

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

RSA No.2168 of 2015 (O&M)

Date of Decision: November 18, 2019

Baldev Singh (deceased) through his LR's and others

...Appellants

Versus

Gurwinder Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. D.S. Gurna, Advocate
for the appellants.

Mr. Ish Puneet Singh, Advocate
for the respondent.

JAISHREE THAKUR, J. (Oral)

1. This is a regular second appeal that has been filed by the appellants-defendants (henceforth called 'the appellants') seeking to challenge the judgment and decree dated 25.03.2013 passed by the lower court, decreeing the suit of the respondent-plaintiff (henceforth called 'the respondent') for alternative relief of recovery of earnest money as well as judgment and decree dated 02.03.2015 passed by the first Appellate Court whereby, the appeal filed by the respondent for the relief of possession by way of specific performance of the agreement was allowed.

2. In brief, the facts of the case are that appellant No.1 was recorded as owner of land measuring 3K-19M as per copy of jamabandi for

the year 1998-99 and he entered into an agreement to sell in favour of the respondent regarding the suit property (the property mentioned at letter X in the headnote of the plaint) on 10.12.2003 after receiving ₹ 50,000/- as earnest money from the respondent in the presence of marginal witnesses and scribe. It was averred that rate of the land was fixed at ₹ 5,05,000/- per acre and the date for execution and registration of sale deed was fixed as 10.12.2004. It was agreed by appellant No.1 that if he fails to execute and register the sale deed, then the respondent shall have right to get it executed through court of law and shall also be entitled to ₹ 1,00,000/- as damages to be recovered from appellant No.1. It was stated that on 08.12.2004, appellant No.1 again received ₹ 50,000/- as further earnest money from the respondent and got extended the date for execution and registration of the sale deed upto 30.06.2005 vide writing dated 08.12.2004. It was alleged that thereafter the respondent came to know from the Halqa Patwari that appellant No.1 has executed a transfer deed on 25.05.2005 in favour of appellants No.2 to 4 in collusion with his daughter-in-law Baljit Kaur regarding land measuring 2K-2M out of the suit property. The respondent requested the appellants to admit his claim as per the terms and conditions of the agreement to sell dated 10.12.2003, but all in vain. It was claimed that the respondent remained always ready and willing and is still ready and willing to perform his part of the contract.

3. Upon notice, the appellants appeared and filed their joint written statement, in which it has been submitted that appellant No.1 was grand-father of appellants No.2 to 4, who are minors and residing with their mother Baljit Kaur. It was admitted that appellant No.1 was the owner of

the suit land, however, it was stated he never executed any agreement to sell in favour of the respondent and never received any earnest money from him. It was alleged that the agreement to sell in question is illegal, null and void being a self created document and the same has been prepared by the respondent in collusion with the attesting witnesses. It was claimed that the transfer deed executed by appellant No.1 in favour of appellants No.2 to 4 is a legal and valid document and the same is binding on the respondent.

4. Replication was filed. From the pleadings of the parties, issues were framed and evidence was led by both the parties and after appreciating the evidence, the lower court decreed the suit of the respondent for alternative relief of recovery of the earnest money, which findings were affirmed in appeal by the first Appellate Court. Now, both the judgments and decrees passed by the courts below have been assailed in this regular second appeal.

5. Counsel appearing on behalf of the appellants argues that the courts below have wrongly held that the agreement to sell in question has been proved by the respondent. It is contended that the lower court has erred in observing that since the vendor had transferred his title in favour of appellants No.2 to 4, so it was not required for the respondent to get his presence marked before the Sub Registrar. It is also submitted that the finding returned by the first Appellate Court that the sale deed dated 25.05.2005 is hit by doctrine of *lis pendence* is not sustainable, as the said sale deed stood executed before the filing of the suit. It is further argued that the agreement to sell executed by the vendor does not bind the legal heirs of the vendor. It is also contended that the alternative relief was

rightly granted by the lower court and said finding has been wrongly reversed by the first Appellate Court.

6. On the other hand, counsel for the respondent vehemently opposes the arguments advanced by counsel appearing on behalf of the appellants, while submitting that these arguments have been dealt with in detail by the courts below. It is argued that the suit of the respondent has been rightly decreed and no ground is made to interfere with the well reasoned findings returned by the courts below.

7. I have heard counsel for the parties and with their assistance, have gone through the case file.

8. The lower court, while decreeing the suit of the respondent, has observed that the agreement to sell in question has been proved on record by the respondent and that the respondent has been able to prove satisfactorily that he was and is ready and willing to perform his contractual obligation as per the agreed terms and conditions. However, the lower court allowed the alternative relief of recovery of earnest money to the respondent. Feeling aggrieved against the denial of relief of specific performance, the respondent has preferred an appeal before the first Appellate Court, at the same time, the judgment and decree of the lower court was not challenged by the appellants. In appeal, on re-appreciating the evidence, the first Appellate Court allowed the relief of possession of the suit property by way of specific performance of the agreement to sell to the respondent and reversed the findings of the lower court to that extent.

9. In the present case, so far as agreement to sell in question is concerned, the same has been proved on record by the respondent while

stepping into the witness box as PW1, whose testimony has been corroborated by PW2 Jagnam Singh and PW3 Swaran Singh. Both PW2 and PW3 have deposed that contents of the agreement to sell and endorsement of extension were read over to appellant No.1, who put his signatures on the same, after admitting the same to be correct. As far as stand taken by the appellants that the agreement to sell in question is illegal, null and void, they have failed to prove on record the same that as to how and in what manner, it is so. More so, even in their written statement, the appellants have not specifically pleaded that the thumb impressions of appellant No.1 were forged by the respondent or that the same were obtained on blank papers.

10. The appellants herein have not challenged the findings of the lower court before the first Appellate Court that the agreement to sell in question has been proved by the respondent as well as that the respondent was ready and willing to perform his part of the contract. It is the respondent, who challenged the findings of the lower court in appeal, only to the extent of denial of relief of possession by way of specific performance of the agreement to sell in question. The stand of the respondent before the first Appellate Court was that the sale deed dated 25.05.2005 executed by appellant No.1 in favour of appellants No.2 to 4, his grand children, was null and void and was not binding on his right and was liable to be set aside. The first Appellate Court, on re-appreciating the evidence and while relying upon ratio of law as laid down in the judgments rendered in *Sukhwinder Singh & Ors. vs. Satnam Singh & another, 2013 (3) CCC 533, Abhey Singh & Ors. vs. Ramesh Kumar & Ors. 2009(3)*

CCC 74 (P&H), Shrikrishna Danuji Sonone vs. Vitthak son of Shakar Bajre, 2010(2) CCC 730 (Bom.), Hodil Singh (since deceased) represented by legal heirs vs. Bhawant Singh (deceased) represented by legal heirs, 2010(2) CCC 608 and Abhey Singh and others vs. Ramesh Kumar and others, 2009(3) CCC 774 reversed the finding of the lower court in granting the alternative relief of recovery of earnest money and granted the relief of possession of the suit property by way of specific performance of the agreement to sell dated 10.12.2003 in favour of the respondent by declaring that the sale deed dated 25.05.2005 executed by appellant No.1 in favour of appellants No.2 to 4 was null, void, illegal and ineffective. In this regard, this court is of the opinion that as appellant No.1 had already agreed to sell the suit land to the respondent vide agreement to sell dated 10.12.2003, as such, further sale deed dated 25.05.2005 executed by appellant No.1 in favour of appellants No.2 to 4 was not sustainable in the eyes of law and the same has been rightly declared as null, void, illegal and effective by the first Appellate Court. Counsel for the appellants has miserably failed to point out any perversity in the findings returned by the first Appellate Court, while allowing the relief of possession by way of specific performance of the agreement to sell in question and setting aside the findings of the lower court, to the extent of granting the alternative relief of recovery of earnest money. Once the agreement to sell has been proved on record, along with the intention of readiness and willingness to perform his part of the contract by the respondent, the lower court was not right in declining the relief of possession by way of specific performance of the agreement to sell in favour of the respondent merely because appellant No.1

had further transferred the suit land in favour of appellants No.2 to 4 vide sale deed dated 25.05.2005, as such, this court finds no illegality in the findings returned by the first Appellate Court.

11. In view of the above, this court finds no illegality or perversity in the findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellants-defendants, which has no merit.

12. Dismissed.

November 18, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No