

RSA No. 480 of 2019 (O&M)

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

RSA No. 480 of 2019 (O&M)

Date of Decision: December 03, 2019

Badri Parshad (deceased) through LR and others

..... Appellant(s)

Versus

Raghbir

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajesh Khandelwal, Advocate
for the appellants.

LISA GILL, J.

The appellants/defendants are aggrieved of the judgment and decree dated 01.11.2018, passed by the learned Additional District Judge, Hisar as well as judgment and decree dated 31.03.2015, passed by the learned Civil Judge (Junior Division), Hisar, whereby the suit filed by the respondent-plaintiff was decreed.

Brief facts necessary for adjudication of the case are that respondent-plaintiff filed a suit for symbolic possession by way of specific performance of the agreement to sell dated 08.11.2002, pleaded to be executed by defendant no.1 Badri Parshad in respect to a plot, as detailed in the plaint. It is pleaded that the appellant/defendant no.1 was the owner in possession of the said plot and he agreed to sell the same to the plaintiff for a total sale consideration of Rs.55,000/-, which was received by defendant no.1 from the plaintiff in the presence of witnesses at the time of execution

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of agreement to sell dated 08.11.2002, which was scribed by Narender Kumar Jain, Deed Writer. It is pleaded that the actual physical possession of the plot in question was also handed over by defendant no.1 to the plaintiff at the time of execution of agreement to sell dated 08.11.2002. Defendant no.1 agreed that the sale deed in respect to the said plot could be executed and registered at the wish of the plaintiff and in case defendant no.1 did not come forward for the same, the plaintiff would be entitled to get the sale deed registered through Court and defendant no.1 would be responsible for all costs and damages. As per the agreement, the plaintiff was entitled to get the sale deed executed in his own favour or in favour of any person of his choice. The agreement was witnessed by Raghbir Sharma PW3 and Suresh. The plaintiff is pleaded to have left a nine foot (9ft.) wide plot for passage due to the difficulty being faced by the residents of the locality. Remaining six foot (6 ft.) wide portion of the plot is claimed to be in actual physical possession of the plaintiff since 08.11.2002. Plaintiff claimed to be the owner in possession of the entire 15' x 60' plot in dispute pursuant to agreement to sell dated 08.11.2002. It is claimed that defendant no.1 was posted at Palwal and used to come to Hisar on weekends and holidays. From 08.11.2002 till 30.01.2010 defendant no.1 never denied or refused to have the sale deed executed in favour of the plaintiff, however, surprisingly since 31.01.2010, defendant no.1 in connivance with defendants no.2 & 3 sought to dispossess the plaintiff from the plot in dispute. Defendant no.1 altogether denied to have the sale deed executed in favour of the plaintiff. The plaintiff, it is pleaded, always remained ready and willing

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to execute the sale deed but defendant no.1 tried to dispossess the plaintiff from the plot in question and dismantle the eastern common wall of the plot and further threatened to include the 6 ft. wide vacant portion of the plot in dispute in the house of defendants no.2 & 3. Hence, the suit was filed.

Defendants/appellants contested the suit taking various preliminary objections and denying the averments on merits. Joint written statement was filed. Dismissal of the suit was sought by both the defendants.

Replication to the written statement was filed by the plaintiff. Following issues were framed by the learned trial Court on the basis of the pleadings:-

1. Whether the plaintiff is entitled for symbolic possession by way of specific performance of agreement dated 08.11.2002 executed by defendant no.1 in respect of plot mentioned in the head note of the plaint ? OPP.
2. Whether the plaintiff is entitled for the relief of injunction as prayed for ? OPP
3. Whether the plaintiff has no locus standi to file the present suit ? OPD.
4. Whether the plaintiff has no cause of action to file the present suit ? OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPP
6. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

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Plaintiff, it is noted, gave up his claim with regard to 9' x 16' portion of the plot and limited his claim to the portion of the plot measuring 6' x 60'. He also gave up his right in respect to the common wall.

Learned trial Court on considering the evidence on record, facts and circumstances of the case, concluded that the plaintiff successfully proved the execution of the agreement to sell dated 08.11.2002, having examined the attesting witnesses Raghbir Sharma PW3 as well as the Scribe thereof i.e. Narender Kumar Jain PW1. It is further held by the learned trial Court that defendants-appellants failed to prove the agreement to sell dated 08.11.2002 to be a forged, fraudulent or fabricated document. The plea raised by the defendants that the suit property had already been sold by defendant no.1 to the members of the street was rejected, there being no evidence to this effect. Learned trial Court, thus, concluded that the remaining claim of 6' x 60' portion of the suit property was clearly distinguishable, therefore, it can easily be separated. Thus, the suit was decreed to the extent of 6' x 60' portion of the plot.

An appeal was preferred by the defendants, which was dismissed by the learned Additional District Judge, Hisar vide judgment and decree dated 01.11.2018.

Aggrieved therefrom, present appeal has been filed by the appellants-defendants.

Learned counsel for the appellants vehemently argues that both the learned Courts below have grossly erred in allowing the suit filed by the respondent-plaintiff. It is contended that it is proved from the evidence on

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record that defendant no.1 had already transferred the suit property to the members of the street, therefore, in such a situation, he could not have subsequently sold the land to the plaintiff by way of execution of the agreement to sell dated 08.11.2002. It is further submitted that both the learned Courts below have wrongly ignored the evidence of Varinder Bushan Bhatnagar, Handwriting and Fingerprint Expert DW8 examined by the appellants, merely on the ground that he is not an authorized professional handwriting expert. It is contended that DW8 has specifically opined that signatures of defendant no.1 on the agreement to sell are forged and fabricated. Learned counsel for the appellants submits that the testimony of the said handwriting expert has been accepted by this Court in RSA-3095-1985, decided on 23.04.2004 and in CR-3500-1999. It is submitted that the Court's observation in order dated 09.08.1999 in CR-3500-1999 to the extent that Varinder Bhushan Bhatnagar is not a Handwriting Expert as his academic qualification is only B.A., has been later clarified to the effect that the same shall not affect the expertise of the said person because of his long experience. In this view of the matter, it is urged that the report Ex.DW8/A1 to W8/A9 submitted by DW8 should be accepted and it thus stands proved that agreement to sell dated 08.11.2002 is a forged document. It is, thus, prayed that this appeal be allowed and impugned judgments and decrees of both the learned Court below be set aside. Consequently, suit filed by the plaintiff be dismissed throughout.

I have heard learned counsel for the appellants at length and have gone through the record with his assistance.

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It is a matter of record that in order to prove the execution of the agreement to sell dated 08.11.2002 Narender Kumar Jain, Deed Writer PW1 and Raghbir Sharma PW3 the attesting witness of the said agreement have been examined by the plaintiff. Both the said witnesses have categorically stated regarding the factum of execution of the agreement to sell between appellant no.1 and the plaintiff besides receipt of payment of Rs.55,000/- by appellant/defendant no.1 in their presence. PW1 has clearly stated that the document was prepared as per the instructions of the parties. Raghbir-plaintiff PW4 has testified that the stamp paper for execution of the agreement to sell was purchased by defendant no.1. The plaintiff also examined a handwriting and fingerprint expert i.e. Yashpal Jain PW5, who categorically deposed that signatures on the alleged agreement to sell and receipts are similar with the sample signatures of Badri Parshad-defendant no.1. Report tendered by DW8 regarding the signatures of defendant no.1 has been ignored by both the learned Courts below. Learned Additional District Judge, Hisar has specifically noticed the statement of DW8 to the extent that DW8 admitted that he had not passed any examination or any professional course, which certifies him to be an authorized professional handwriting and fingerprint expert. DW8 further submitted that his father and uncle authorized him as handwriting and fingerprint expert. I have gone through the order dated 23.04.2004 passed by a co-ordinate Bench of this Court in RSA-3095-1985 as well as order dated 23.11.2002 in CR-3500-1999. Learned counsel for the appellants is unable to deny that expertise of the handwriting and fingerprint expert, who is none other than Varinder Bhushan Bhatnagar in the said case, had not been

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questioned. Therefore, reference to the said orders in order to prove that DW8 was qualified, is of no benefit to the appellants. In the given facts and circumstances of the case, I do not find any merit in the argument raised by learned counsel for the appellants that the report submitted by DW8 should be accepted to be the correct one and agreement to sell dated 08.11.2002 be held to be a forged document.

Even otherwise, it is to be noted that the original registered sale deed dated 08.04.1985 Ex. PC conferring title upon defendant no.1 was produced by the plaintiff. This fact by itself cements the case of the plaintiff that at the time of the execution of the agreement to sell dated 08.11.2002 and on handing over of the complete payment of the property, the original registered sale deed dated 08.04.1985 was handed over to the plaintiff by defendant no.1. It is rightly observed by both the learned Courts below that there is no explanation what-so-ever on the part of the appellants-defendants, as to how the original sale deed came in possession of the plaintiff. Moreover, the plaintiff admittedly gave up his claim in regard to 9' x 60' portion of the plot. He restricted his claim to 6' x 60' of the land.

Argument raised by learned counsel for the appellants that the land in question already stood sold/transferred to the members of the street, is not borne out by the evidence on record. Admittedly, no document was ever drawn up for transferring the rights of the property to the so called members of the street. DW5 and DW7 have admitted that no document/registered instrument was executed for the transfer of the suit property by defendant no.1 in favour of the members of the street. It is a

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settled position that transfer of any immovable property valued at more than Rs.100/- can be transferred only by way of registered sale document as per provisions of the Indian Registration Act, 1908. Therefore, reference to the entries in the diary Ex.DW4/B does not bear any fruit in favour of the appellants-defendants. Furthermore, DW6 has accepted that the said diary was not the one prepared for calculation of the alleged donation.

I also do not find any merit in the argument raised by learned counsel for the appellants that a decree in respect to a part of the land could not have been issued in favour of the plaintiff. This argument is again devoid of any merit, hence is rejected. Learned trial Court has specifically referred to the photograph and the other evidence on record, which proves that the two portions of the land are clearly distinguishable and can easily be separated. Thus, the suit of the plaintiff is not barred by provisions of Section 12 of the Specific Relief Act.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. No question of law, much less substantial question of law arises for consideration in this appeal. Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in the impugned judgment and decree dated 01.11.2018, passed by the learned Additional District Judge, Hisar and the judgment and decree dated 31.03.2015, passed by the learned Civil Judge (Junior Division), Hisar, which calls for any interference by this Court in second appeal.

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No other argument has been raised.

Judgment and decree dated 01.11.2018, passed by the learned Additional District Judge, Hisar and the judgment and decree dated 31.03.2015, passed by the learned Civil Judge (Junior Division), Hisar are upheld.

Appeal is accordingly dismissed with no order as to costs.

December 03, 2019.

Sunil

**(LISA GILL)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No