

RSA-2605-1988 (O&M)

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

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Date of decision : 11.04.2019

Rachhpal Singh (deceased) through LRs

... Appellant

Versus

Dalip Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.P. Kaushal, Advocate and
Mr. Kirpal Singh Thakur, Advocate
for the appellant.

Mr. Vikas Singh, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the respondent No.1-plaintiff for specific performance of agreement to sell dated 02.02.1981, has been decreed by the trial Court and affirmed in appeal.

The respondent No.1-plaintiff, in a suit filed on 25.04.1981, alleged that defendant Nos.1 and 2-Rajinder Singh and Gurdial Singh, through attorney Daljit Singh entered into agreement to sell, aforementioned, in respect of land measuring 1 kanal 13 marlas, agreed to be sold @ ₹19,000/- per acre, against the receipt of ₹1,500/- as earnest money by fixing the date as 07.05.1981 for balance sale consideration and for registration and execution of the sale deed. The plaintiff was put to in

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possession and had raised the construction and the possession was prior to the aforesaid agreement. During the subsistence of the agreement, defendant Nos.1 and 2, through the same attorney, sold the land to defendant No.3 i.e. appellant, herein, vide sale deed dated 15.04.1981. He had been ready and willing to perform the part of the agreement to sell, but the breach had already occurred much before the target date.

Respondent Nos.1 and 2/vendors were proceeded *ex parte*.

Appellant-defendant No.3 contested the suit and alleged that Daljit Singh was the attorney holder, but he did not enter into agreement to sell nor received the earnest money. He was the *bona fide* purchaser for a valuable consideration as defendant Nos.1 & 2 did not apprise them about the subsisting agreement to sell.

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

- 1. Whether defendants Nos.1 and 2 executed the agreement for sale in favour of the plaintiff for consideration? OPP*
- 2. Whether the plaintiff remained willing and ready to perform his part of the contract? OPP*
- 3. Whether the plaintiff is in unauthorized possession of 11 marlas of land and the remaining land is in actual possession of the defendants? If so, to what effect? OPD*
- 3A Whether defendant No.3 is a bona fide purchaser for value without notice as alleged? OPD-3*
- 3B Whether the plaintiff was in possession of the disputed property or any part thereof even before impugned agreement made by defendants Nos.1 and 2 through their attorney Daljit Singh? If so, its effect?*
- 4. Relief.*

Both the parties led extensive evidence in support of their

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respective cases.

Even, the assistance of the Local Commissioner to establish the possession was taken, but the same was rejected by the trial Court.

Mr. Kaushal, learned counsel appearing on behalf of the appellant-defendant No.3, submitted that the Expert of the plaintiff itself proved that word 'Daljit & Singh' was not written by the same person. Power of attorney has not been proved in accordance with law as it remained as Mark X. Appellant-defendant No.3 is the *bona fide* purchaser for a valuable consideration as he purchased the property on payment of ₹1500/- and was also put in possession. In such circumstances, the Courts below could not have granted the discretionary relief under Section 20 of the Specific Performance Act. The sale deed has also been proved through testimony of DW2, Kundan Singh, much less, possession. Atul Kumar Singla, unclinchly stated that the signatures on the agreement to sell were of some other person. Shisha Singh had an animosity with the father of defendant No.3. All these facts, if read in cumulative, dis-entitles the plaintiff to the relief as granted by the Courts below.

Mr. Vikas Singh, learned counsel appearing on behalf of the respondents submitted that defendant No.3 miserably failed to prove on record the sale deed executed in his favour, for a valuable consideration as DW2 Kundan Singh did not utter a word regarding the same. The aforementioned sale deed was executed only by none-else, but Daljit Singh, attorney holder. Dehors of the fact that the Local Commissioner's report was rejected by the trial, but the agreement to sell recited his previous possession and construction of the house. Appellant-defendant No.3, has not filed any counter-claim, claiming possession in terms of the alleged title

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deed dated 15.04.1981. Dewan K.S. Puri, a renowned Expert, whose testimony, used to be believed as sermon, stated that the agreement to sell bore the signatures of Daljit Singh.

I have heard learned counsel for the parties, appraised the paper book as well as the original records of the Courts below and of the view that the following 'Substantial Questions of Law' arise for determination:-

- 1. Whether the appellant-defendant No.3 has been able to establish the sale consideration regarding sale deed.*
- 2. Whether the judgments and decrees of the Courts below suffer from illegality and perversity.*

DW2-Kundan Singh, in examination-in-chief, has stated as under:-

"I was Sarpanch of Village Attalan about 3 years back. About three years, in pursuance of the warrant of possession, Daljit Singh witness present in Court was delivered possession of the suit land and a report rozenamcha was recorded by the Patwari and also a report was recorded by the Patwari and Quanungo on the reverse of the warrants which was signed in token of its execution by Daljit Singh, witness, myself, Gurbachan Singh Panch and Balkar Singh. Contents of the copy of the report which is Mark Y have been read over to the witness and he admits the same as correct. Ex.D1 sale deed was executed by said Daljit Singh in favour of my brothers Gurmukh Singh and others and I witnessed the sale deed Ex.D1. The said Daljit Singh had signed Ex.D1 and D2 in my presence and I attested both the documents as a marginal witness.

From the recital of the aforesaid statement, there is no reference

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to the payment of sale consideration. No other witness to the sale deed has been examined establishing that the appellant-defendant No.3 was put to possession. The contents of the sale deed do not reveal the exchange of money before the sub-Registrar or at any other place except reference of ₹1500/-. Any previous animosity of Shisha Singh with the father of defendant No.3, would be wholly preposterous/meaningless as the agreement to sell, in favour of the plaintiff, is of 02.02.1981 and by that time, appellant-defendant No.3 had not stepped into the transaction, which is of 15.04.1981.

I cannot remain unmindful of the fact that the rate agreed as per the agreement to sell, of the entire property, was ₹3900/-, viz-a-viz the sale deed, in favour of appellant-defendant No.3, which is paltry amount of ₹1500/-. It cannot be said to be distress sale deed, but an attempt to circumvent the specific performance or turn back from performing the part of the agreement to sell. Non-appearance of defendant Nos.1 and 2, is also the testimony to the same. Diwan K.S. Puri, in examination, stated that the signatures were of only Daljit Singh. He was a renowned expert, whose statement had also been appreciated in a judicial verdict. The readiness and willingness cannot be said to be wanting as the suit was filed within ten days after the breach.

As an upshot of my aforementioned findings, I am of the view that the judgments and decrees of the Courts below do not call for interference as appellant-defendant No.3, had also not made any effort to claim the possession, by way of the independent proceedings or counterclaim, on the basis of the alleged title, vide sale deed dated 15.04.1981. Accordingly, the concurrent findings are upheld. The

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Substantial Questions of Law, as framed above, are answered against the appellant-defendant No.3 and in favour of the respondents-plaintiff.

Resultantly, the present second appeal is dismissed.

Original records be sent back.

11.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**