

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6682 of 2016 (O&M)

Date of Decision: February 05, 2019

Gurwinder Singh

...Appellant

Versus

Paramjot Singh (deceased) through L.Rs & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Raj Kumar Kakkar, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second Appeals, i.e., 6682 of 2016 arising out of the decision rendered in Civil Suit No.515 of 2007 (hereinafter called "Suit No.1") in respect of agreement to sell dated 11.08.2005 of land measuring 24 kanals 0 marlas and 6681 of 2016 arising out of decision of Civil Suit No.512 of 2007 (hereinafter referred to "Suit No.2") regarding agreement to sell dated 23.12.2005 of land measuring 39 kanals 11 marlas. Since the parties to the lis are same except the land, the agreements, the appeals are decided together. The facts are being taken from RSA No.6682 of 2016, though there would be a passing reference in the later part of the order.

Appellant-plaintiff sought the specific performance of the agreement to sell dated 11.08.2005 in respect of land, *ibid*, agreed to be sold @ ₹ 2,00,000/- per acre against the payment of ₹ 70,000/- as earnest money. The stipulated date for execution and registration of the sale deed was fixed as 16.11.2005. However, plaintiff alleged that defendant No.1 was paid another amount of ₹ 5,30,000/- on 23.03.2006, though on the stipulated

date, i.e., 16.11.2005, he remained present in the office of the Sub Registrar, but the defendant No.1 did not turn up and in the first week of December, 2007, he flatly refused to execute the sale deed, but came to know that he had already sold the land vide two sale deeds dated 15.06.2006 registered on 29.06.2006 and 19.10.2007.

In RSA No.6681 of 2016, the agreement to sell was dated 23.12.2005 in respect of land measuring 39 kanals 11 marlas, which was agreed to be sold @ ₹ 2,00,000/- per acre against payment of ₹ 3,00,000/- as earnest money. Another sum of ₹ 4,25,000/- was paid to defendant No.1 towards balance sale consideration on 06.09.2006. Again on 12.11.2006, amount of ₹ 2,70,000/- was paid, totalling ₹ 9,95,000/-.

The trial Court decreed suit No.1 by granting alternative relief of refund of ₹ 70,000/- and in Suit No.2, decree with regard to ₹ 9,95,000/- was passed.

Mr. Raj Kumar Kakkar, learned counsel representing the appellant-plaintiff submitted that defendant Nos.2 to 8 failed to establish the plea of bonafide purchasers as they had the knowledge of the agreement to sell. The sale deeds were executed during the subsistence of the agreement to sell. Payment of ₹ 5,30,000/- on 23.03.2006 has been proved through the testimony of Jagdish Chander and Gurmukh Singh. Both stated that the aforementioned amount was paid in the shop of Jagdish Chander and the writing was signed by Paramjot Singh (since deceased). Once the courts below in Suit No.2 granted the relief with regard to refund of the entire amount which was paid, as noticed above, adverse inference was liable to be drawn against the defendants as they failed to belie signatures of Paramjot Singh on the writing dated 22.03.2006. In fact, the courts below ought to

have granted the discretionary relief.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant.

By examination of the agreement to sell in Suit No.1, the writing does not depict payment of ₹ 5,30,000/-. Even the style of signing of Paramjot Singh as compared to the signatures on the first and last pages of the agreement to sell, much less back side below the signature of the Stamp Vendor is different. The plaintiff has failed to prove the same through the testimony of any expert. Though the courts below did not undertake this exercise, but under the provisions of Section 45 of the Indian Evidence Act, the same can always be invoked.

As regards the discretionary relief, plaintiff has miserably failed to prove on record the knowledge of the agreement to sell in favour of defendant Nos.2 to 8. In fact, in Suit No.1, in case the second payment is not established, the same is to be ignored. No explanation has come forth in not filing the suit with promptitude as it was filed as late as in December, 2007, whereas the target date was 16.11.2005. All these factors weighed in the mind of the courts below in granting alternative relief.

For the reasons mentioned above, I do not find any illegality or perversity in the judgments and decrees of the courts below, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeals are dismissed.

February 05, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No