

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

**RSA No.1523 of 2016(O&M)
Date of Decision.20.05.2019**

S. Nirmal Singh (now deceased) through LRs

...Appellant

Vs

S. Pargat Singh and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D.S. Kahlon, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.4200-C of 2016

The application for impleading the legal representatives of deceased S. Nirmal Singh is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record for the purpose of adjudication of the present appeal.

Main Case

The appellant-plaintiff has not been successful in claiming injunction against the defendants in respect of suit property referred to therein in both the Courts below.

The appellant-plaintiff alleged that he was in possession of the suit property as earlier he was in joint ownership with his brother and husband of pro forma defendant No.4. During his life time, Harbans Singh, executed a sale deed of his share in favour of Parmjit Singh. Vide exchange deed dated 30.07.1988, Parmjit Singh exchanged land with the appellant-plaintiff and in such circumstances, became lawful and exclusive owner. Exchange deed

could not be incorporated in the revenue record. It was settled between the brothers that Harbans Singh would execute sale deed in favour of the plaintiff of his share, subject matter of sale deed dated 10.07.1991 and in this respect, he executed agreement to sell dated 24.10.1994 but Harbans Singh unfortunately died and the agreement to sell could not be enforced. Widow of Harbans Singh on conferring title through mutation, entered into agreement to sell dated 01.04.2005 in favour of appellant-plaintiff for total consideration of ₹21 lakhs against earnest money of ₹8 lakhs. Remaining amount was to be paid on 31.07.2005 at the time of execution of sale deed but again dispute arose and defendants No.1 to 3 obtained signatures of defendant No.4, Jagdish Kaur wife of Harbans Singh which were converted into agreement to sell. This fraud was not in the knowledge of the plaintiff. Plaintiff had filed civil suit against defendant No.4 for declaration and injunction and during the pendency of suit, matter was resolved between him and defendant No.4, consequently sale deed dated 08.07.2005 was executed in favour of the plaintiff on receipt of entire consideration. Defendants No.1 to 3 threatened plaintiff for forcible interference and dispossession, thus, cause of action accrued to file the suit.

Defendants No.1 to 3 filed joint written statement and stated it to be a counter-blast to the suits already filed by defendants No.1 to 3 against defendant No.4. On merits, it was alleged that there was no legal and valid exchange deed and denied the validity and legality of execution.

Plaintiff in support of aforementioned evidence

examined five witnesses and brought on record certain documents. On the other hand, defendants examined two witnesses and closed evidence.

The trial Court dismissed the suit. Before the lower Appellate Court, application under Order 41 Rule 27 CPC was filed for additional evidence to examine himself and certain documents as during the trial, plaintiff had gone to USA and returned in November, 2008. The aforementioned application was contested resulting into dismissal of the same.

Learned counsel for the appellant-plaintiff submitted that non-examination of the plaintiff in suit for injunction is not *sine qua non*. The judgments relied upon are totally not applicable as they were pertaining to suit where there was personal knowledge between the executor and the proposed vendee and information cannot be shared by an agent i.e. attorney holder. Possession in pursuance of previous agreement entered by Harbans Singh and his wife Jagdish Kaur has been proved on record. Defendants No.1 to 3 connived with defendant No.4 and obtained injunction against alienation by filing the suit.

I have heard learned counsel for the appellant and appraised the paper book. It is matter of record that in pursuance of agreement to sell on the basis of which plaintiff was seeking permanent injunction, no effort had been made to seek specific performance or to protect possession as per Section 53-A of the Transfer of Property Act. It is a matter of record that defendants No.1 to 3 had filed suit against defendant No.4 i.e. wife of Harbans Singh

qua alienation. No explanation has come forward with regard to decision of the suit or sale agreement of Jagdish Kaur in favour of defendants No.1 to 3.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 20, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No