

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

**RSA No.2503 of 1997 (O&M)
Date of decision: 26.09.2019**

Randhir Singh and others

.....Appellants

Versus

Balbir Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjiv Gupta, Advocate,
for the appellants.

None for the respondents.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 24.05.1997 passed by the Additional District Judge, Kurukshetra, whereby on appeal filed by Balbir Singh-defendant No.6, judgment dated 12.12.1991 passed by the Sub Judge, Ist Class, Jagadhri, has been modified and plaintiffs (appellants) have been held entitled to only recovery of Rs.33,600/- along with interest at the rate of 6% per annum from the date of passing of the decree.

In the present case, while issuing notice of motion on 20.08.1997, parties were directed to maintain status quo with regard to possession over the suit property. Thereafter, vide order dated 05.11.1997, respondent No.1 (who was contesting respondent) was proceeded against exparte. Respondent Nos.2 and 4 remained unserved as they were proforma respondents.

others (appellants herein) filed a suit for specific performance of agreement to sell and in the alternative for recovery of damages to the effect that Smt. Bharto-defendant No.1 (guardian of defendant Nos. 2 to 4) obtained permission from the Court for sale of land belonging to minor defendants. After obtaining permission, she (defendant No.1) entered into an agreement dated 05.01.1982 with the plaintiff (Lajwanti) for sale of the suit land for a consideration of Rs.45,000/- and had received Rs.16,800/- as earnest money. Possession of the suit land was delivered to the plaintiff. Stipulated date for execution of the sale deed was fixed as 15.06.1983. On 22.04.1982, Smt. Bharto again received a sum of Rs.4000/- towards sale consideration vide receipt inscribed below the original agreement itself. But, thereafter, defendant No.1 started negotiating with other persons in order to alienate the suit land other than the plaintiff No.1. Thereafter, plaintiffs filed a suit against the defendants, wherein stay was granted vide order dated 10.12.1982. During the pendency of said suit, the stipulated date for execution of the sale deed was crossed. Therefore, plaintiffs had to file the present suit for specific performance of agreement to sell. It was alleged that plaintiff No.1 was always ready and willing to perform her part of the contract, but defendant No.1 was not ready for the same. Hence, the suit.

Upon notice, defendant Nos.1 to 4 filed written statement taking preliminary objections with regard to locus standi, estoppel, limitation, cause of action, maintainability, the suit being not properly valued etc. On merits, it was stated that no permission had ever been sought by defendant No.1-Smt. Bharto to sell the land on behalf of minor defendants to the plaintiffs. It was denied that she had ever received any earnest money from the plaintiff. It was alleged that Smt. Bharto-defendant No.1, being a 'Parda

Nashin and illiterate' lady had no occasion to enter into any agreement or to receive any amount as earnest money. It was further stated that the agreement, if any, is bogus, illegal and had been obtained by fraudulent means.

Defendant No.5, who was impleaded later on, filed a separate written statement and supported the stand taken by defendant Nos.1 to 4 in their written statement. It was stated that defendant No.5 had purchased the land for Rs.75,310/- vide registered sale deed dated 04.01.1984 from Smt. Bharto-defendant No.1, who had entered into agreement on her behalf as well as on behalf of minor defendants and had received Rs.25,000/- from him. It was alleged that defendant no.5 had become a bonafide purchaser of the suit land. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether defendant No.1 as guardian and on behalf of minor defendant Nos. 2 to 4 agreed to sell the suit land to plaintiff vide agreement dated 05.01.1982 for Rs.45,000/- and received Rs.16,800/- as earnest money? OPP
2. Whether defendant No.1 also gave possession of the suit land to plaintiff at the time of impugned agreement? OPP
3. Whether plaintiff further paid a sum of Rs.4000/- to defendant No.1 towards balance sale price on 22.04.1982 and defendant No.1 executed receipt for the same on the impugned agreement OPP
4. Whether defendant No.1 had obtained necessary permission from the Guardian Court for sale of the suit land on behalf of defendant Nos.2 to 4? OPP
5. Whether the plaintiff has always been and is still ready and willing to perform her part of the contract? OPP

6. Whether defendants committed breach of the contract and plaintiff is entitled to specific performance thereof? OPP
7. Whether in the alternative, the plaintiff is entitled to recovery of Rs.45,000/- as alleged? OPP
8. Whether the suit is time barred? OPD
9. Whether the plaintiff has no locus-standi to file this suit? OPD
10. Whether the plaintiff is estopped from filing the present suit? OPD
11. Whether the plaintiff has no cause of action? OPD
12. Whether the suit is not maintainable in the present form? OPD
13. Whether the suit is bad for misjoinder and non-joinder of parties? OPD
14. Whether defendant No.1 is not legal guardian of defendant Nos.2 to 4 and cannot sell the suit land on their behalf? OPD
15. Whether the suit is not properly valued? OPD
16. If issue No.1 is proved, whether the impugned agreement is bogus, illegal and obtained by fraud as alleged? OPD
 - 1 (a). Whether the defendants have purchased this land vide registered sale deed dated 04.01.1984, if so, to what effect? OPD
 - 2 (a). Whether defendant NO.5 is bonafide purchaser of the suit land? OPD
17. Relief.

Before the trial Court, defendant No.1 had denied her thumb impression on agreement to sell Ex.P4. But, she did not state anywhere that her thumb impression on Ex.P4 had been obtained by fraud. Moreover, as per report of expert Ex.PW5/B, thumb impression put on by Smt. Bharto-defendant No.1 on the last page of Ex.P4 were identical. Argument of defendants that thumb impression of defendant No.1 on third page of the agreement was taken by fraud, had been rejected by the trial Court because while appearing as DW-1, Smt. Bharto had completely denied her signature/thumb impressions on Ex.P4. No legal proceedings were taken by

the defendants against the plaintiffs for the alleged fraud, if any, which had been committed by them.

Execution of agreement to sell Ex.P4 has been proved by Smt. Laj Wanti (PW-1) and Shri Jai Chand (PW-3), who was an attesting witness. Smt. Laj Wanti (PW-1) stated that she had given Rs.16,800/- on the same day i.e. date of execution of the agreement Ex.P4, in the presence of witnesses and subsequently, after 3-4 months thereto, she had again given Rs.4000/- to defendant No.1-Smt. Bharto in the presence of Desh Raj (PW-5). On 15.06.1983, she remained present in Tehsil Complex Ladwa till 3.00 P.M., but nobody from the side of defendants had appeared to get the sale deed registered. To the same effect is the deposition of Shri Jai Chand (PW-3), who was attesting witness of the agreement to sell Ex.P4. Keeping in view the testimony of PW-1, PW-3, PW-5 and report Ex.PW5/B and Ex.PW5/B, the execution of the agreement stood proved.

Defendant No.5, who claims to be the bonafide purchaser of the suit land from defendant No.1 had placed on record another agreement to sell dated 27.05.1981 Ex.DW1/A and had taken a plea that defendant No.1, on her behalf and on behalf of minor defendants, had already executed agreement to sell in favour of defendant No.5 on 27.05.1981. He further stated that agreement to sell Ex.P4, which was executed in favour of the plaintiff, was later in time. It was stated that once, vide agreement Ex.DW1/A, the suit land had been agreed to be sold for a sale consideration of Rs.75,000/-, there was no occasion for defendant No.1 to enter into any agreement, on a subsequent date, with the plaintiff to sell the suit land for a very low price of Rs.45,000/-. As per Ex.DW1/A, Rs.25,000/- had been received by defendant No.1 from defendant No.5.

Trial Court, after going through the evidence led by both the parties, returned a finding that defendant No.1 had entered into a sham agreement Ex.DW1/A on the back date i.e. 27.05.1981 for sale consideration of Rs.75,000/-. At that time, defendant No.1 had no permission to enter into any such agreement or to sell the land on behalf of minor defendants from any competent Court of law. In the agreement, it was not mentioned that Rs.25,000/- had been received as earnest money. Thereafter, they made a receipt Ex.DW1/B referring therein the receipt of earlier amount of Rs.25,000/-. This receipt bears the date 28.05.1981 instead of 27.05.1981. Moreover, the stamp paper for executing the document Ex.DW1/A was not purchased by Smt. Bharto and had been got purchased through one Dilel Singh. Hence, in the absence of any permission from Guardian Court, the trial Court held that agreement Ex.DW1/A entered into between Smt. Bharto-defendant No.1 and defendant No.5 was a fake document. At the time of filing the written statement, defendant No.1 did not mention about the said agreement. Trial Court further observed that possession of the suit land was, admittedly, with the plaintiffs. Accordingly, findings on all the issues were given against the defendants. Keeping in view the above findings, suit of the plaintiffs for specific performance of agreement to sell dated 05.01.1982 was decreed with costs.

Aggrieved by the said judgment, defendant No.6-Balbir Singh, who was subsequent purchaser of the suit land from defendant No.1-Smt. Bharto, filed appeal before the lower appellate Court. The lower appellate Court, after hearing learned counsel for the parties, affirmed the findings returned by the trial Court with respect to the agreement Ex.DW1/A that this agreement was a sham transaction entered into between the defendants in

order to avoid the agreement Ex.P4. However, while disposing of the appeal, decree for specific performance passed by the trial Court has been set aside and instead, a decree for recovery of Rs.33,600/- with proportionate cost of suit and future interest at the rate of 6% per annum has been passed in favour of the plaintiffs.

Heard, learned counsel for the appellants.

In this case, both the Courts below have held that since the date of execution of agreement to sell dated 05.01.1982 Ex.P4, the plaintiffs have been in possession of the suit property. The only question for consideration in this appeal is, whether the lower appellate Court has wrongly modified the judgment of the trial Court by granting the alternative relief of recovery in favour of plaintiffs-appellants.

After hearing learned counsel for the appellants and going through the impugned judgment, this Court is of the view that once both the Courts have returned a finding that subsequent agreement dated 27.05.1981 Ex.DW1/A and receipt Ex.DW1/B were sham transactions just to avoid the execution of agreement to sell Ex.P4 and possession of the suit property was with the plaintiffs, the suit could not be decreed for alternative relief of recovery of Rs.33,600/-. Moreover, out of total sale consideration of Rs.45,000/- plaintiff No.1 had already paid Rs.33,600/- to defendant No.1 and possession had been delivered to the plaintiffs. By projecting another agreement Ex.DW1/A, the defendants had made an attempt to avoid execution of the sale deed, whereas plaintiff No.1 was always ready and willing to perform her part of the contract, which is evident from the fact that on 15.06.1983 i.e. the stipulated date, she had appeared before the office of Sub Registrar. In this view of the matter, this appeal deserves to

be allowed.

Reference, at this stage, can be made to a judgment passed in **Motilal Jain vs. Ramdasi Devi**, 2000 (3) RCR (Civil) 545, wherein Hon'ble the Supreme Court has held that if, plaintiff merely makes a prayer for alternative relief of damages in a suit for specific performance, it cannot be said that he is not entitled to the main relief of specific performance. In the case before Hon'ble the Supreme Court, out of total sale consideration of Rs.25,000/-, Rs.17,000/- had already been paid. Thereafter, the plaintiff had proved his readiness and willingness to pay the balance amount. In para No.10 of the judgment, it was observed as under:-

“10. In the instant case, a perusal of paras 6 to 11 of the plaint do clearly indicate the readiness and willingness of the plaintiff. The only obligation which he had to comply with was payment of balance of consideration. It was stated that he demanded the defendant to receive the balance of consideration of Rs.8000/- and execute the sale deed. The defendant was in Patna (Bihar) at the time of notices and when he came back to his place, the plaintiff filed the suit against him. In support of his case, he adduced the evidence of PW-1 and PW-2. The plaintiff had parted with two-third of the consideration at the time of execution of Ex.t.2. There is no reason why he would not pay the balance of one-third consideration of Rs.8000/- to have the property conveyed in his favour.”

The Hon'ble Supreme Court held that merely on account of prayer for alternative relief of damages, suit for specific performance cannot be rejected. With the above observations, appeal of the plaintiff was allowed and the legal representatives of the defendant were directed to execute the sale deed in favour of the plaintiff.

In the facts of the present case, out of total sale consideration of Rs.45,000/-, major amount had already been paid by plaintiff No.1 and possession of the suit property was given to her. Learned counsel for the appellants states that pursuant to the judgment passed by the trial Court,

balance sale consideration has already been deposited by the plaintiffs. Hence, only on account of alternative prayer for recovery of damages, lower appellate Court had wrongly modified the well reasoned judgment dated 12.12.1991 passed by the trial Court.

Resultantly, the present appeal is allowed and the impugned judgment dated 24.05.1997 passed by the Additional District Judge, Kurukshetra is set aside and the judgment dated 12.12.1991 passed by the Sub Judge, Ist Class, Jagadhri, is upheld. Suit filed by the plaintiffs for specific performance of agreement to sell dated 05.01.1982 Ex.P4 is decreed. Trial Court is directed to get the sale deed executed in favour of the plaintiff(s), in accordance with law, within a period of two months from the date of receipt of certified copy of this judgment.

26.09.2019
ajp

(RITU BAHRI)
JUDGE

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