

**RSA-1915-1987 (O&M)**

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

**RSA-1915-1987 (O&M)  
Date of decision : 01.04.2019**

Phulla

... Appellant

Versus

Darshani Devi (deceased) through LR's and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. R.S. Tacoria, Advocate  
for the appellant.

None for the respondents.

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**AMIT RAWAL, J. (ORAL)**

The present regular second appeal, at the instance of the appellant-plaintiff, is directed against the judgment and decree of the lower Appellate Court, whereby the suit of the plaintiff, seeking specific performance of agreement to sell dated 19.02.1976, has, partly, been decreed.

The plaintiff alleged that Fatta-defendant No.1 was the owner in possession of the agricultural land measuring 36 kanals, as described in the plaint, which was inherited by him, from his father. On 19.02.1976, entered into an agreement to sell for a total consideration of ₹32,000/- against the payment of ₹12,000/- as earnest money, by fixing the target date as 30.11.1976 for execution and registration of the sale deed and delivering of the possession. Originally the plaintiff filed the suit against Fatta Singh, but later on, impleaded the other defendants. It was alleged that the defendant No.1 had, during the subsistence of the agreement to sell, transferred the suit land, in favour of defendant Nos.2 to 4 and remaining

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part of the land to the defendant Nos.5 to 12. Both of them had the knowledge of the agreement. The plaintiff appeared before the office of Sub-Registrar on the fixed date and marked his presence by way of affidavit, but the defendants did not come forward, therefore, cause of action accrued to file the present suit.

Defendant Nos.2 to 4 filed the joint written statement and alleged that defendant No.1 had, no title in the suit land, therefore, was not competent to enter into agreement to sell. The property was stated to be joint Hindu Family property.

Defendant Nos.5, 6 and 10 to 12 filed joint written statement by controverting the allegations and alleged that they had spent ₹10,000/- for improvement of the land as most of the land was un-even and claimed to be *bona fide* purchasers.

Since the parties were at variance, the trial Court framed the following issues:-

1. *Whether there was any agreement to sell between the parties as referred in para 3 of the plaint, if so, what are its terms?*  
*OPP*
2. *Whether the agreement in dispute was got executed from the defendant by fraud as alleged in para No.3 of the written statement on merits?* *OPD*
3. *Whether the plaintiff was always ready and willing to perform his part under the contract?* *OPP*
4. *Whether the plaintiff is estopped from filing the present suit?*  
*OPD*
5. *Relief.*

*After the addition of the new defendants the following issues were framed on 01.10.1981:*

- 4A. *Whether the defendants No.2 and 3 are bona fide*

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*purchaser for value and without notice? OPD*

*B. Whether the defendant No.4 obtained the land in dispute vide valid decrees dated 10.09.79 and 23.8.79 passed by the Civil Court? OPD*

*C. Whether Fatta had no locus standi to enter and execute the alleged agreement? OPD*

*D. Whether the alleged agreement was without free consent and without consideration as such void? OPD*

*E. Whether the suit is not maintainable in the present from OPD*

*F. Whether the suit is time bared? OPD*

*G. Whether the suit is bad for multifariousness? OPD*

*Issue No.4-B was modified on 27.5.82 as under:-*

*Whether defendant No.4 obtained the land in suit vide valid decrees dated 22.8.79 and 23.8.79 passed by the Civil Courts ? OPD*

*Additional issues were again framed on 2.12.82 as under:-*

- 1. Whether the defendant Nos.5 to 12 are bona fide transferees for consideration as alleged ? OPD 5 to 12*
- 2. Whether the suit is bad for misjoinder and nonjoinder of necessary parties? OPD*
- 3. Whether the suit is not maintainable? OPD*
- 4. Whether the suit is time barred/ OPD 5-12*
- 5. Whether the plaintiff has no locus standi to file the suit against defendants No.5 to 12? OPD 5-12*
- 6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD 5-12*

*Following issue No.7 was framed on 21.2.1983:-*

*7. Whether the defendant Fatta and Smt. Panmeshwari and Smt. Patori are members of Joint Hindu Family and the property is joint Hindu Family property as alleged? If so, its effect? OPD*

The plaintiff in order to prove the pleadings examined three witnesses and brought on record Ex.P1, whereas the defendants examined

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three witnesses and brought on record Ex.D1 to Ex.D7.

The trial Court on the basis of the evidence brought on record found that defendant Nos.2 and 3 had purchased the land from defendant No.1 and defendant No.4, by means of decree of 22.08.1979 and 23.08.1979, during the pendency of the suit and instead of granting discretionary relief under Section 20 of the Specific Relief Act, ordered for refund of the earnest money. However, the lower Appellate Court accepted the appeal in part to the extent of specific performance of contract qua the share of Fatta, defendant No.1, i.e. 12 kanals on payment of whole agreed price of ₹32,000/-.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that Mam Raj was the owner of land measuring 238 kanals 15 marlas, but as per the mutation, it was mutated in the name of Patori, his widow, Fatta, his son and Panmeshwari, his daughter, in equal shares. Fatta challenged the mutation before the Collector and before the appeal could be decided, died. The aforementioned mutation was challenged in the Civil Court through declaration and injunction on 08.09.1978 and a Will dated 09.12.1971 was also propounded. The suit, vide judgment and decree dated 22.08.1979 (Ex.D6 and Ex.D7), was decreed, on the basis of the compromise. As per the aforementioned compromise, mother relinquished her share in favour of Fatta, defendant No.1, thus, he became the owner of  $\frac{2}{3}$ <sup>rd</sup> land, but  $\frac{1}{3}$ <sup>rd</sup> land was given to Panmeshwari, daughter. The agreement to sell, in dispute, contained the element that Fatta had become the owner in possession of the basis of the Will. The trial Court while partly decreeing the suit erroneously held the suit land to be ancestral, in other words, Fatta was not held to be exclusive owner. The lower Appellate

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Court though modified the decree confined to the discretionary relief qua the share of Fatta, whereas his sister did not have the right, once the property was mutated, thus, urges this Court for decreeing the suit in entirety.

There is no representation on behalf of the respondents despite service.

The appeal is of the year 1987 and accordingly, I proceed to decide the appeal on merits.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Taccoria, for, the judgment and decree dated 22.08.1979 (Ex.D6 and Ex.D7) had attained the finality, whereas the present suit was filed on 13.04.1978, Fatta, in such circumstances, cannot be held to be exclusive owner. In the absence of any challenge to the decree, which could not have been done in the suit for specific performance, the findings arrived at by the lower Appellate Court being last Court of fact and law, confining the discretionary relief to the 2/3<sup>rd</sup> holding of Fatta, which acquired on the basis of the compromise, reflected in the judgment and decree, cannot be said to be suffering from illegality and perversity. No substantial question of law arises for determination. No ground is made out for interference. Accordingly, the present second appeal is dismissed.

**01.04.2019**  
Yogesh Sharma

**( AMIT RAWAL )**  
**JUDGE**

Whether speaking/reasoned    **Yes/ No**

Whether Reportable            **Yes/ No**