

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

RSA No.6221 of 2017 (O&M)

Date of Decision: February 07, 2018

Mohinder Singh

...Appellant

Versus

Tuli Ram and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Rahul Garg, Advocate for the appellant.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed against the judgment and decree of the courts below, whereby, the suit for specific performance of agreement dated 9.8.2002 and for setting aside the sale deed dated 21.1.2003, filed by the appellant has been dismissed.

The case of the plaintiff - appellant was that respondent No.1 Tulli Ram was owner of land measuring 1 Kanal 8 Marlas comprised in Khewat No.288 min, Khatoni No.579 min, rect.No.53, Killa No.11 min (East) (1K-8M) situated at village Sambhi, Tehsil Nilokheri, District Karnal. Vide agreement of sale dated 9.8.2002, he agreed to sell the same in favour of the plaintiff – appellant for a sale consideration of Rs.60,000/-. A sum of Rs.50,000/- was received by him as earnest money. The agreement was attested by Notary Public Karnal and physical possession of the suit land was delivered to the plaintiff. Since then, he was in possession thereof as prospective vendee. The date for registration of sale deed was fixed as 8.8.2003. Instead of honouring the agreement, the respondent illegally and in a clandestine manner sold the suit land in favour of respondent No.2 Inderjit Singh vide registered sale-deed 804/1 dated 21.1.2003. Hence, the

suit for specific performance of the agreement and for setting aside the sale-deed was filed.

The case of respondent Tulli Ram was that no agreement as alleged, had been entered into by him with the plaintiff. In fact, a fraud had been played upon him by the plaintiff – appellant in collusion with Amar Nath, a son of the respondent. It was his case that he had entered into an agreement to sell the suit land with Inderjit Singh – respondent No.2 on 10.7.2002 for a sale consideration of Rs.45,000/- and actual physical possession had also been delivered to Inderjit Singh. He had sold land measuring 8 K 0 Marlas comprised in Rect. No.52, Khasra No.6 min North (2-0), rect.No.53, Killa No.11 min West (6-0) for a sale consideration of Rs.2.35 lacs vide registered sale-deed No.453 dated 9.8.2002 to the plaintiff. On the same date, the plaintiff in collusion with Amar Nath son of respondent No.1 obtained his signatures on the agreement in question. Actually, the respondent had never agreed to sell the suit land in favour of the appellant as he had already entered into an agreement to sell the suit land to Inderjit – respondent No.2 and having received sale consideration of Rs.45,000/- had delivered physical possession to him.

Respondent No.2 also claimed that the agreement dated 9.8.2002 was result of fraud and the suit land had been sold to him vide sale-deed dated 21.1.2003.

On the basis of the evidence on record, the learned Trial Court concluded that the agreement dated 9.8.2002 was not proved. It based its decision on the following:-

The plaintiff in his plaint made no mention of the registered sale-deed dated 9.8.2002 (Ex.D12) vide which a separate parcel of land had been sold by respondent Tulli Ram to him; Bakhtawar and Kartar, who had attested the sale-deed dated 9.8.2002, were also attesting witnesses to the alleged agreement dated

9.8.2002 (Ex.P2); Plaintiff Mohinder Singh had admitted that he had purchased one acre land from respondent Tulli Ram on 9.8.2002 for a sale consideration of Rs.2.35 lacs. But his cross examination revealed that he did not have sufficient money to pay the entire sale consideration as also the earnest money for the agreement to sale. He admitted that he had only brought Rs.2.50 lacs, which was sufficient only to cover the sale consideration of Rs.2.35 lacs and the stamp papers of Rs.29,000/- and miscellaneous expenses of Rs.5000/- to 7000/-; PW3 Kartar Singh, who was an attesting witness to both the sale-deed as also the agreement to sell, only deposed about agreement to sell and stated in cross-examination that no other document was executed on that day in his presence. He testified in his cross-examination that the plaintiff had only brought Rs.50,000/- from his house on that day; Notary Public PW2 Jai Parkash Sharma, who had also attested the agreement, in his cross-examination stated that no money was paid in his presence.

Though, respondent Tulli Ram could not depose in this case as he had meanwhile expired and his LRs had been brought on record, learned Trial Court concluded that the testimony of the attesting witnesses was not credible. Hence, the execution of the agreement to sell was not proved. On the other hand, respondent No.2 was able to prove both the agreement to sell dated 10.7.2002 between him and respondent No.1 as also the sale-deed dated 21.1.2003. He had also been able to establish his possession over the suit land since the year 2003 from the revenue records.

The learned lower Appellate Court affirmed the findings of the learned Trial Court.

Learned counsel for the appellant contended that except for a denial of the agreement to sell dated 9.8.2002 by respondent Tulli Ram in his written statement, no evidence was led on his behalf.

It is a fact that Tulli Ram had died during the pendency of the suit. His

legal representatives, though impleaded, did not lead any evidence. However, the onus to prove the agreement to sell dated 9.8.2002 was on the plaintiff, which he failed to discharge. The evidence produced by him was found to be not credible. It was not proved that the earnest money was paid to respondent Tulli Ram. On the other hand, the agreement to sell dated 10.7.2002 entered into between respondent Tulli Ram and respondent Inderjit Singh, which was prior to the agreement dated 9.8.2002, had been duly proved. Also the sale-deed dated 21.1.2003 was proved.

A concurrent finding of fact has been recorded by the Courts below. No fault can be found therewith. There is no law point worth consideration involved in the present appeal. The appeal is, thus, dismissed.

Since the appeal has been dismissed on merits, therefore, there is no necessity of deciding the applications for condonation of delay in filing and re-filing the appeal.

February 07, 2018
gian

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No