

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

RSA No.993 of 2018 (O&M)
Date of Decision: February 23, 2018

Rajinder Singh and another ...Appellants

Versus

Malkiat Singh and another ...Respondents

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

Present: Mr.Amandeep Singh Manaise, Advocate
for the appellants.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed against the judgment and decree of the courts below.

Plaintiff - Respondent No.1 had filed a suit for specific performance of agreement to sell dated 19.09.2008. In the alternative, he claimed recovery of earnest money. The case set up in the plaint was that vide agreement to sell dated 19.9.2008, defendant No.1 -(respondent No.2 herein) had agreed to sell land measuring 3 Kanals i.e. 60/507 share out of the suit land in his favour at the rate of Rs.12 lacs per acre for which he received Rs.50,000/- as advance. The sale-deed was to be executed and registered on 12.12.2008 by defendant No.1, on payment of the balance sale consideration. It was also agreed that if the plaintiff failed to get the sale-deed executed in terms of the agreement, the earnest money would stand forfeited and if defendant No.1 failed to execute and get the sale-deed registered, he would be liable to pay double the amount of the earnest

money. It was also agreed that on failure of defendant No.1 to execute the sale-deed in terms of the agreement, the agreement could be enforced through court. The plaintiff was always ready and willing and is still ready and willing to perform his part of the contract. He remained present in the office of Sub-Registrar, Kahnuwan on 12.12.2008 with balance sale consideration and requisite expenses to get the sale-deed executed, but defendant No.1 did not turn up to execute the sale-deed as per the agreement and the plaintiff got his presence marked before the Sub-Registrar on 12.12.2008. The alleged sale-deed dated 27.3.2009 executed in favour of appellants – defendants No.2 and 3 on the basis of an alleged agreement to sell dated 27.7.2008 was illegal null and void being a forged and fabricated document having been prepared by defendant No.1 in connivance with defendants No.2 and 3, who were the real nephews of defendant No.1.

The case of defendant No.1 was that he had executed a registered sale-deed dated 27.3.2009 in favour of defendants no.2 and 3 for a sale-consideration of Rs.4,87,500/- on the basis of agreement to sell dated 27.7.2008. The agreement pleaded by the plaintiff dated 19.9.2008 was a forged and fabricated document. In fact, defendant No.1 had received Rs.50,000/- from the plaintiff for some domestic needs and as security, the plaintiff had obtained signatures of defendant No.1 on blank papers which had been misused by the plaintiff. There was no occasion for defendant No.1 to execute the agreement to sell dated 19.09.2008 with the plaintiff as before that he had already executed agreement to sell with defendants No. 2 and 3.

To prove his case, the plaintiff examined Charanjit Singh Deed-

writer as PW1, who deposed that he scribed the agreement to sell executed by defendant No.1 in favour of the plaintiff, the agreement was read over to the parties. Defendant No.1 affixed his signatures thereto in the presence of Avtar Singh and Kewal Singh who signed as attesting witnesses. Plaintiff signed as vendee. The plaintiff paid a sum of Rs.50,000/- as earnest money to defendant No.1 in their presence and an entry to this effect was made in the Deed-writer register, which was duly proved. PW2, attesting witness Kewal Singh identified his signatures and that of the other attesting witness Avtar Singh on the agreement to sell.

The defendants on the other hand, examined DW2 Manbir Singh Sekhon, Advocate, who deposed that he had scribed the sale-deed dated 27.3.2009 executed by defendant No.1 in favour of defendants No.2 and 3. DW4 Santokh Singh deposed as attesting witness of the said sale-deed.

The Courts below after noting that Defendant No.1 had admitted his signatures on each page of the agreement to sell dated 19.9.2008, but only denied its contents, that he had admitted that he was a matriculate, could read and write Hindi, Punjabi and English, and had retired from the Army, he admitted that he had 15-16 Killas share in total land of 226 Kanals 16 Marlas of joint khata, held that his plea that he had signed the blank papers as security for the loan of Rs.50,000/- could not be accepted. It was held that in view of his admitted signatures on the agreement to sell dated 19.9.2008, the burden to prove that the signatures were obtained by fraud and forgery was on him which he had not been able to discharge. Also the defendants did not produce the agreement to sell dated 27.7.2008 before the Trial Court. Consequently, the courts concluded that the sale-deed

dated 27.3.2009 had only been executed by defendant No.1 to avoid performing the contract in terms of the agreement to sell executed with the plaintiff. The sale-deed dated 27.3.2009 having been executed after the institution of the present suit on 7.3.2009 was held to be hit by the doctrine of lis pendens and declared to be null and void qua the rights of the plaintiff. As the plaintiff had appeared before the sub-Registrar on 12.12.2008 and marked his presence, the Courts below held that he had proved his readiness and willingness to perform his part of the contract. Hence he was held entitled to the relief of specific relief of performance of contract. Also, as the defendant No. 1 had denied the execution of the agreement to sell, it was held that he could not raise the plea of absence of readiness and willingness on the part of the plaintiff. The plea of defendants No.2 and 3 that they were bona fide purchasers, was rejected by noting that they were the real nephews of defendant No.1. They were not even in India at the time of the execution of the sale-deed. The sale-deed was executed on 27.3.2009 after the filing of the suit on 7.3.2009.

Before the Ld. Lower Appellate Court the defendant No.1 had moved an application under Order 41 Rule 27 of the CPC to prove the agreement to sell dated 27.07.2008 executed by defendant No.1 in favour of defendants Nos.2 and 3. It was pleaded that due to inadvertence the said agreement could not be produced before the Trial Court. It was stated that it was a material document essential to decide the real controversy in the suit. However, the said application was dismissed. Ld. Counsel for the appellant argued that the application has been wrongly dismissed and the appellants ought to have been permitted to lead additional evidence as it was necessary

for the decision of the case.

This contention of the Ld. Counsel cannot be accepted. The Ld. Lower Appellate Court while dismissing the application had observed that the agreement to sell dated 27.07.2008 had been referred to in the pleadings and it also finds mention in the sale deed dated 27.03.2009. However, no mention of the same was made by defendant No.1 in the written statement. No reason has been assigned for non-production of this agreement to sell during the trial. It was also not proved on file that with due diligence the document could not be produced. In the light of this, it cannot be said that the Ld. Lower Appellate Court was wrong in dismissing the application.

Both the Courts below have returned concurrent findings of fact on the issues raised. No substantial question of law arises for determination in this case.

This appeal is accordingly dismissed.

February 23, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No