

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

**RSA No.2265 of 2018 (O&M)
Date of decision: 05.12.2019**

Krishan Ram (now deceased) through LR.

.....Appellants

Versus

Gurwinder Kaur and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Namit Gautam, Advocate,
for the appellant(s).

Ritu Bahri, J.

CM No.6103-C of 2018

For the reasons mentioned in the application, same is allowed and delay of 688 days in filing of the appeal is condoned.

RSA No.2265 of 2018 (O&M)

This appeal has been filed against the judgment dated 15.10.2015 passed by the Additional District Judge, Ferozepur, dismissing an appeal filed by plaintiff-appellants (hereinafter referred to as 'the plaintiffs') against the judgment and decree dated 11.03.2011 passed by the Additional Civil Judge (Senior Division), Zira, whereby suit filed by them (plaintiffs) for specific performance of agreement to sell dated 02.01.2003 was dismissed. However, alternative relief for recovery of Rs.1,50,000/- along with interest at the rate of 8% per annum was granted.

Krishan Ram (since deceased) through his LR.-plaintiffs (appellants herein) filed a suit for specific performance of agreement to sell with the averments that Amrik Singh son of Piara Singh (husband of

defendant-respondent No.1 and father of defendant No.2) had entered into an agreement to sell dated 02.01.2003 for sale of shop and *chubara* in question in favour of plaintiff (Krishan Ram) for a total sale consideration of Rs.2,50,000/- and received Rs.1,50,000/- as earnest money. Stipulated date for execution and registration of the sale deed was fixed as 05.06.2004. The said agreement was scribed by Sunil Kumar, document writer and witnessed by Darshan Singh and Kamaljit Singh. It was further stated that the suit property was already in possession of son of plaintiff-Krishan Ram on rest. Therefore, Krishan Ram and his son were in possession as prospective vendees. After the death of Amrik Singh, defendants being widow, son and mother were required to perform their part of the contract. The stipulated date i.e. 05.06.2004 was Saturday and 06.06.2004 was Sunday. Therefore, plaintiff Krishan Ram (since deceased) had visited the office of Sub Registrar, Zira on 07.06.2004 for getting the sale deed executed, but the defendants did not turn up for the said purpose. Ultimately, Krishan Ram got his presence marked by filing an application before the Sub Registrar, Zira. Plaintiff personally approached the defendants for execution of the sale deed, but they flatly refused to do so. Hence, the suit.

Upon notice, defendants (respondents) filed written statement stating therein that the alleged agreement to sell dated 02.01.2003 was the result of fraud, committed by the plaintiff in connivance with the witnesses and the scribe. Signatures of Amrik Singh on the alleged agreement were denied. It was submitted that in fact, plaintiff-Krishan Ram was in possession of the property in dispute as a tenant. He got executed the agreement in question in order to grab the property in dispute. 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 plaintiff is entitled for specific performance of agreement of sale dated 02.01.2003? OPP
2. Whether the plaintiff has always been ready and willing to perform his part of contract? OPP
3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
4. Whether in the alternative, plaintiff is entitled for recovery as prayed for? OPP
5. Whether the alleged agreement is forged and fabricated document? OPD
6. Relief.

Trial Court, after hearing learned counsel for the parties, dismissed the suit for the relief of specific performance of the agreement to sell dated 02.01.2003. However, the suit was decreed qua alternative relief of recovery of Rs.1,50,000/- along with interest at the rate of 8% per annum from the date of execution of agreement dated 02.01.2003 till the filing of suit. Appeal against the said judgment also met the same fate.

Heard.

Jagdish Lal, legal heir of plaintiff Krishan Ram, stepped into the witness box as PW-2 and reiterated the version of the plaint. Sunil Kumar, Document Writer (PW-3) deposed that the agreement Ex.P1 was scribed by him at the instance of Amrik Singh (since deceased) and the sale deed was to be registered on or before 05.06.2004. The said agreement was executed in the presence of Darshan Singh and Kamaljit Singh, attesting witnesses. He further deposed that Amrik Singh put his signatures on the agreement in the presence of attesting witnesses. The agreement was duly entered by this

witness in his registered, where Amrik Singh along with witnesses put their signatures as Ex.PW3/B. Jagdish Lal (PW-2) corroborated the version of Darshan Singh (PW-1) and Sunil Kumar (PW3). Kulbhushan Rampal, Draftsman (PW-4) proved the site plan of property in dispute as Ex.P2. Sher Randhir, Advocate (PW-5) stated that he sent the legal notice on behalf of Krishan Ram (since deceased) to Gurwinder Kaur etc., which bore his signatures. Execution of agreement to sell Ex.P1 and receipt of earnest money of Rs.1,50,000/- was duly proved. Prior to execution of agreement Ex.P1, Amrik Singh had earlier executed an agreement to sell regarding sale of shop in dispute and in this regard, a civil suit bearing No.135-1 dated 14.05.2003, titled as **Tarsem Lal vs. Kartar Kaur etc.** was filed. During the argument of that suit, it had come to the notice that Amrik Singh, during his lifetime, had mortgaged his property in favour of Punjab & Sind Bank vide mortgaged deed dated 30.11.1994. In this backdrop, the present suit for specific performance was dismissed. However, alternative relief of recovery of earnest money was decreed.

Keeping in view that the present agreement to sell Ex.P1 was subsequent event, it was the duty of the plaintiff to ascertain the title of the suit property. At the time of execution of agreement to sell Ex.P1, the property in dispute had already been mortgaged with Punjab & Sind Bank. Therefore, the suit of plaintiff was decree for alternative relief of recovery of earnest money.

After hearing learned counsel for the appellant(s) and going through the impugned judgments as well as documents relied upon by the parties, this Court is of the view that plaintiff-appellant(s) have failed to lead any cogent and convincing evidence to prove that Amrik Singh could pass a

better title in favour of plaintiff-Krishan Ram. In the absence of any such evidence, suit of plaintiff-appellants has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, 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.

05.12.2019
ajp

(RITU BAHRI)
JUDGE

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