

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

RSA No.1863 of 2016(O&M)

Date of decision: 12.9.2019

Roshan Singh (deceased) through his LRsAppellant

VERSUS

Bir Singh (deceased) through his LRsRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Akshay Kumar Goel, Advocate for the appellant.

Mr. C.B. Kaushik, Advocate for the respondent.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession by way of specific performance of agreement to sell dated 30.09.2005 was decreed by the trial Court vide judgment and decree dated 25.09.2012 and appeal preferred by unsuccessful appellant/defendant (since deceased) represented by his LR's did not find favour with Additional District Judge, Bhiwani as the first Appellate Court affirmed findings of the trial Court without variance.

The case set up by the respondent/plaintiff is that Roshan Singh (since deceased) entered into agreement to sell dated 30.09.2005 in respect of land measuring 7 kanal 11 marlas comprised in khasra No.46//2 (7-11) for consideration of Rs.2,60,000/-. The defendant mortgaged the land in dispute with possession to the plaintiff vide mortgage deed dated

17.08.1995. No time for execution and registration of the sale deed was fixed and it was left at volition of the plaintiff-vendee to get the sale deed executed and registered at any time. Since 30.09.2005, the plaintiff is in cultivating possession of the land in dispute along with tubewell situated therein. Legal notice dated 03.04.2008 through registered post was sent requiring the defendant to execute the sale deed and got it registered on 24.04.2008 but the defendant in place of complying with the said notice sent a false and evasive reply dated 10.04.2008 through Sh. Khushi Ram Sharma, Advocate, Bhiwani whereby he denied having executed agreement to sell dated 30.09.2005 and the same being a forged document. Hence the suit.

The defendant filed the written statement seriously contesting claim of the plaintiff and controverting allegations with regard to his having entered into agreement to sell dated 30.09.2005 or receipt of earnest money etc. It was averred that the plaintiff has suppressed true facts from the Court. The answering defendant who is suffering from chronic disease of Asthma, mortgaged his land with possession with the plaintiff and the plaintiff settled the accounts on 16.07.2003 by making payment of Rs.48,230/- against receipt issued by the plaintiff and possession of land mortgaged with the plaintiff was delivered to the defendant, thus, the defendant is in possession of the land in dispute. The defendant is a rural, rustic, innocent and illiterate person and the plaintiff by exercising undue influence during the course of transaction of loan advanced and while settling the account might have obtained thumb impression of the defendant by misrepresentation and if the same has been converted into alleged agreement to sell, then the alleged agreement is forged, without

consideration, illegal and not binding on rights of the defendant. He also challenged maintainability of the suit in the present form and the plaintiff being estopped by his act and conduct from filing the suit. All material averments made of the plaint were denied with a prayer for dismissal of the suit.

The trial Court framed issues, reproduced in para 4 of judgment of the said Court. To prove his case, the respondent/plaintiff examined Baba Shamsheer Giri PW-1, Ramovtar Verma deed writer PW-2 and plaintiff himself appeared in the witness box besides tendering documents. On the other hand, defendant examined Bir Singh DW-1, Sunder Singh DW-3 and Sushila, one of the daughters of deceased Roshan Singh appeared in the witness box.

As has been noticed hereinbefore, the trial Court accepted claim of the respondent/plaintiff both in respect of agreement of sale by Roshan Singh (since deceased) and readiness and willingness of the respondent to perform his part of the agreement and eventually a decree for specific performance of the agreement was passed in favour of the respondent/plaintiff. The appeal preferred by Sh. Roshan Singh through his LRs did not find favour with the first Appellate Court.

Counsel for the appellant has assailed consistent findings recorded by the Courts primarily on three counts. The first submission made by counsel is that as per the revenue documents on record, Roshan Singh was co-owner to the extent of 1/3rd share in land comprising khasra No.46//2 (7-11), therefore, Roshan Singh was not competent to enter into any such agreement of sale in respect of the entire land of aforesaid khasra number and this fact alone creates a doubt if agreement to sell was

executed by Sh. Roshan Singh. In the same breath, it has been argued that since Roshan Singh was co-owner only to the extent of 1/3rd share in khasra No.46//2, the Courts have committed a serious error rather illegality by allowing specific performance of the agreement even in respect of land of which Roshan Singh was not the owner. To bring home his contention, he has tried to derive advantage from copy of the jamabandi for the year 1996-97 Ex.D1 and copies of sale deeds Ex.D7 and D9 previously executed by Roshan Singh in the year 2004 and 2005.

The second submission made by counsel is that agreement to sell was never executed by deceased Roshan Singh. It is argued that in the concluding portion of body writing of agreement, there is reference to decision dated 16.04.2003 by Civil Judge, Bhiwani but the last four lines have been added later, clear to naked eye from spacing in between lines of the remaining part of the agreement vis-à-vis the last few lines. Counsel would submit that less spacing in the last five lines is also admitted by the deed writer examined by the respondent/plaintiff.

Another submission made by counsel is that after 30.09.2005, there was complete silence on the part of respondent till the legal notice dated 03.04.2008 was issued which was duly replied by the appellant through Sh. Khushi Ram Sharma, Advocate. It is further argued that there is no evidence on record that on the stipulated date as per the notice, the respondent appeared in the office of Sub Registrar on 24.04.2008. It is argued with vehemence that the time lag between the date of agreement and notice dated 03.04.2008 coupled with failure of the respondent to cause appearance in the office of Sub Registrar on 24.04.2008 go a long way to prove that findings of the Courts with regard to readiness and

willingness of the respondent/plaintiff to perform his part of the agreement are not based upon correct appreciation of materials on record and liable to be set aside.

Counsel representing the respondent/plaintiff, on the contrary, has supported consistent findings recorded by the Courts. It is argued that the appellant has failed to raise a question of law much less a substantial one that needs determination in second appeal. It is further argued that since appellant in the written statement had not denied the factum of partition inter se the brothers and land of khasra No.46//2 (7-11) had fallen to his share, it is not open for the appellant to take a somersault to wriggle out of his liability created under the agreement. According to counsel, false plea raised by appellant with regard to his not being owner of the suit land is sufficient to show that he is neither entitle to any relief in exercise of discretionary jurisdiction of the Court nor can seek setting aside of decree of specific performance allowed in exercise of discretionary jurisdiction of trial Court and affirmed in appeal.

I have heard counsel for the parties, perused the paper-book and records.

Much stress has been laid by counsel for the appellant that since Roshan Singh was not owner of land measuring 7 kanal 11 marlas, there was no occasion for him to enter into agreement for sale of the disputed land. It appears to the Court that counsel for the appellant raised such submissions either mischievously or ignorant of pleadings of the parties. The respondent/plaintiff raised a specific plea in para 2 of the plaint that all the co-sharers mutually partitioned their land wherein land measuring 7 kanal 11 marlas comprising in khasra No.46//2 (7-11) fell to

the share of defendant and since then he is in exclusive possession of the land in dispute and also installed tubewell therein. In response to para 2 of the plaint, reply of the defendant is quoted thus:-

"That para No.2 of the plaint is not denied."

Once the defendant had not denied the averments raised in para 2 of the plaint with regard to suit land having fallen to his share in mutual partition between the co-sharers, it amounts to admission on the part of defendant. As per the settled position in law, there cannot be better evidence than admission made by the contesting party. Perusal of records would reveal that defendant filed an application for amendment of the written statement but the same was dismissed by the trial Court and order has attained finality. In this view of the matter, entire effort made by counsel for the appellant either to create doubt in the agreement of sale or to challenge the decree of specific performance by contending that Roshan Singh was not exclusive owner of the suit land is nothing short of misleading the Court, therefore, inconsequential.

The plea of appellant that agreement might have been prepared on blank thumb impressions of Roshan Singh does not get substantiated from evidence on record. Roshan Singh was the best person to say something about the same but he died during pendency of suit before the trial Court. Counsel for the appellant has failed to point out any materials on record that escaped notice of the Court while deciding correctness of agreement of sale propounded by the respondent/plaintiff. The respondent adduced sufficient evidence to prove that agreement of sale was executed by deceased Roshan Singh. Counsel for the appellant has not pointed out any such facts elicited in cross examination of witnesses of the

plaintiff that can create doubt with regard to genuineness and validity of the agreement of sale. The contention raised by counsel for the appellant with regard to less spacing in the last five lines of the agreement would carry no weight as plea of the appellant with regard to his blank thumb impressions being available with the respondent/plaintiff has no legs to stand. On the other hand, since the appellant has denied execution of agreement, it is not open for him to argue that last five lines in the agreement have been added later.

This brings the Court to question of readiness and willingness of the respondent to perform his part of the agreement. As per the agreement, the land was agreed to be sold for sale consideration of Rs.2,60,000/- and entire amount was paid to the vendor under the agreement. No date was fixed for execution of the sale deed. In the given circumstances, the vendee was at liberty in law to file suit for specific performance within reasonable time. In the instant case, the plaintiff filed the suit even before expiry of period of three years from the date of agreement. He served notice dated 03.04.2008 calling upon the defendant to execute and register the sale deed on 24.04.2008, responded by the defendant vide reply dated 10.04.2008 whereby he denied the agreement by raising plea of forgery. Since the defendant denied execution of agreement and he being not bound to execute the sale deed, there was no reason for the respondent/plaintiff to appear in the office of Sub Registrar on 24.04.2008, the date fixed as per notice dated 03.04.2008. He rather filed the suit on 24.04.2008. As the respondent had already paid the entire sale consideration and had approached the defendant for execution of sale deed within a reasonable time and filed the suit within less than 15 days

from the date of receipt of reply to legal notice, it is difficult to accept contention of the appellant that findings recorded by the Courts on the question of readiness and willingness of the respondent to perform his part of the agreement are faulty much less perverse. In this view of the matter, I do not find any reason to differ with findings recorded by the Courts.

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

SEPTEMBER 12, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no