

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

RSA No.147 of 2018 (O&M)

Date of decision: 19.08.2019

Harbans Lal and others

... Appellants

Versus

Tarsem Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Inderjit Sharma, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

CM No.3971-C of 2018

Heard.

Allowed as prayed for. Annexures A1 and A2 are taken on
record, subject to just exceptions.

Disposed of accordingly.

Main Case

Challenge in the present appeal has been directed against decrees and judgments passed by the Courts whereby suit filed by the respondent/plaintiff for specific performance of agreement to sell dated 02.03.2004 Ex.P1 was allowed by the trial Court in respect of entire land measuring 40 kanals but the judgment and decree passed by the trial Court was modified to the extent that respondent shall be entitle to specific performance of agreement only in respect of land measuring 17 kanal 6 marlas i.e. 1/4th share of land measuring 69 kanal 5 marlas as the

respondent/plaintiff relinquished the claim in respect of remaining land which was allotted to Balwinder Singh by cancelling the allotment in favour of defendant/appellant No.1-Harbans Lal.

Counsel for the appellants would argue that agreement to sell is uncertain, vague and unspecific, therefore, the Courts have grossly erred by exercising their discretion in favour of the respondent by allowing specific performance thereof. It is argued that agreement was not scribed by regular deed writer. Ravinder Kumar, Advocate the alleged scribe examined as a witness admittedly did not maintain any records in respect of scribing of the agreement of sale. Ravinder Kumar had admitted that none of the attesting witnesses of the agreement is respectable i.e. Lambardar, Sarpanch or Panch of village Bhani Mellawan where the land in question is situated. It is further argued that in the jamabandi for the year 2001-02 Ex.D7, there is an endorsement with regard to partition of joint land measuring 69 kanal 5 marlas and land comprising of specific khasra numbers came to the share of Harbans Lal, therefore, there was no occasion for Harbans Lal to execute an agreement of sale in respect of 1/4th share in total land measuring 69 kanal 5 marla, had the agreement been executed by him. Counsel would argue that as per the agreement, out of earnest money of Rs.1,75,000/-, a sum of Rs.1,05,000/- was to be paid on 30.04.2004 but as per the receipt Ex.P2, the said amount was paid on 13.05.2004 which is contrary to the terms and conditions incorporated in the agreement Ex.P1. In addition, it is argued that Ravinder Kumar PW3 in his cross examination has admitted

that receipt Ex.P2 had been scribed by Gurdial Singh, his clerk but said Gurdial Singh has not been examined to prove that receipt was scribed by him.

Indisputably, the Courts have recorded concurrent findings accepting plea of the respondent/plaintiff that agreement to sell Ex.P1 and writing Ex.P2 were executed by appellant Harbans Lal. To prove the documents, respondent/plaintiff examined Ravinder Kumar, Advocate PW3 and one of the attesting witnesses of documents Exs.P1 and P2. Counsel for the appellants during the course of hearing made available photocopy of statement of Ravinder Kumar, Advocate PW3. In cross examination of Ravinder Kumar, it was suggested to him that he connived with Tarsem Singh plaintiff and obtained signatures of Harbans Lal on blank stamp papers representing that the signatures were required for preparing the attorney. Harbans Lal appellant, in the written statement, altogether denied execution of agreement of sale and receipt with regard to payment of Rs.1,05,000/-. Harbans Lal did not appear in the witness box either to deny execution of agreement of sale and receipt or to explain the plea that his signatures were obtained on blank stamp papers. The Courts have rightly held that an adverse inference is liable to be drawn against defendant No.1 for his failure to appear in the witness box without any tangible explanation. In the given circumstances, the appellants cannot derive any advantage to their contention from the fact that agreement was not scribed by a regular deed writer or the same has not been attested by a respectable

of the village where the land in question is situated. The receipt also bears signatures of son of appellant No.1 who appeared in the witness box and admitted his signatures thereon. In this view of the matter, I find myself unable to accept contention of the appellants that findings recorded by the Courts in respect of agreement Ex.P1 and receipt Ex.P2 suffer from an error much less perversity that would call for intervention.

Contention raised by counsel with regard to the agreement being vague, uncertain is also not tenable when contents of the agreement to sell are read in its entirety. Agreement to sell contains the terms and conditions agreed between prospective vendor and vendee. They are always at liberty to modify those terms and conditions by mutual consent. As per the agreement, out of earnest money of Rs.1,75,000/-, Rs.70,000/- in cash was paid on 02.03.2004 and remaining amount of Rs.1,05,000/- was agreed to be paid on 30.04.2004. Actually, this amount was paid on 13.05.2004 vide receipt Ex.P2. Once it is proved that the vendor has accepted the remaining amount of Rs.1,05,000/- towards earnest money even beyond a date fixed in the agreement, it amounts to extending the date for payment of remaining amount of Rs.1,05,000/- towards earnest money. That being so, the appellants cannot derive any advantage to their contention from the factum of payment of Rs.1,05,000/- on 13.05.2004 as against the agreed date on 30.04.2004.

The contention raised by appellants in respect of sale of 1/4th share out of land measuring 69 kanal 5 marlas in place of land measuring

17 kanal 6 marla of specific khasra numbers on the basis of mutation No.1377, the same has been dealt in detail by the first appellate Court in para 24 of the judgment. Counsel for the appellants has not disputed the factual findings recorded by the first appellate Court that mutation No.1377 was entered and sanctioned on 23.07.2004 whereas the agreement of sale is dated 02.03.2004 and was executed prior to sanction of mutation.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

19.08.2019

ashok

(REKHA MITTAL)
JUDGE

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