

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

RSA No.5117 of 2016 (O&M)

Date of decision:20.05.2019

Parminder Singh

... Appellant

Vs.

Harpal Singh and others

... Respondents

CR No.3046 of 2019 (O&M)

Parminder Singh and another

... Petitioners

Vs.

Harpal Singh (since deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sukhjot Singh, Advocate
for the appellant and
for the petitioners (in both cases).

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two cases i.e. RSA No.5117 of 2016 and CR No.3046 of 2019.

The present regular second appeal has been filed against the concurrent findings of facts and law whereby suit of the respondent-plaintiff for specific performance of the agreement to sell dated 16.11.2004 regarding the land measuring 43 kanals 6 marlas i.e 7 kanals 15 marlas out of certain khasra numbers;11 kanals 12 marlas, 15 kanals 15 marlas; 0 kanal 9 marlas and 2 kanals 10 marlas of other khasra numbers, has been decreed

by the trial Court and affirmed in appeal.

It was alleged that appellant-defendant no.1/Parminder Singh in the presence of the witnesses on 16.11.2004 received a sum of Rs.13. 00 lakhs stipulating the target date for execution and registration of the sale deed as 15.05.2005 and also undertook to redeem the property from the Bank being mortgaged. The plaintiff on 16.5.2005 reached the office of Sub Registrar as 15.5.2005 was the holiday being Sunday but the defendants did not come forward nor got the encumbrance certificate.

Defendants no.1, 3, 4, 5 and 8 contested the suit by filing the joint written statement. Defendants no.2, 6 and 7 were proceeded against ex parte. Appellant-defendant no.1 admitted that he had entered into agreement to sell but claimed that plaintiff was none-else but the property dealer and wanted to buy the land on account of non-availability of prospective buyer nor had the sufficient funds. He had gone to the office of Sub Registrar but the plaintiff and his muscle men obstructed him to reach there, therefore, the absence was not willful.

Defendant no.3-Punjab National Bank, Morinda also contested the suit and stated that property was lying mortgaged with it and so was the reply of defendant no.4-State Bank of Patiala. Defendants no.5 and 8 also reiterated the stand of aforementioned defendants. The pith and substance of the aforementioned written statement was that the property was mortgaged with these Banks.

In support of the averments plaintiff examined himself as PW1, Ram Asra as PW2, Karnail Singh as PW3, Mohinder Singh as PW4 and

Amanpreet Kaur, Peon from Punjab National Bank Ropar as PW5 and Mohinder Singh as PW6 and closed the evidence. On the other hand, defendant himself examined as DW1 and tendered the affidavit Ex.DW1/A.

Learned counsel appearing on behalf of the appellant submitted that only one witness to the agreement to sell, Ram Asra was examined. He in cross examination spilled the beans that plaintiff had not entered into agreement to sell. In such circumstances, the alleged payment of earnest money and non-equipment of the balance amount which was *sine qua non* for discretionary relief is conspicuously wanting, thus, suit was liable to be dismissed. The plaintiff attempted to disclose the source of money but when the entire amount was calculated, there is short fall. All these factors have not been taken into consideration by the Courts below.

In revision petition, when the respondent-plaintiff had sought the execution of the judgment and decree, aforementioned, objections were filed with regard to allocation of khasra numbers *vis-a-vis* previous and new one, it is contended that subject matter of khasra numbers in the agreement to sell are still different than the one of which execution has been sought, therefore, the decree could not have been granted and the objections have erroneously been dismissed.

I have heard the learned counsel for the appellant, appraised the judgments and decrees of the Courts below and of the view that appellant-defendant has not been able to explain the reasons of not appearing before the office of Sub Registrar on 16.05.2005 and the alleged story of obstruction/hindrance has not been proved either through any oral

complaint with the police or legal notice. There is no force in the argument of Mr. Sukhjit Singh that Ram Asra feigned ignorance qua agreement to sell. The tenor and mode of the cross-examination coupled with the examination-in-chief handed over to this Court and read out do not reveal the same. In examination-in-chief of aforementioned witness, it was stated that earnest money of Rs.13.00 lakhs was paid by the plaintiff at the time of execution of the sale deed in his presence and other witness namely Hakam Singh. He had seen the original agreement which bore his signature and the defendant also thumb marked. In cross-examination, he stated that he was an illiterate, also reflected that there was some litigation by the respondent-plaintiff against the appellant-defendant for recovery of amount on the basis of execution of pronote. It is in that context suggestion was put that appellant-defendant had never executed the agreement to sell on 04.03.2013 in his favour. Even the line read out that I do not know whether Parminder Singh had entered into agreement to sell with any other person with regard to the property in dispute cannot be construed to be agreement in question. It was expression with any other person whether he had been indulging into agreement, one after another. The mortgage of the property is also result of that appellant-defendant was in dire need of money and could not repay the amount and had entered into agreement to sell. The findings of fact and law cannot be said to be suffering from illegality and perversity.

As regards, the change of khasra numbers, the trial Court after noticing the objections in extenso held that share in khasra number 36//5/1 (5-18), 3/2(4-0), 6/2(2-0), 4(8-0), 7/1(4-0) to khasra number 36//5/1/2(1-4),

3/2/1(2-3), 6/2/2(1-7), 4/2(7-7), 7/1/2(3-19) was the correct one as change in khasra number regarding the left out of aforementioned khasra numbers was not mentioned in the jamabandi for the year 1999-2000. Similarly with regard to khasra no.27//25/2/2(3-0) which was earlier 27//25/2(3-12) and therefore, after sub division 27//25/2/1(0-12) was given as 27//25/2/2(3-0), therefore, there is no illegality and perversity in the impugned order.

Resultantly, the regular second appeal and as well as revision petition stand dismissed on the ground of delay as well as on merits.

(AMIT RAWAL)
JUDGE

May 20, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No