

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

**RSA No. 1953 of 2018(O&M)**

**Date of decision: 9.4.2019**

Bhagwant Singh .....Appellant

VERSUS

Bharpur Singh through LRs and another .....Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Kewal Krishan , Advocate for the appellant.

**REKHA MITTAL, J.**

**CM No.5359-C of 2018**

Heard.

Allowed as prayed for.

Deficiency of Court fee has been made up.

Disposed of accordingly.

**RSA No.1953 of 2018**

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for specific performance of full and final agreement to sell dated 05.12.1998 for sale consideration of Rs.20,00,000/- and agreement dated 03.03.2004 entered by defendant No.1 with the appellant/plaintiff in respect of land measuring 3½ acres out of land measuring 35 kanal 6 marlas and 3 sarsahi and 1 kanal 15 marla and 3 sarsahi being 2/3<sup>rd</sup> share of land, detailed in headnote of the plaint and challenge to sale deed bearing vasika No.3859 dated 13.02.2009 in respect of land, described in headnote of the plaint with relief of

mandatory and permanent injunction was dismissed by the trial Court vide judgment and decree dated 08.05.2014 that came to be affirmed in appeal by the Additional District Judge, Ludhiana.

Counsel for the appellant would fairly inform that he confines his claim only qua specific performance of agreement to sell dated 05.12.1998 marked as Ex.P1. It is argued with vehemence that the Courts have committed a serious error rather illegality by rejecting suit of the appellant/plaintiff despite the fact that both the defendants before the trial Court did not contest the suit and were proceeded against ex parte and as such there is no challenge to averments raised in the plaint and evidence adduced by the appellant in the form of testimony of Bhagwant Singh – appellant and Chhinderpal Singh PW-2. It is further argued that despite Bharpur Singh, father of the appellant having executed agreement to sell dated 05.12.1998, he executed sale deed dated 13.02.2009 in favour of defendant No.2 on the basis whereof Mutation No.3506 of 2006-07 was sanctioned and the sale deed is liable to be set aside being the result of collusion, fraud and cheating etc. It is further argued that defendant No.2 is none else but daughter in law of Bharpur Singh and brother's wife of present plaintiff/appellant.

I have heard counsel for the appellant, perused the paper-book particularly the judgments impugned.

Before adverting to submissions made by counsel for the appellant, it is appropriate to take note of findings of the Appellate Court in respect of agreement dated 05.12.1998, reads thus:-

“In the considered opinion of this court, the agreement (Ex.P1) is not an agreement in the eyes of law. Rather, by

way of this agreement, the immovable property worth more than Rs.100/- is said to have been transferred to the plaintiff, but since the document in question is not a registered document, as required under the provisions of Section 17 of the Registration Act, the same is inadmissible in evidence. Moreover, the document appears to be a family partition. Even if it is treated as family partition, even then it is not admissible in evidence, considering the fact that by way of this agreement, defendant No.1, who seems to be absolute owner of the property in dispute having purchased the same from one Thakur Singh, has transferred the same to the plaintiff. Therefore, even if it was family partition, it required compulsory registration as per provisions of Registration Act. Moreover, all the legal heirs of defendant No.1 have not been impleaded as party in this case. Therefore, on that account also specific enforcement of the document can be discarded upon. In case the agreement is treated as an agreement to sale, in that eventuality the suit is palpably time barred. The specific performance of the agreement could have been sought within a period of three years only from the date of execution of the agreement, whereas the present suit has been filed in the year 2009.”

During the course of hearing, a copy of agreement Ex.P1 was supplied by counsel for the appellant for perusal and appreciation. On a plain but careful reading of document leaves no manner of doubt that the

same is not an agreement of sale in the eye of law that can be got enforced through process of the Court. As a matter of fact, in the document, there is no reference to any consideration for the alleged transaction qua land measuring 3½ acres situated in village Tunga Hari, District Ludhiana. Counsel for the appellant has failed to point out as to the basis for making reference to sale consideration of Rs.20,00,000/- in headnote of the plaint. There cannot be dispute about settled position in law that consideration is one of the essentials of a valid agreement in addition to other essentials like competence of parties, lawful object, not opposed to public policy and not the result of undue influence etc. Since in the case at hand, there is no consideration mentioned in the document Ex.P1, I find it difficult to differ with findings of the Appellate Court that document Ex.P1 is not an agreement in the eye of law of which the specific performance can be sought through process of the Court. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts that would call for interference.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. No order as to costs.

**APRIL 09, 2019**

‘D. Gulati’

**(REKHA MITTAL)**

**JUDGE**

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