

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

RSA No.2565 of 2012 (O&M)

Date of decision: March 28th, 2019

Rohtash and others

...Petitioners

Versus

Azad Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. C.B. Goel, Advocate for the appellants.

Mr. Sandeep Kotla, Advocate for the respondent.

Rajan Gupta, J.(oral)

Present appeal has been preferred by defendant/appellants, aggrieved by judgments of courts below whereby suit filed by plaintiff was decreed. Learned counsel for the appellants has argued that courts below did not appreciate the evidence in court perspective. According to him, findings of the courts below are bereft of any merit and contrary to the evidence on record. As such, the suit filed by the plaintiff was liable to be dismissed. Plea has been opposed by learned counsel for the respondent.

Both the learned counsel for the parties have been heard. Evidence on record has also been looked into.

Plaintiff-respondent filed a suit for possession by way of specific performance in respect of land measuring 14 Kanals 8 Marlas on the basis of agreement to sell dated 17.01.2005 and also sought decree for permanent injunction to restrain defendant from alienating the suit land in any manner. It was averred that defendant Hukam Chand was owner in possession of the suit land and had agreed to sell the same to plaintiff vide agreement to sell dated

17.01.2005. He also agreed to sell possessory rights of *Gair-Marusi* in respect of land measuring 33 Kanals 13 Marlas, situated at village Dhansoli. Accordingly, plaintiff paid a sum of Rs.8,00,000/- as earnest money. Last date for execution and registration of sale deed was fixed as 31.5.2005. Plaintiff had always been ready and willing to perform his part of the contract. Even plaintiff requested defendant to be present before the office of Sub Registrar, Bapoli on 31.05.2005. However, on the said date defendant did not turn up. Thereafter, plaintiff served legal notice asking the defendant to execute and register the sale deed. It was also averred that defendant had not disclosed the fact that he had mortgaged the suit land with one Ram Pal and had not paid the mortgage amount of Rs.1,85,000/- alongwith interest to him. Besides, civil suit for recovery of the said amount was also pending. As defendant failed to perform his part of the agreement, plaintiff was compelled to file the present suit. Defendant contested the claim by filing the written statement. Besides denying material averments raised by plaintiff, it was averred that agreement in question was neither signed nor executed by the defendant. Thereafter, parties led evidence in support of their pleas. Trial court on appreciation of evidence on record, decreed the suit qua 14 Kanals 08 Marlas of land, as the relief for remaining land measuring 33 Kanals 13 Marlas was given up. Accordingly, defendant was directed to execute the sale deed in favour of plaintiff qua 14 Kanals 08 Marlas of land, as per agreement to sell dated 17.01.2005 within six months. Defendant was also restrained from alienating the suit land in any manner.

Feeling aggrieved by judgment and decree, the legal heirs of defendant- Hukam Chand preferred an appeal before the first appellate court which was dismissed vide judgment and decree dated 25.01.2012. Hence, the

second appeal.

After hearing learned counsel for the parties and on going through the judgments passed by the courts below, I find no merit in the second appeal.

There are concurrent findings of both the courts below that defendant Hukam Chand, who died during the pendency of the suit, had executed an agreement to sell dated 17.01.2005 in favour of plaintiff, whereby he had agreed to sell 14 Kanals 08 Marlas of land as also possessory rights of '*Gair-Marusi*' in respect of land measuring 33 Kanals 13 Marlas.

Both the courts also came to conclusion that title of defendant qua 14 Kanals 08 Marlas of land was clear and unambiguous and hence decreed the suit qua said land, whereas the title qua remaining land measuring 33 Kanals 13 Marlas was not with the defendant. Relief qua said land was not pressed by plaintiff, hence declined. It would be pertinent to point out here that decree dated 04.01.2007 was obtained by appellants, against their father during pendency of suit filed by plaintiff/respondent and thus, it cannot affect the rights of plaintiff qua suit land i.e. 14 Kanals 08 Marlas.

Finding no infirmity with the reasoning given by courts below, no interference is called for in the second appeal. The same being without merit, is hereby dismissed.

(RAJAN GUPTA)
JUDGE

March 28th, 2019
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No