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

RSA No.1570 of 2001 (O&M)
Date of Decision:11.01.2019

Dalbir Singh and others

...Appellant(s)

Versus

Gurdial Singh and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.A.K.Chopra, Senior Advocate with
Mr.Ankit Midha, Advocate for the appellants.

Mr.S.D.Sharma, Senior Advocate with
Mr.Ved Priya Malik, Advocate for the respondents.

ANIL KSHETARPAL, J.

The plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

In the considered opinion of this Court, following substantial questions of law arise for consideration:-

(i) Whether pursuant to an agreement to sell if the target date for execution and registration of sale-deed fixed in the original agreement to sell is extended by one of the proposed vendor whether the limitation for filing the suit would begin to run from the date fixed for performance in the original agreement to sell or extended date with respect to all the proposed vendors.

(ii) Once execution of the agreement to sell and receipt of earnest money is admitted in the written statement filed through counsel then can the court dismiss the suit on the ground that agreement to sell is not signed by all the defendants.

In the present case, Gurdial Singh along with his two sons and wife were owners of property situated in two villages namely Bhattian and Bhundewal. Initially first agreement to sell dated 30.9.1986 is signed by Gurdial Singh on behalf of his sons and wife. As per agreement to sell, the target date for execution and registration of the sale-deed was fixed as 29.12.1986. However, the date was extended with mutual consent by executing another writing dated 29.12.1986. In the aforesaid writing, reference was to the agreement to sell dated 30.9.1986, which was only signed by Gurdial Singh. The date for execution and registration of the sale-deed was extended to 7.1.1987. This subsequent writing is signed by all the four proposed vendors. On 7.1.1987, once again another writing was executed again signed by all the proposed vendors namely Gurdial Singh, Surinder Singh, Gurcharan Singh and Gurdep Kaur, acknowledging the agreement to sell dated 30.9.1986, receipt of earnest money and extending the date to 13.1.1987. On 13.1.1987, once again the date was extended for another 10 days to 23.1.1987. This writing dated 13.1.1987 was signed by Gurdial Singh. Since the agreement to sell was not honoured, the plaintiffs filed the present suit, praying for decree for possession by way of specific performance of the agreement to sell dated 30.9.1986, 29.1.1986, 7.1.1987 and 13.1.1987.

The suit was contested. The execution of the agreement to sell and receipt of earnest money were admitted. However, it was pleaded that the agreement to sell is with respect to specific khasra number out of joint holding and therefore, the relief of specific performance cannot be granted. It was further pleaded that some of the agreements have not been signed by defendant Nos. 2 to 4.

At this stage, it would be apt to reproduce paras 1, 3 and 5 of the written statement filed by the defendants on merits:-

> *"(1) Para No.1 of the plaint is correct that the land mentioned in the heading of the plaint is jointly owned by the defendants alongwith other cosharers. The agreement dated 30-9-86 is admitted to be executed by the defendants but the details of the land mentioned in the agreement dated 30-9-86 are wrong. The plaintiffs have failed to mention the entire khasra numbers of the joint holding as the defendants cannot sell specific khasra numbers out of the joint holding. The defendants can only sell their share in the joint holding. Thus the agreement dated 30-9-86 is not enforceable, against the defendants.*
>
> *XXX XXX XXX XXX XXXX*
>
> *XXX XXX XXX XXX*
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> *(3). Para No.3 of the plaint is incorrect and denied. In fact on 29-12-86, the plaintiffs did not turn up as they had no funds to pay the sale price in order to get the sale-deed executed and registered and fresh agreement dated 23.1.87 was written without giving details of the land agreed to be sold. There is no agreement dated 13-1-87 as alleged by the plaintiff in this para of the plaint. The agreement dated 23.1.87 is signed by defendant No.1 alone and not by the other defendants. Thus the defendants No.2 to 4 are not bound by the agreement signed by defendant No.1 on 23.1.1987. Moreover, the agreement dated 23.1.1987 is also not enforceable as no details of land are mentioned therein. The agreement alleged to be dated 7.1.87 is also not enforceable as it is void and uncertain. Moreover in*

> *this agreement the date for the execution of sale deed is fixed as 13-1-87 which is not enforceable against the defendants.*
>
> *"5.(Para No.5 wrongly mentioned instead of Para No.4)*
>
> *In reply to para No.5 of the plaint, it is submitted that there is no agreement dated 13-1-87 alleged to be executed by the defendants in favour of the plaintiffs. As submitted in the earlier paragraph of the written statement, there is one agreement dated 23.1.87 which is executed only by deft No.1 and not by the other defendants. The other defendants are not bound by this agreement dated 23-1-87 at all. That on 29-12-86 and 13-1-87 the plaintiff have no money to pay to the defendants in presence of the agreement. The plaintiff were insisted that the sale deed will be at the rate of Rs.6000/- per killa whereas the agreement is Rs.17000/- per acre, and the remaining amount of sale consideration will be paid afterwards."*

Both the courts on reappreciation of evidence, dismissed the suit by recording a finding that since the agreement to sell is not signed by defendants No.2 to 4, therefore, specific performance cannot be granted. The learned court further held that the details of the land agreed to be sold has not been given. The learned first appellate court further held that the suit filed by the plaintiffs are within time against Gurdial Singh but not within time with respect to defendants No.2 to 4.

In the present suit, it is apparent from the above-said reproduced pleadings that the agreement to sell dated 30.9.1986 and receipt of earnest money are not in dispute. The subsequent writings are only in continuation of first agreement to sell. It is well settled that the agreement to sell is not required to be in writing, even it can be oral. The case has to be decided after appreciating the facts available on the file. The original agreement to sell dated 30.9.1986 is no doubt signed by Gurial Singh, who was head of the family. Other proposed vendors are his two sons and wife. They had signed the writings dated 29.10.1986 and 7.12.1986 in which they had admitted execution of the agreement to sell dated 30.9.1986. Receipt of earnest money as also execution of subsequent writings have been admitted. In these circumstances, the courts below were wrong in refusing specific performance of the agreement to sell on the ground that the agreement to sell dated 30.9.1986 and writing dated 13.1.1987 have not been signed by defendants No.2 to 4.

As regards the reason given by the courts that the details of the land have not been given in the agreement to sell is erroneous because the agreement to sell is specifically give details of the land agreed to be purchased in both the villages separately. Once the agreement to sell executed between the parties give details of the land agreed to be sold, the subsequent writings through which, merely time for performance was extended, were in fact in continuation of the first one. The details of the land were not required to be given in the subsequent writings. Once in the subsequent writings, correctness of the first agreement to sell has been acknowledged and it has been recorded that the first agreement to sell dated 30.9.1986 continues and the parties shall remain bound by the terms provided therein, the courts below committed an error in recording a finding that the details of the land had not been given in the agreement to sell.

Equally erroneous is the reason given by the learned first appellate court that the suit for specific performance is barred with respect to defendants No.2 to 4 and within time with respect to Gurdial Singh-defendant No.1. This issue is to be examined in the context of documents, which have come on record and the pleadings of the defendants. Once the extension which have been signed by all the proposed vendors on 29.12.1986, 7.1.1987 and signed by one on 13.1.1987 is not in dispute, the date for execution of the sale-deed stood extended. Gurdial Singh, who has signed the writing dated 13.1.1987 is father, whereas remaining defendants are two sons and wife. Still further, defendants No.2 to 4 although not signatory to the first agreement to sell dated 30.9.1986 have acknowledged and admitted agreement to sell dated 30.9.1986. In these circumstances, the first appellate court was in error in recording that the suit qua defendants No. 2 to 4 was barred by time. The learned trial court has further erred in recording a finding that since the plaintiffs as well as the defendants had visited the office of Sub Registrar on 23.1.1987, therefore, sale-deed would have been executed and hence the plaintiffs are not ready and willing to perform their part of the contract. The reasons given by the court are strange. The plaintiffs had proved their readiness and willingness by visiting the office of Sub-Registrar and affidavits were executed and got attested from the Sub-Registrar. In such circumstances, the findings of the courts below are clearly erroneous.

For the reasons recorded above, the regular second appeal is allowed. The judgments and decrees passed by the courts below are erroneous, therefore, liable to be set aside and hence, set aside. A decree for possession by way of specific possession of the agreement to sell dated 30.9.1986, which was extended on three occasions, is passed. However, keeping in view that balance sale consideration has remained with the plaintiffs, they shall be liable to deposit the balance sale consideration within a period of three months from the date of receipt of a certified copy of this judgment before executing court along with interest @10% from the date of agreement to sell.

Pending application(s), if any, shall also stand disposed of, in terms thereof.

11.01.2019 **(ANIL KSHETARPAL)**
mks **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No