

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

**RSA No.4763 of 2019 (O&M)
Date of decision: 23.10.2019**

Piara Singh and another

.....Appellants

Versus

Jarnail Singh

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ramandeep Singh Pandher, Advocate,
for the appellants.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 19.09.2019 passed by the Additional District Judge, Fatehgarh Sahib, dismissing an appeal filed by defendants-appellants (hereinafter referred to as 'the defendants') against the judgment and decree dated 28.03.2016 passed by the Additional Civil Judge (Senior Division), Khamanon, whereby suit filed by plaintiff-respondent (hereinafter referred to as 'the plaintiff'), has been decreed.

Jarnail Singh-plaintiff (respondent herein) filed a suit for possession by way of specific performance of agreement to sell dated 12.11.2008 with the averments that defendant No.1-Piara Singh was owner and in possession of the property measuring 2 Kanals 4 Marlas, as detailed and described in the head note of plaint. Vide agreement to sell dated 12.11.2008, defendant No.1-Piara Singh had agreed to sell the suit property in favour of plaintiff for a total sale consideration of Rs.10,000/- per Biswa,

and received Rs.20,000/- as earnest money in the presence of marginal

witnesses. Stipulated date for execution and registration of the sale deed was fixed as 30.06.2009. On 29.06.2009, at the request of defendant No.1, date for execution of the sale deed was extended from 30.06.2009 to 18.01.2010 and in lieu of that, a sum of Rs.30,000/- was paid by plaintiff towards additional earnest money. However, the defendant, instead of executing sale deed in favour of plaintiff, transferred the suit property in favour of his brother and wife namely Karnail Singh and Kulwinder Kaur i.e. defendant Nos.2 and 3 vide two transfer deeds dated 21.12.2009 and 23.12.2009. Hence, the suit.

Upon notice, defendants (appellants) filed joint written statement, stating therein that defendant No.1 never executed any agreement to sell or subsequent extension in favour of the plaintiff. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for possession by way of specific performance of the agreement to sell dated 12.11.2008 as prayed for? OPP
2. Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP
3. Whether in the alternative, the plaintiff is entitled to recovery of Rs.50,000/- along with interest from the defendant as alleged? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether this Court has no jurisdiction to try the present suit? OPD
6. Relief.

Trial Court, after hearing learned counsel for the parties, decreed the suit. Appeal against the said judgment also met the same fate.

Heard.

Before the trial Court, stand taken by defendant No.1 was that his signatures were obtained by plaintiff on blank papers, on which the agreement to sell dated 12.11.2008 was prepared in connivance with the witnesses. It was further pleaded that defendant No.1 was addicted to intoxicants and plaintiff took undue advantage of this position. The trial Court observed that defendant No.1 had himself admitted his signatures on the agreement to sell dated 12.11.2008 Ex.P2. Plaintiff himself appeared as PW-1 and examined witnesses Swaran Singh (PW-3), Surjit Singh, Numberdar (PW-4) and S.S. Puri, Advocate (PW-5) to prove execution of the agreement to sell Ex.P2. The witnesses had deposed that the said agreement was read over to defendant No.1 and he had signed the agreement after admitting its contents to be true. In this manner, contents of the agreement to sell and payment of Rs.50,000/- after granting extension of time from 30.06.2009 to 18.01.2010 stood proved.

Trial Court further examined the transfer deed dated 23.12.2009 executed by defendant No.1 in favour of his wife and held that this deed was without consideration. There was another sale deed dated 21.12.2009 in favour of defendant No.2 (real brother of defendant No.1). There was no explanation as to why defendant No.1 executed these two sale deeds in favour of his family members. It was held that these sale deed were executed within a short span of time in order to avoid his liability to execute sale deed in favour of plaintiff. Both the above said sale deed were set aside being sham transactions. Finally, the suit was decreed for specific performance of agreement to sell dated 12.11.2008 Ex.P2.

The lower appellate Court, on appeal, affirmed the findings

returned by the trial Court with respect to the execution of agreement to sell dated 12.11.2008. It was further observed that defendant No.2, being brother of defendant No.1, was having knowledge regarding agreement to sell dated 12.11.2008 executed by his brother i.e. defendant No.1 in favour of the plaintiff. As per Jamabandi for the year 2002-2003 Ex.P1, defendant No.1-Piara Singh was having 89/601 share in land measuring 30 Kanals 01 Marlas, which means that out of 601 Marlas (30 Kanals 01 Marla), defendant No.1 owned 89 Marlas. When he entered into agreement to sell dated 12.11.2008 in favour of the plaintiff, he agreed to sell 02 Kanals 04 Marlas equivalent to 44 Marlas. After deducting 44 Marlas, out of 89 Marlas, defendant No.1 was still left with 45 Marlas of land. Vide transfer deed dated 21.12.2009 Ex.D1, he had sold 1 Kanal i.e. 20 Marlas of land in favour of his brother-defendant No.2. The lower appellate Court observed that he was competent to sell this land. In this backdrop, sale deed dated 21.12.2009 executed by defendant No.1 in favour of defendant No.2 was upheld. However, sale deed executed by defendant No.1 in favour of his wife i.e. defendant No.3, being sham transaction was set aside.

A perusal of the judgment passed by lower appellate Court shows that sale deed dated 21.12.2009 Ex.D1 executed by defendant No.1 in favour of defendant No.2 has been rightly saved and to that extent, judgment of the trial Court has been rightly modified. Sale made by defendant No.1 in favour of his wife-defendant No.3, is a sham transaction because once the sale deed dated 21.12.2009 has been duly proved, defendant No.1 was not left with adequate land to execute subsequent sale deed in favour of defendant No.3.

After going through the impugned judgments and documents

relied upon by the parties, this Court is of the view that suit of the plaintiff-respondent has been rightly decreed. No illegality, much less perversity, has been found therein, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

23.10.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No