

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4955 of 2011 (O&M)

Date of decision : 29.11.2019

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Kulwinder Kaur and others

.....Appellants

vs.

M/s Parkash Chand Kapoor Chand and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. H.S. Dhandi, Advocate for the appellants.

Mr. V.G. Jauhar, Advocate for respondent No.1

Mr. Rohit Kumar, Advocate for

Mr. Sushil Bhardwaj, Advocate for respondent No.2.

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H. S. Madaan, J.

Briefly stated facts of the case are that plaintiff M/s Parkash Chand Kapoor Chand Commission Agents, New Grain Market, Nabha, through its partner Rajinder Parsad, had brought a suit for specific performance, in alternative suit for recovery of Rs.3,80,000/- and for permanent injunction against Inderjit Singh, Smt. Kulwinder Kaur, Smt. Tejinder Kaur and Amarjit Singh.

As per version of the plaintiff, plaintiff is a partnership

concern working as Commission Agent at New Grain Market, Nabha. It is registered with Registrar of Firms Punjab, Chandigarh. Defendant No.1 is a co-sharer in the land measuring 2 bigha 5 biswa comprised in Khewat No. 7 and the land measuring 100 bighas 6 biswas comprised in khewat No.8 and further land measuring 103 bighas 7 biswas comprised in Khewat No. 10 as entered in jamabandi for the year 1996-97 A.D. of village Bakhtari. Defendant No. 1 is recorded to be in possession of land measuring 22 bighas 17 biswas comprised in Khewat No. 8 Khatoni No. 25 and Khasra No. 493 min/5-0, 951/206/5-18, 953/207 min/2-1, 208/6-15, 209/3-3, situated in the revenue estate of village Bakhtari. Defendant No.1 entered into an agreement of sale with the plaintiff on 20.6.1996 regarding the sale of the land. That agreement was signed by defendant No.1 and Rajinder Parshad, partner of the plaintiff. It was attested by Vidya Sagar and Raghbir Chand witnesses. Defendant No.1 could not execute the sale deed in favour of plaintiff firm in accordance with the terms and conditions of agreement of sale by the due date and he requested the plaintiff firm to extend the time further for a month. Consequently, the date was extended from 15.11.1996 to 31.12.1996 and further an amount of Rs.35,000/- was paid by the plaintiff firm to defendant No.1 as part of sale consideration at that time. However, the defendant No.1 did not execute the sale deed in accordance with the terms and conditions of agreements of sale dated 20.6.1996 and 15.11.1996. He showed his inability to do so and requested the plaintiff to execute the sale deed by 30.11.1997 by

further extending the time for execution of sale deed. The plaintiff agreed and extended the time and consequently agreement dated 31.12.1996 was executed by defendant No.1. The plaintiff firm through Rajinder Parshad approached defendant No.1 on 29.11.1997, with the balance sale consideration, expenses of stamps and registration and tendered the same to defendant No.1 asking him to execute the sale deed of the suit land but to no effect. On 1.12.1997 the date agreed, the defendant no.1 again did not turn up for completion of transaction. Rajinder Parshad partner who had attended the office of Sub Registrar, Bhawanigarh, got his presence marked by getting the affidavit attested from the Executive Magistrate, Bhawanigarh. Defendant No.1 had been delaying the matter on one pretext or the other. Consequently, plaintiff came to know that defendant No.1 had sold the land measuring 9 bighas 10 biswas of the land, which include suit land also, vide sale deed No. 412 of 20.5.1997 in favour of defendants No. 2 and 3 for an ostensible consideration of Rs.2,52,000/-. During pendency of the suit, defendants No. 2 and 3 had alleged in the written statement about execution of two sale deeds by defendant No.1 in their favour bearing No. 412 dated 20.5.1997 and 1787 dated 18.12.1996. Then the plaintiff came to know about execution of sale deed No. 1787 dated 18.12.1996, which was for an ostensible consideration of Rs.3,60,000/-. According to him this sale in favour of defendants No. 2 and 4, is a sham and bogus transaction brought by defendant No.1 in order to harm the interest of plaintiff. This sale deed is

absolutely without any consideration and the vendees Amarjit Singh himself and Kulwinder Kaur through her husband Bhupinder Singh had notice of earlier agreements of sale executed by defendant No.1 in favour of the plaintiff. Therefore, the said sale deed is ineffective and inoperative as against the rights of the plaintiff. The plaintiff requested the defendant to get the sale deed executed, by setting aside the sale deeds executed by him in favour of defendants No. 2 and 3 and such defendants be asked to join defendant No.1 in executing the sale deed in favour of plaintiff, but to no effect. Therefore, the plaintiff brought the suit in question contending that it is entitled to the relief of possession of the suit property through specific performance of agreement of sale on payment of balance sale consideration of Rs.81,250/- by adjusting the earnest money. In case the court come to the conclusion that the plaintiff is not entitled to the relief of specific performance of agreements of sale for any reason, then in alternative plaintiff was entitled to refund of earnest money of Rs.2,35,000/- alongwith interest of Rs.1,45,000/- @ 18% per annum from the dates of agreements of sale till the date of suit and future interest @ 18% per annum from the date of suit till the realization. According to the plaintiff, it is entitled to this amount of Rs.1,45,000/- by way of damages also as the plaintiff has been deprived of use of this this amount of Rs.2,35,000/- as the amount remained with defendant No.1 from the dates of agreements of sale. The market rate of interest in the locality of Nabha is not less than 2% per month, however, the plaintiff claimed interest @ 1.5% per

annum. It was calculated as Rs.1,45,000/-. That the plaintiff was entitled to relief of permanent injunction, restraining the defendants from alienating or transferring the suit land in favour of any person.

On notice, the defendants appeared. Defendant No.1 filed his written statement. Whereas defendants No. 2 and 3 came up with a joint written statement and defendant No.4 filed his separate written statement. In the written statement filed by the former – defendant No.1, he has contended that as per law if a partner dies, then the partnership automatically gets dissolved. The LRs of Parkash Chand deceased partner are necessary parties. Various other legal objections were taken. This defendant denied that he is in exclusive possession of 22 Bigas and 17 Biswas as alleged. He denied that defendant No.1 had executed any agreement. The witnesses were related to the plaintiff and they have formed a gang for preparing false documents and they had signed vice versa; that brother of defendant No.1 Shish Pal was dealing with the plaintiff. The plaintiff might have obtained the signatures of defendant No.1 as security for his brother. In fact defendant No.1 entered into an agreement on 13.6.1995 with the other defendants and executed sale deed as per agreement in their favour. It was denied that defendant no.1 never received Rs.35,000/- as alleged. When defendant No.1 had not executed any agreement on 20.6.1996, then further extension of time for execution of sale deed on 15.11.1996, 31.12.1996, 30.11.1997 did not arise; that defendant No.1 is a layman and simple villager, whereas plaintiff and witnesses are very clever persons. It

was stated that Krishan Kumar son of Kaur Chand is Munim of plaintiff firm. According to the answering defendant suit of the plaintiff is neither maintainable nor competent in its present form. Several other legal objections had been taken. Refuting the remaining assertions, such defendant prayed for dismissal of the suit.

In the separate written statement filed by defendants No. 2 and 3, they have also taken up various legal objections. According to such defendants, the allegation that defendant No.1 had entered into an agreement of sale with the plaintiff on 20.6.1996 is not correct, rather it is forged and fabricated document. The true facts of the case are that on 13.6.1995, defendant No.1 entered into an agreement for sale of land measuring 20 bighas comprised in Khata No. 7/27, killa No. 951/206/5-18, 953/207/min/2-1, 338/8-1, 208 min/40-0 @ Rs.40,000/- per bigha and received Rs.5,49,000 as earnest money. An agreement to this effect was executed in favour of Bhupinder Singh and Amarjit Singh, husbands of defendants No. 2 and 3, respectively. The sale deeds dated 19.12.1996 and 20.5.1997 were executed in favour of Amarjit Singh son of Dalip Singh, Kulwinder Kaur wife of Bhupinder Singh and Tejinder Kaur wife of Amarjit Singh, respectively. The original agreement dated 13.6.1996 was misplaced from the house and defendants No. 2 and 3 got its photostat copy from the office of Sub-Registrar, Bhawanigarh. The vendees are bona fide purchasers for value and without notice, who made the necessary inquiries from the office of Sub-Registrar, Bhawanigarh before getting the said sale deeds executed. The agreements dated

15.11.1996, 20.6.1996 and 31.12.1996 are alleged to have been executed at Nabha and defendants No. 2 and 3 were supposed to make enquiry regarding title of property from the office of Sub Registrar, Bhawanigarh and since the disputed property is situated within its jurisdiction as village Bakhtari falling within Sub Tehsil, Bhawanigarh, this fact in itself establishes that no agreement as alleged was executed and the alleged agreements are forged and fabricated documents. The plaintiffs were required to get their presence marked on 30.11.1997 in the office of Sub-Registrar, Bhawanigarh. The sale of land by defendant No.1 in favour of defendants no. 2 and 3 was stated to be legal and valid. Refuting the remaining assertions, such defendants prayed for dismissal of the suit.

Defendant No.4 in the separate written statement filed by him also contested it vehemently.

Replication was filed.

From the pleadings of parties, following issues were framed :-

1. Whether the defendant Inderjit Singh entered into an agreement to sell suit land in favour of plaintiff on 20.6.1996, 15.11.1996 and 31.12.1996? OPP
2. Whether plaintiff remained ready and willing and is still ready and willing to perform his part of the contract? OPP
3. Whether plaintiff is entitled to get the specific performance of the agreement after setting aside the sale deed No. 1787

dated 18.12.1996 executed by Inderjit Singh in favour of Amarjit 'Singh and sale deed No. 412 of 20.5.1997 executed by Inderjit Singh in favour of Kulwinder Kaur and Tejinder Kaur ? OPP.

4. Whether the plaintiff is entitled to recover Rs.3,80,000/- in the alternative? OPP
5. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
6. Whether the suit is not properly valued for the purpose of court fees and jurisdiction? OPD
7. Whether the suit is bad for multifariousness ? OPD
8. Whether defendants No. 2 and 3 are bona fide purchaser for consideration without notice ? OPD
9. Whether agreement to sell in favour of defendants No. 2 and 3 was prior to any agreement in favour of plaintiff ? OPD
10. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD
11. Whether defendant No.4 is bona fide purchaser for consideration without any notice ? OPD
- 11-A. Whether this suit is bad for non-joining of LRs of Parkash Chand, deceased ? OPD
- 11-B. Whether suit is bad u/s 30 of CPC? OPD
- 11-C. Whether property in hands of defendant no.1 is Joint Hindu Family Coparcenary property ? OPD

11-D. Whether plaintiff firm is a money lender without any licence ? OPD

11-E. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD

12.Relief.

Parties lead evidence in support of their respective claims.

In order to prove its case, the plaintiff examined Vidya Sagar as PW-1, Raghubir Chand as PW-2, Mahesh Inder Sharma, Document Writer as PW 2/A, Jeet Singh as PW-3, Ashok Kumar as PW-4, Krishan Kumar as PW-5, Dr. Atul Kumar Singla, Handwriting and Fingerprint Expert as PW-6, Raghuvir Chand as PW-7, Lajpat Rai as PW-8, Rajinder Parshad as PW-9, Inder Kumar, Junior Assistant, Office of Sub Registrar, Nabha as PW-10 and thereafter closed its evidence.

On the other hand, defendant No.1 himself appeared as DW-1 and further examined Bhupinder Singh as DW-2, Ramesh Kumar as DW-3 and closed their evidence, after tendering certain documents.

After hearing the arguments, the trial Court decided issues No.1 to 3, 5 to 11, 11-A, 11-B, 11-C, 11-D and 11-E, in favour of plaintiff and against the defendants, whereas no finding was returned on issue No. 4 as the said issue had become redundant.

In view of the findings returned on the issues, the trial Court of Additional Civil Judge (Senior Division), Sangrur, vide judgment

and decree dated 22.9.2007, decreed the suit filed by the plaintiff.

Kulwinder Kaur, Tejinder Kaur and Amarjit Singh, being defendants No. 2 to 4 in the original suit, felt aggrieved by the judgment and decree passed by the trial Court and had preferred an appeal before District Judge Sangrur. That appeal was assigned to Additional District Judge, Sangrur. The appeal was found to be without any merit and the same was dismissed, vide judgment and decree dated 13.9.2011.

Still feeling aggrieved, such defendants have filed an appeal before this Court, notice of which was given to the respondents.

I have heard learned counsel for the parties, besides going through the record.

Both the Courts below on analysis of the factual and legal position, have come to the conclusion that defendant No.1 had executed legal and valid agreement of sale in favour of the plaintiff after receiving the amount of Rs.2,35,000/- and had executed agreement to sell dated 20.6.1996 but he did not execute the sale deed and extended time to 15.11.1996. This time was further extended to 31.12.1996. Therefore, the plaintiff is entitled to get the sale deed executed in his favour after paying balance sale consideration.

The claim of defendants No. 2 to 4 that they are bona fide purchasers since they had purchased the suit land for valuable consideration without notice vide sale deeds Exhibits D-2 and D-3 was rejected giving detailed and valid reasons. The fact was taken

note of that in sale deeds Exhibits D-2 and D-3 in favour of defendants No. 2 to 4, there is no mention of agreement dated 13.6.1995 and payment/passing of sale consideration was also not proved. The plea taken by defendants that suit property was joint Hindu Co-parcenary property was also rejected on account of the fact that enough, cogent and convincing evidence in that regard was not produced by the defendants and when defendant No.1 Inderjit Singh had appeared as DW-1 he did not say even a word in that respect. The agreement to sell entered into between the plaintiff and defendant No.1 on 20.6.1995 was found to be legal and valid and no reason was found to deny the relief of specific performance to the plaintiff. Therefore the suit had been decreed.

The judgments passed by the Courts below are well reasoned, based on proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for any interference by this Court. No substantial question of law arises in the present appeal.

Therefore, the appeal is found to be without any merit and the same stands dismissed.

29.11.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No