

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

**RSA No.3120 of 2018 (O&M)
Date of Decision:08.05.2019**

Kuldip Singh

.....Appellant

Versus

Gian Singh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Puneet Sharma-I, Advocate
for the applicant-appellant.

LISA GILL, J.

Appellant arrayed as defendant no.2 before the learned trial Court has filed this appeal being aggrieved of judgment and decree dated 10.12.2012, passed by the learned Civil Judge (Jr. Division), Yamuna Nagar at Jagadhri, as well as judgment and decree dated 30.03.2017, passed by the learned Additional District Judge, Yamuna Nagar at Jagadhri, whereby suit for specific performance of agreement to sell dated 04.11.1997 filed by the plaintiffs-respondents, has been decreed.

Brief facts necessary for the adjudication of the case are that a suit for specific performance of agreement to sell dated 04.11.1997 was filed by respondent-Gian Singh and others, who are arrayed as respondents no.1 to 5 in this appeal. Plaintiffs sought specific performance of agreement to sell dated 04.11.1997 executed by defendant no.1 in their favour in respect to the land as described in the plaint with delivery of symbolic possession and for a declaration that sale deed no. 1366 dated 14.11.2006 executed by

defendant no.1 in favour of defendant no.2, his son, was illegal, null, void and ineffective qua the rights of the plaintiffs. It is stated that defendant no.1 entered in an agreement to sell dated 04.11.1997 with the plaintiffs, for sale of the land as described in the plaint, for a total sale consideration of ₹37,500/-. Entire sale consideration was received by defendant no.1 in the presence of witnesses i.e., PW-1-Surjit Singh and PW-2-Anoop Kumar. It is pleaded that a specific recital was incorporated in the said agreement that there was litigation pending regarding the title of the suit property before a Court of competent jurisdiction. Therefore, as and when the matter is decided in favour of defendant no.1, a notice of one month would be served upon the plaintiffs in writing for getting the sale deed executed and registered in their favour, at their instance. Actual, physical possession of the suit land, it is stated was delivered to the plaintiffs as the entire sale consideration was paid on the same date. An affidavit, Ex.PW2/B, in respect to delivery of possession was executed by defendant no.1. It is further averred by the plaintiffs that the area i.e., the share of defendant no.1 was land measuring 2 Kanal 0 Marla i.e., 1/ 4th share of land measuring 8 Kanal 0 Marla fully detailed in the heading of the plaint. However, out of the said land, land measuring 0 Kanal 7 Marla was acquired by the State Govt., for a road and hence new Khasra Number was carved out as Khasra No.10//20/2 and thereafter, defendant no.1 became owner of land measuring 1 Kanal 18 Marla being 1/ 4th share of remaining land measuring 7 Kanal 13 Marla and in this way, the share of defendant no.1 was reduced by 0 Kanal 2 Marla.

The case regarding the suit property was decided in favour of defendant no.1 on 29.04.2005 and mutation of the suit property accordingly

sanctioned in favour of defendant no.1. However, no notice was served upon the plaintiffs in terms of the agreement to sell dated 04.11.1997. It is pleaded that when the plaintiffs came to know from some sources regarding sanction of mutation of the said land in favour of defendant no.1, legal notice dated 12.10.2006 was served upon defendant no.1 asking him to come present before the Sub-Registrar, on or before 14.11.2006 for execution and registration of the sale deed in favour of the plaintiffs. Defendant no.1 was personally requested to come present on 14.11.2006, as well. It is claimed that the plaintiffs on 14.11.2006, were present before the Sub-Registrar, Radaur, along with necessary expenses for execution and registration of the sale deed, but, defendant no.1, though present in the premises of the office of Sub-Registrar, Radaur, refused to execute the sale deed in favour of the plaintiffs and have it registered. Being pushed to the wall, plaintiff no.1 got his presence marked by way of affidavit attested from Notary Public on 14.11.2006. It is pleaded that defendant no.1 in a stealthy manner executed a registered sale deed of the suit property in favour of defendant no.2 (present appellant) i.e., his real son to defeat the plaintiffs rights on 14.11.2006, itself. Plaintiffs were threatened to be dispossessed by the defendants. Hence the suit was filed.

Defendants resisted the suit. Defendants no.1 and 2 filed their separate written statements. Defendant no.1, while taking various preliminary objections, denied execution of the agreement to sell dated 04.11.1997. Defendant no.1 pleaded that he had sold the suit property vide registered sale deed dated 14.11.2006 for valuable sale consideration of Rs.1,20,000/- to defendant no.2. It is further stated that defendant no.2 is a

bona fide purchaser for consideration and his rights are thus protected under Section 41 of the Transfer of Property Act (for short 'T.P.Act'). Agreement to sell dated 04.11.1997, is claimed to be a fraudulent and forged document. Defendant no.1 claimed to be owner in possession of the suit land and after sale thereof to defendant no.2, possession was stated to be with him. Dismissal of the suit was prayed for.

Defendant no.2 in his written statement also raised various preliminary objections and denied the averments on merits on the same lines as defendant no.1.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether defendant no.1 has entered into agreement to sell dated 04.11.1997 with the plaintiffs, as alleged in the plaint?OPP
2. Whether plaintiffs are entitled for actual, physical possession of the suit property, as alleged?OPP
3. Whether suit of the plaintiffs is not maintainable?OPD
4. Whether this Court has no jurisdiction to try, hear and decide the present suit?OPD
5. Whether suit is time barred?OPD
6. Whether suit of the plaintiffs is not properly valued for the purposes of Court fee and jurisdiction?OPD
7. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, decreed the suit filed by the plaintiffs-respondents with costs directing the defendants to execute and registered the sle deed in favour of the plaintiffs in equal shares while observing that the entire sale consideration had already been received by defendant no.1 at the time of execution of agreement to sell dated 04.11.1997 and possession thereof had also been delivered to the

plaintiffs, at that time. It is further declared that sale deed dated 14.11.2006, executed by defendant no.1 in favour of defendant no.2, is illegal, null, void and nonest having no adverse effect upon the rights of the plaintiffs. The said sale deed was a result of sham transaction.

Appeal preferred by the present appellant was dismissed by the learned Additional District Judge, Yamuna Nagar at Jagadhri, vide impugned judgement and decree dated 30.03.2017.

Aggrieved therefrom, present appeal has been filed by the appellant (defendant no.2).

Learned counsel for the appellant vehemently argues that both the learned Courts below have grossly erred on facts and in law in decreeing the suit filed by the plaintiffs. It is further submitted that the agreement to sell dated 04.11.1997, is a result of fraud perpetuated by the plaintiffs. Learned counsel argues that as per the recital in agreement to sell, the sale deed is to be executed after finalization of pending litigation *qua* the suit property in favour of the appellant after one month's notice. It is strenuously urged that the suit property was never the subject matter of any litigation. Therefore, the question of any such recital in itself reflects fraud being played upon defendant no.1 and the appellant. It is further contended that learned First Appellate Court has wrongly declined the application moved by the appellant seeking to lead additional evidence inasmuch as the appellant wished to place on record the judgements and decrees as well as the plaint, written statement etc., in the litigation stated to be pending in respect to the suit property. The appellant had also wanted to produce jamabandies for the year 1987-88, 1991-92 and khasra girdawries since

22.10.1988 to 02.04.1993, 11.10.1993 to 21.03.1998, 03.10.1998 to 20.03.2003 and 20.03.2003 to 15.03.2008 to show that defendant no.1 was not in a position to convey any marketable title to the plaintiff or valid possession of the suit property at the time of the alleged agreement to sell.

It is further submitted that the agreement to sell dated 04.11.1997, is not enforceable as it is chargeable to stamp duty. He relied upon the judgement of the Hon'ble Supreme Court in **Omprakash and others Vs. Laxminarayan and others 2013 (4) R.C.R (Civil) 747**. Therefore, the impugned judgements and decrees, it is submitted should be set aside on this ground alone. It is thus prayed that this appeal be allowed and both the impugned judgements and decrees passed by the learned Courts below be set aside and suit filed by the plaintiffs-respondents, be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

At the outset, it is necessary to mention the relationship between the parties. Defendant no.1, is the father of defendant no.2 (present appellant). Plaintiffs and defendant no.1 are cousin brothers, inasmuch as their grandfather is Mangal Singh. Plaintiffs are sons of Babu singh son of Mangal Singh. Defendant no.1, is son of Rulia Singh son of Mangal Singh.

Plaintiffs in order to prove execution of the agreement to sell dated 04.11.1997, Ex.P-1, have examined one of the attesting witness namely Surjit Singh as PW-1 and PW-4-Satnarayan, the stamp vendor from whom the stamp papers on which the agreement to sell was typed were purchased. PW-4-Satnarayan, clearly deposed regarding purchase of the

stamp papers on 04.11.1997 by defendant no.1 for the purpose of execution of an agreement to sell. He proved the entry thereof in his register. PW-4 further deposed that on 04.11.1997 itself, defendant no.1 purchased another stamp paper of ₹5/- for the purpose of executing an agreement. Entry regarding the same was also proved by him. Satnarayan, specified that both the entries find present the thumb impressions of defendant no.1-Balwant Singh. PW-1, is the real brother of defendant no.1-Balwant Singh. He has specifically deposed regarding execution of the agreement to sell between the parties. PW-1, further deposed that he, like his brother-defendant no.1 had entered into an agreement to sell his 1/ 4th share out of the total land measuring 8 Kanals and had executed a registered sale deed dated 17.10.2006, Ex.P-2, in favour of the plaintiffs. Plaintiff-respondent no.1-Gian Singh, himself stepped in the witness box as PW-5. He reiterated the contents of the plaint.

Defendants, on the other hand, examined DW-3-Sonu Ram i.e., the other attesting witness of the agreement to sell dated 04.11.1997 to prove their case. However, it is a matter of record that DW-3 while in his examination-in-chief, Ex.DW3/A, denied his signatures on the agreement to sell dated 04.11.1997 as a witness and he also denied that any consideration was passed from the plaintiffs to defendant no.1 in his presence, DW-3, went on to state that the plaintiffs had obtained his thumb impressions on blank papers. Thus, it is apparent that DW-3 has admitted his signatures on the agreement to sell dated 04.11.1997, but has failed to explain or prove that the same were obtained by any kind of fraud or misrepresentation. A perusal of the file reveals that the entire consideration was admittedly received by

defendant no.1 at the time of execution of the agreement to sell.

Possession of the plaintiffs over the suit property is clearly proved by the evidence on record. In-fact, all the witnesses of the defendants have admitted possession of the plaintiffs over the suit property. DW-1-Kulwant Singh, Numberdar, who is an attesting witness to the registered sale deed dated 14.11.2006 executed by defendant no.1 in favour of defendant no.2 has also admitted in categorical terms, that defendant no.1-Balwant Singh had given the suit property to Gian Singh, though for the purpose of cultivation. DW-1 has admitted that the suit land at the time of his deposition was being cultivated by Gian Singh and it is his crops, which were standing on the suit land. DW-3-Sonu Ram as well as DW-4-Amar Singh, have admitted possession of plaintiff no.1 over the suit property. It is relevant to note at this juncture that DW-4-Amar Singh son of Rulia Ram is the real brother of defendant no.1-Balwant. Amar Singh had also entered in an agreement to sell dated 07.06.1994 in respect to his land under litigation, with Gian Singh and handed over its possession to Gian Singh. Later, in 2006, after conclusion of the litigation in his favour, Amar Singh, on 14.11.2006 itself, executed a sale deed of the said land in favour of two of his daughters-in-law. Suit by Gian Singh for specific performance of agreement to sell dated 07.06.1994 was decreed and the appeal pertaining thereto (RSA No. 3123 of 2018) has been decided by this Court today itself i.e., 08.05.2019, in favour of Gian Singh. DW-2-Kuldeep Singh (appellant) has admitted the presence of Gian Singh in the office of Sub-Registrar on 14.11.2006. It is a matter of record that legal notice was issued by Gian Singh to the defendant for execution of the sale deed on 14.11.2006.

Therefore, execution of the agreement to sell dated 04.11.1997 is clearly proved on record by specific and cogent evidence on record. Passing of the consideration amount and subsequent passing of possession of the suit property to the plaintiffs, is duly proved.

Argument raised by learned counsel for the appellant that the agreement to sell is chargeable to stamp duty, therefore, specific performance thereof cannot be decreed in absence thereof, is devoid of any merit.

Learned counsel for the appellant is unable to deny that in case of **Omprakash and others (Supra)**, the Court was seized of the matter pertaining to the State of Madhya Pradesh, wherein special provision is available in this respect. At this stage, it is relevant to note that a Division Bench of this Court in **Ram Kishan and another Vs. Bijender Mann @ Vijender Mann and others 2013 (2) R.C.R (Civil) 419**, while dealing with the question as to whether a suit for specific performance can be decreed on the basis of unregistered document to sell in view of Section 17(1A) of the Indian Registration Act, 1908, clearly held as under:-

- “(a) a suit for specific performance, based upon an unregistered contract/agreement to sell that contains a clause recording part performance of the contract by delivery of possession or has been executed with a person, who is already in possession shall not be dismissed for want of registration of the contract/agreement;
- (b) the proviso to Section 49 of the Registration Act, legitimises such a contract to the extent that, even though unregistered, it

can form the basis of a suit for specific performance and be led into evidence as proof of the agreement or part performance of a contract.”

Therefore, it cannot be said that decree of specific performance of agreement to sell dated 04.11.1997, cannot be issued in favour of the plaintiffs. Learned Courts below have rightly held the suit property to be clearly identifiable and thus rightly granted the relief of specific performance.

Another argument vehemently raised by learned counsel for the appellant is that the present appellant is a *bona fide* purchaser of the property for consideration. This argument is also devoid of any merit. This is so for the reason that the factual matrix of the case as narrated above, cements the observation of the learned trial Court to the effect that execution of sale deed dated 14.11.2006 in favour of the present appellant by defendant no.1, who is none other but his father, is a sham transaction only in order to subvert the rights of the plaintiffs. It is beyond comprehension and imagination that DW-2 would not have knowledge of the agreement to sell dated 04.11.1997 executed by his own father in favour of the plaintiffs, who are also their relatives. Moreover, possession of the suit property is specifically admitted by the witnesses examined by the defendants. It is relevant to note that DW-Kuldeep Singh in his cross-examination admitted that on the date when sale deed dated 14.11.2006 was executed, plaintiff no.1-Gian Singh was present in the office of the Sub-Registrar, Radaur. It is thus clear that plaintiff no.1-Gian Singh remained present in the office of the Sub-Registrar, Radaur, in pursuance of the legal notice issued by him to defendant no.1. Thus, *bona*

fides of the plaintiff in terms of his readiness and willingness for execution of the sale deed are clearly proved. No argument has been raised by learned counsel for the appellant in this respect.

It is apparent that after conclusion of the civil litigation pending regarding the suit property, the defendants sought to wriggle out of their liability and it is in this process that sale deed dated 14.11.2006 was executed by the father in favour of his own son i.e., the present appellant.

The defendants failed to prove any element of fraud on the part of the plaintiffs. Defendant no.1 did not dispute his signatures/thumb impressions on the agreement to sell dated 04.11.1997. The question of limitation has been correctly decided by the learned Courts below as the mutation of the land in question was admittedly sanctioned in 2005.

In all fairness, it is considered appropriate to deal with another contention raised by learned counsel for the appellant, that the learned First Appellate Court has grossly erred in declining the application moved by the appellant, seeking to lead additional evidence. A copy of the said order declining the application under Order 41 Rule 27 read with Section 151 CPC is attached. A perusal thereof, reveals that the appellant sought to produce jamabandi for the year 1987-88, 1991-92 and khasra girdawries since 22.10.1988 to 02.04.1993, 11.10.1993 to 21.03.1998, 03.10.1998 to 20.03.2003 and 20.03.2003 to 15.03.2008 to show that the present appellant was not in a position to convey any marketable title to the plaintiff or valid possession of the suit property at the time of the alleged agreement to sell. It is to be noted that the appellant, at that stage, sought to raise a fresh plea that the suit property as mentioned in the agreement to sell was not subject to any

kind of litigation whatsoever.

Learned counsel for the appellant is unable to deny that no such plea was ever raised by the present appellant in his pleading and neither was it so stated in his deposition. It is pertinent to note, at this stage, that defendant no.1 in his reply to para no.3 of the plaint, has admitted the recital regarding decision of the civil litigation. Furthermore, it is a settled position that plea of lack of title as on the date of agreement to sell, is not available to a vendor. The appellant, clearly in a desperate bid, urged that defendant no.1, was in-fact not in a position to convey any valid title to the plaintiff in regard to the suit property or valid possession thereof. Therefore, agreement to sell dated 04.11.1997 was in-effective. Defendant no.1 never denied his signatures on the agreement to sell and the present appellant is admittedly his son. Therefore, it is rightly held by the learned Additional District Judge, Yamuna Nagar at Jagadhri has rightly dismissed the application under Order 41 Rule 27 read with Section 151 CPC and has correctly held that mere non filing of the documents of the earlier litigation between the registered persons, does not make case of the plaintiffs doubtful in any manner.

Learned counsel for the appellant-defendant no.2, is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below have returned concurrent findings vide impugned judgements, after proper appreciation and consideration of the evidence on record, which calls for no interference.

No other argument has been raised.

There is a delay of 1 days in filing and 205 days in re-filing of

this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing or re-filing of this appeal has been rendered academic. Applications are accordingly disposed of.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 10.12.2012 and 30.03.2017 passed by the learned Civil Judge (Jr. Division) Yamuna Nagar at Jagadhri and learned Additional District Judge, Yamuna Nagar at Jagadhri, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

08.05.2019
s.khan

[LISA GILL]
Judge

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