

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

RSA-3794-2013(O&M)

Date of decision:-13.3.2019

Om Parkash

...Appellant

Versus

Krishan Chand

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sanjiv Gupta, Advocate
for the appellant.

Mr.Sumit Gupta, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Krishan Chand had brought a suit against defendant- Om Parkash praying for specific performance of agreement to sell, in addition to that craving for grant of permanent injunction on the averments that defendant being a co-owner in total land measuring 252 Kanals 11 Marlas to

the extent of of 761/5051 share coming to 38 Kanals 1 Marla, comprised in Khewat No.279, khatoni No.368-369 situated within revenue estate of village Kaimla, Tehsil Gharaunda, District Karnal as per jamabandi for the year 2001-02, had entered into an agreement to sell 8 Kanals of land along with rights attached thereto with the plaintiff, on 7.5.2007 for total consideration of Rs.8 lacs, receiving a sum of Rs.4,40,000/- as earnest money; that the agreement was scribed by Sh.Mahabir Gupta, Deed-Writer, Tehsil Campus Gharaunda and was thumb marked by the defendant in presence of marginal witnesses; the final date for execution and registration of the sale deed was fixed as 30.9.2007; that as per the terms and conditions agreed upon between the parties, it was settled that in case the plaintiff did not get the sale deed executed and registered in his favour within the stipulated period, then the earnest money paid by him would be forfeited and if the defendant did not get the sale deed executed and registered in favour of the plaintiff, then the plaintiff would be entitled to get the agreement to sell specifically enforced through Court of competent jurisdiction; that the defendant had handed over actual physical possession of 8 Kanals 0 Marla comprised in Khewat No.279, khatoni No.369, rectangle No.17, killa No.9(8-0), which was in his exclusive cultivating possession to the plaintiff on the date of execution of the agreement to sell and since then plaintiff has been in actual physical cultivating possession of the

said land; that before the stipulated date fixed for execution and registration of the sale deed, the defendant had contacted the plaintiff and requested him to pay some amount since he was in dire need of money for getting clearance certificate from the bank; that acceding to that request the plaintiff paid a sum of Rs.1,10,000/- to the defendant on 28.5.2007 and a receipt was reduced into writing on the backside of original agreement to sell in that regard; that the defendant further received an amount of Rs.10,000/- from the plaintiff on 1.10.2007, in that way out of total consideration amount of Rs.8 lacs agreed between the parties, the defendant had received a sum of Rs.5,60,000/-. According to the plaintiff, he had always been ready and willing to perform his part of contract and he had contacted the defendant several times before the fixed date i.e. 30.10.2007 but the defendant put off the matter on one pretext or the other, though promising that before the fixed date for execution and registration of the sale deed, he would get a clearance certificate from the bank and would get the sale deed executed and registered on the stipulated date. As per the version of the plaintiff, on 30.10.2007, he went to office of Sub-Registrar, Gharaunda along with balance sale consideration and other ancillary expenses and waited for the defendant throughout the day but the defendant did not come there knowingly and intentionally on account of steep rise in the prices of the suit land; that the plaintiff got an affidavit attested from the office

of Sub Registrar, Gharaunda in token of his presence on that very date; that the plaintiff requested the defendant even after the stipulated date to execute and get registered the sale deed in his favour and to clear the loan amount but the defendant flatly refused to do so and rather threatened to alienate the suit land to some other person, as such the plaintiff sent a notice to defendant on 21.11.2007 requesting him to come present on 29.11.2007 to get the sale deed executed and registered in favour of the plaintiff; that the notice was duly received by the defendant; that the defendant contacted the plaintiff and orally requested that he was unable to get the sale deed executed and registered on 29.11.2007 and pleaded that he would get the needful done within 10 days by giving prior notice to the plaintiff but he did not do so giving rise to a cause of action to the plaintiff to bring the suit in question asking for specific performance of agreement to sell and in the alternative craving for passing of decree for recovery of Rs.11,20,000/- i.e. double the amount of the earnest money along with cost of the suit. The plaintiff had further sought a decree for permanent injunction restraining the defendant from alienating the suit land in favour of any other person except the plaintiff.

On notice the defendant had appeared and filed written statement contesting the suit raising preliminary objections challenging the locus standi of the plaintiff to file the suit contending

that the plaintiff was estopped by his own act and conduct to file the suit; that the plaintiff had not come to the Court with clean hands and suppressed the true and material facts from the Court; that the suit as framed was not maintainable; that the suit so filed has not been properly and correctly valued for the purpose of Court fee and jurisdiction; that the civil Court has no jurisdiction to entertain the suit. On merits, the defendant denied the material assertions in the plaint submitting that he had not executed or thumb marked the alleged agreement to sell and he had no intention to sell his land; that no amount was ever paid by the plaintiff to answering defendant; as a matter of fact the alleged agreement to sell was a forged document being manipulated and procured by plaintiff in active connivance with his uncle Dharam Dutt, Ex-Sarpanch as well as Document Writer; that no amount whatsoever was paid by the plaintiff to the defendant. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to a decree for possession by way of specific performance of the contract dated 7.5.2007 as

prayed? OPP.

2. If issue No.1 is proved then whether the defendant be restrained from alienating the suit land by way of sale, mortgage, charge as prayed for? OPP.
3. Whether the plaintiff has no locus-standi to file the present suit? OPD.
4. Whether the present suit is not maintainable? OPD.
5. Whether the plaintiff has no cause of action to file the present suit? OPD.
6. Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts from the Court? OPD.
7. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
8. Whether the civil Court has got no jurisdiction to entertain and try the present suit? OPD.
9. Relief.

In order to prove his case, the plaintiff had got recorded his statement as PW4 further examining Sh.Gurpal Singh as PW1, Sh.Mahabir Gupta as PW2, Sh.Dharam Dutt as PW3 and Station Clerk, DC office, Karnal as PW5 besides tendering some documents.

On the other hand, the defendant had appeared himself as DW1.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiff and against the defendant, issues No.3, 4 and 6 against the defendant, issues No.5, 7 and 8 being not pressed. Resultantly, the trial Court vide judgment and decree dated 29.7.2011 decreed the suit of the plaintiff with costs and a decree for specific performance of contract/agreement to sell dated 7.5.2007 qua the land detailed in para para No.3 of the plaint was passed in favour of the plaintiff and against the defendant and a direction was issued to the defendant to execute the sale deed within two months from the date of judgment and in case he failed to comply with such direction then the plaintiff would be at liberty to get the sale deed registered and executed through process of law; that the defendant was further directed to hand over the land in question to the plaintiff after receiving rest of the consideration amount.

Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Karnal, who vide judgment dated 21.11.2012 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant filed the present regular second appeal before this Court, notice of which was issued and the respondent-plaintiff appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I do not find any merit in this appeal.

As regards the arguments advanced by learned counsel for the appellant that the agreement and receipt are result of fraud and misrepresentation, it is not convincing and was rightly rejected by the Courts below. The agreement to sell having been scribed by a regular Deed Writer with an entry being there in his register having thumb impressions of the parties rules out the possibility of any forgery and fabrication later on. Scribe Sh.Mahabir Gupta appearing as PW2 had deposed on the lines of case of the plaintiff proving various documents. The agreement was attested by two attesting witnesses, therefore execution of agreement and receipts stood duly proved. The defendant has simply denied the execution claiming the documents to be forged, which he has failed to establish. The thumb impressions purported to be those of the defendant has been established to have been appended by him.

The settled law on the subject is that specific performance in cases of agreement for sale of immovable property should normally be granted unless some exceptional hardship is there. Learned counsel for the appellant has tried to build up a case that the defendant is a small land holder and has got daughters of marriageable age, therefore he be not asked to execute the sale deed qua the suit land in favour of the plaintiff. However, learned counsel

for the plaintiff/respondent has contended that neither any such plea was taken by the defendant in his pleadings before the lower Court nor any such evidence was led by him. Therefore, he cannot raise this plea at this juncture.

After hearing the rival contentions of learned counsel for the parties, I find that the defendant/appellant has failed to show that he would be put to extreme hardship if he is made to execute the sale deed regarding the suit land of 8 Kanals in favour of the plaintiff. Therefore, the plea of exceptional hardship to the defendant is not sustainable and is hereby rejected.

Learned counsel for the appellant had further submitted that although in the agreement to sell it has been mentioned that possession of the suit land had been given to plaintiff and he had been in possession thereof but the Courts below have come to the conclusion that plaintiff is not in possession of the suit land at the spot and have rather directed delivery of possession to him, therefore recital in the agreement to sell being wrong, the plaintiff is not entitled to get the agreement enforced.

On the other hand, learned counsel for the plaintiff has argued that the delivery of possession from defendant to the plaintiff has not been proved to be there. Though claimed by plaintiff in his pleadings and during his evidence but it has to be taken note of that the defendant has still joint khata along with other co-sharers and

might not have been in position to deliver possession of the land settled to be sold. For that single reason, the claim of the plaintiff cannot be thrown away.

After hearing the rival contentions of learned counsel for the parties, I find that the argument of learned counsel for the appellant/defendant cannot be accepted and specific performance cannot be denied to the plaintiff for the sole reason.

Furthermore, learned counsel for the appellant has failed to show as to which substantial question of law arises in this case.

Both the Courts below on proper analysis of the pleadings of the parties, the evidence adduced by the contestants in light of the law on the subject have returned the findings that the defendant had entered into an agreement to sell the land in question with the plaintiff and the plaintiff has been ready and willing to perform his part of the contract, whereas the defendant has tried to back out of the agreement. The plea taken by the defendant of the agreement to sell and receipt scribed on back thereof being forged and fabricated documents was rejected, as such specific performance of agreement to sell was granted to the plaintiff against the defendant. The concurrent findings on the issues so recorded do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

It being so and in view of the concurrent findings returned by the Courts below with which I do not see any reason to disagree, I conclude that the appeal is without merit and is dismissed accordingly.

13.3.2019

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking: Yes/No****Whether reportable : Yes/No**