in a suit seeking specific performance of agreement of sale. In this view of the matter, contention raised by counsel for the appellants is not tenable.

So far as market value of the land in question being more than the sale consideration agreed to be paid by the vendee, less sale consideration cannot be a ground to set aside an agreement of sale or a sale deed unless there is evidence on record that the transaction is the result of coercion, undue influence or fraudulent. This apart, counsel for the appellants has not pointed out any materials on record that market value of the land at the relevant time was more than Rs. 5 lakhs. In this view of the matter, contention of the appellants in this regard is devoid of merit.

The plea that the agreement is not attested by a local man does not hold good to set aside consistent findings recorded by the courts based upon correct appreciation of materials on record in the light of settled principle in law that civil disputes are to be decided on the basis of balance of probabilities. The appellants have altogether failed to substantiate their plea that agreement of sale has not been executed by Sh. Budh Ram, predecessor-in-interest of the defendants.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

13.8.2018

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No