

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

RSA-5344-2014(O&M)

Date of decision:-13.11.2019

Jagir Singh

...Appellant

Versus

Teja Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ram Bilas Gupta, Advocate
for the appellant.

Mr.K.R. Dhawan, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Teja Singh had brought a suit against Jagir Singh seeking possession by way of specific performance of agreement to sell dated 4.5.2004 in respect of suit land measuring 23 kanals 14 marlas situated at village Miani, Tehsil Shahkot, District Jalandhar and in the alternative suing for recovery of Rs.4,74,000/- i.e. return of earnest money of Rs.4 lakhs and damages of Rs.74,000/-.

As per the version of the plaintiff, defendant Jagir Singh being owner of the suit land had entered into an agreement to sell it with him on 4.5.2004 @ Rs.1,60,000/- per acre, receiving a sum of Rs.4 lakhs as earnest money; the stipulated date for execution and

registration of the sale deed was fixed as 4.5.2006 on payment of balance consideration amount; on that date the plaintiff remained present in the office of Sub Registrar, Shahkot to get the sale deed executed in his favour, but the defendant did not turn up to complete the transaction; the plaintiff got his presence marked in the office of Sub Registrar, Shahkot by getting an affidavit attested by Executive Magistrate, Shahkot. According to the plaintiff, he has been ready and willing to perform his part of contract and it has been so throughout. On refusal of the defendant to come forward to execute the sale deed in his favour, the plaintiff brought the suit in question in Civil Court at Nakodar. The suit was assigned to Civil Judge (Jr.Divn.), Nakodar.

On getting notice, the defendant appeared and filed written statement contesting the suit raising various preliminary objections to wit that the suit was not maintainable in the present form; that the plaintiff had not approached the Court with clean hands; that the plaintiff was estopped by his own act and conduct from filing the suit; that the plaintiff had no locus standi to file the suit. On merits, the defendant denied that he had entered into an agreement to sell with the plaintiff on 4.5.2004 or had received Rs.4 lakhs as earnest money. He set up a version that one Satwinder Kumar son of Lahori Ram, resident of Dharamkot works as a Commission Agent at Grain Market, Dharamkot; that the defendant

as well as plaintiff used to sell their crops through that commission agent; the plaintiff Teja Singh had been pressurizing the defendant to marry his son with his daughter but the defendant did not agree to do so since Teja Singh had divorced sister-in-law of the brother of the defendant and for the said reason, the plaintiff Teja Singh in connivance with Satwinder Kumar had filed the suit by forging and fabricating the documents in the form of agreement to sell; that the agreement is witnessed by Satwinder Kumar and his Munim (Accountant) Balwinder Singh. According to the defendant, he had dealing with Satwinder Kumar, Commission Agent; the latter used to obtain his signatures on blank stamp papers for providing bank limit to the defendant and in that process, he might have obtained signatures of the defendant on some papers, which was later on converted into an agreement to sell by playing fraud, misrepresentation and by concealment of facts; the defendant had submitted an application to Senior Superintendent of Police, Moga on 12.10.2007 in that regard. Refuting the remaining averments in the plaint, the defendant prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled for the relief of specific performance on the basis of agreement to sell dated 4.5.2004? OPP.
2. Whether in the alternative, the plaintiff is entitled for the recovery of Rs.4,74,000/- include Rs.4,00,000/- as earnest money and Rs.74,000/- as damages? OPP.
3. If issue No.2 is proved, whether plaintiff is entitled for future interest, if so at what rate? OPP.
4. Whether the agreement dated 4.5.2004 is result of fraud, misrepresentation and the same is without consideration? OPD.
5. Whether the present suit is not maintainable in the present form? OPD.
6. Whether the plaintiff has not come to the Court with clean hands? OPD.
7. Whether the plaintiff is estopped to file the present suit by his acts & conduct? OPD.
8. Whether the suit of the plaintiff is false and frivolous? OPD.
9. Whether the plaintiff has got no locus standi and cause of action to file the present suit against the defendant? OPD.
10. Relief.

Both the parties were afforded adequate opportunities to lead evidence.

After hearing the learned counsel for the parties, the trial

Court decided issue No.1 in favour of the plaintiff and against the defendant, issue Nos. 2 and 3 had become redundant, issue No.4 was adjudged against the defendant and in favour of the plaintiff, issues No.5 to 9 against the defendant and in favour of the plaintiff. Resultantly, the suit of the plaintiff was decreed for specific performance of agreement to sell dated 4.5.2004 in respect of land measuring 23 kanals 14 marlas of defendant. The plaintiff was directed to deposit the balance sale consideration of Rs.74,000/- in the Court within a period of 30 days from the date of order and the defendant was directed to execute and get registered the sale deed in favour of the plaintiff after receiving the balance sale consideration deposited by the plaintiff in the Court within a period of 60 days from the date of order, failing which, the plaintiff would be entitled to get the same done through the process of the Court. This was so done vide judgment and decree dated 21.1.2012.

Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Jalandhar, which was assigned to learned Additional District Judge, Jalandhar, who vide judgment and decree dated 1.5.2014 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

Being dissatisfied with the judgments and decrees passed the Courts below, the defendant has filed the present regular second

appeal before this Court, notice of which was issued and respondent/plaintiff has appeared through counsel.

I have heard learned counsel for the parties besides going through the records.

Both the Courts below on analysis of the evidence produced by the parties, have come to the conclusion that the defendant – owner of the suit land had entered into an agreement to sell the same with the plaintiff on 4.5.2004 @1,60,000/- per acre and received a sum of Rs.4 lakhs as earnest money, agreeing to execute the sale deed in favour of the plaintiff on receipt of balance consideration amount and to get it registered by the stipulated date agreed to be 4.5.2006, but then he backed out, with the result the transaction could not be completed and further the plaintiff has been ready and willing to perform his part of the contract throughout inasmuch as on the stipulated date, he had got his presence marked in the office of Sub Registrar, Shahkot by executing an affidavit and getting it attested from Executive Magistrate, Shahkot and further the plaintiff was entitled to get possession of the suit land by way of specific performance of agreement to sell. The version set up by the defendant that he had not entered into any such agreement and the agreement is result of fraud and misrepresentation was disbelieved so was the alleged motive for doing so. The concurrent findings recorded by the Courts below are well reasoned, based upon proper

appraisal and appreciation of evidence and correct interpretation of law. The judgments do not suffer from any illegality or infirmity, which might have called for interference by this Court.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

13.11.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No