

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

**RSA No.3123 of 2018 (O&M)
Date of Decision:08.05.2019**

Swaran Kaur and another

.....Appellants

Versus

Gian Singh and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Puneet Sharma-I, Advocate
for the applicants-appellants.

LISA GILL, J.

Appellants arrayed as defendants no.2 and 3 before the learned trial Court have filed this appeal, being aggrieved of judgment and decree dated 14.12.2012, 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 07.06.1994 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 07.06.1994 was filed by respondent no.1-Gian Singh, who is arrayed as respondent no.1 in this appeal. Plaintiff sought specific performance of agreement to sell dated 07.06.1994 executed by defendant no.1 in his favour in respect to the land as described in the plaint with delivery of symbolic possession and for a declaration that sale deed no. 1351 dated 14.11.2006 executed by defendant

no.1 in favour of defendant nos.2 and 3, was illegal, null, void and ineffective *qua* the rights of the plaintiff. It is stated that defendant no.1 entered in an agreement to sell dated 07.06.1994 with the plaintiffs, for sale of the land as described in the plaint, for a total sale consideration of ₹1,00,000/-. Entire sale consideration was received by defendant no.1 in the presence of witnesses i.e., PW-4-Surjit Singh and PW-5-Chuhar Singh. 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 plaintiff in writing for getting the sale deed executed and registered in his favour, at their instance. Actual, physical possession of the suit land, it is stated was delivered to the plaintiff as the entire sale consideration was paid on the same date. An affidavit, Ex.PW1/B, in respect to delivery of possession was executed by defendant no.1.

It is further pleaded that in the litigation pending between the parties, defendant no.1 was declared owner only to the extent of 1 Kanal 18 Marla bearing Khasra no. 10//20 vide order dated 29.04.2005 and the mutation of the said land has also been sanctioned in favour of defendant no.1. However, the suit of defendant no.1 *qua* land measuring 4 Kanal 6 Marla bearing Khasra Nos.11//11, 11//1-10-20-21/2 was dismissed, so out of entire land, described in agreement to sell dated 07.06.1994, defendant no.1 was declared owner of land measuring 1 Kanal 18 Marlas i.e., suit land and the mutation of the suit land has been entered and sanctioned in favour of defendant no.1. Previously, 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 in Khasa no.10//20, fully detailed in heading of plaint, at the time of execution of agreement but the land measuring 0 Kanal 7 Marla out of land measuring 8 Kanal 0 Marla was acquired by the State Govt., for a road, hence, new khasra number has been carved out as 10//20/2 and defendant no.1 became the owner of land measuring 1 Kanal 18 Marlas being 1/4th share out of remaining land measuring 7 Kanal 13 Marlas and in this way, the share of defendant no.1 was reduced by 0 Kanal 2 Marla. The defendant no.1 was declared owner of land measuring 1 Kanal 18 Marlas fully detailed and described in the heading of the plaint, so the plaintiff claimed to be entitled to get the sale deed executed and registered at the proportionate rate/value which comes to ₹30,160/- and sought refund/recovery of excess amount of ₹69,840/- paid to defendant no.1.

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 07.06.1994. It is pleaded that when the plaintiff 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 plaintiff. Defendant no.1, was personally also requested to come present on 14.11.2006. It is claimed that the plaintiff on 14.11.2006, was 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, flatly refused to execute the sale deed in favour of the plaintiffs and have it registered. Finding no other alternative, plaintiff no.1 got his presence marked by way of an affidavit attested from Notary Public on 14.11.2006. It is pleaded that defendant no.1 stealthily got executed and registered a sale deed of the suit property in favour of defendant nos.2 and 3 i.e., daughters-in-law of defendant no.1 on 14.11.2006 itself, to defeat the plaintiff's rights. Plaintiff was threatened to be dispossessed by the defendants. Hence the suit was filed.

Defendants resisted the suit. Defendant no.1 filed the written statement and defendants no.2 and 3 filed their separate written statements. Defendant no.1, while taking various preliminary objections, denied execution of the agreement to sell dated 07.06.1994. Defendant no.1 pleaded that he had sold the suit property vide a registered sale deed dated 14.11.2006 for valuable sale consideration of ₹1,20,000/- to defendant nos.2 and 3. It is further stated that defendant nos.2 and 3 are *bona fide* purchasers for consideration and their rights are thus protected under Section 41 of the Transfer of Property Act (for short 'T.P.Act'). Agreement to sell dated 07.06.1194, 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 nos.2 and 3, possession was stated to be with them. Dismissal of the suit was prayed for.

Defendant nos.2 and 3 in their 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 07.06.1994 with the plaintiff, as alleged in the plaint?OPP
2. Whether plaintiff is entitled for actual, physical possession of the suit property, as alleged?OPP
3. Whether suit of the plaintiff 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 plaintiff 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 plaintiff-respondent no.1 with costs, directing the defendants to execute and get the sale deed registered in favour of the plaintiff, 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 07.06.1994 and possession thereof had also been delivered to the plaintiff, at that time. Recovery of ₹69,840/- paid in excess to defendant no.1 was ordered. It is further declared that sale deed no.1351 dated 14.11.2006, executed by defendant no.1 in favour of defendant nos.2 and 3, is illegal, null, void and nonest having no adverse effect upon the rights of the plaintiff. The said sale deed was held to be the result of a sham transaction.

Appeal preferred by the present appellants was dismissed by the learned Additional District Judge, Yamuna Nagar at Jagadhri, vide impugned judgement and decree dated 30.03.2017. Defendant no.1 did not file any appeal against the judgment and decree dated 14.12.2012 passed by

the learned trial Court. He did not even appear before the learned First Appellate Court and was proceeded against *ex parte*.

Aggrieved therefrom, present appeal has been filed by the appellants (defendant nos.2 and 3).

Learned counsel for the appellants vehemently argues that both the learned Courts below have grossly erred on facts and in law in decreeing the suit filed by the plaintiff. It is further submitted that the agreement to sell dated 07.06.1994, is a result of fraud perpetuated by the plaintiff. Learned counsel argues that as per the recital in the agreement to sell, the sale deed is to be executed after finalization of pending litigation *qua* the suit property in favour of the appellants 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 appellants. It is further contended that the 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 appellants 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

07.06.1994, is not enforceable as it is chargeable to stamp duty. He relies 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-in-law of defendants no.2 and 3. Plaintiff and defendant no.1 are cousin brothers, inasmuch as their grandfather is Mangal Singh. Plaintiff is son of Babu Singh son of Mangal Singh. Defendant no.1, is son of Rulia Singh son of Mangal Singh.

Plaintiff in order to prove execution of the agreement to sell dated 07.06.1994, Ex.P-1, has examined one of the attesting witness namely Surjit Singh as PW-4 and PW-3-Satnarayan, the stamp vendor from whom the stamp papers on which the agreement to sell was typed, were purchased. He has specifically deposed regarding execution of the agreement to sell between the parties. PW-4 tendered his duly sworn affidavit Ex.PW4/A in evidence and reiterated the contents of the plaint in letters and spirit. PW-3-Satnarayan Gaba, clearly deposed regarding purchase of the stamp papers by defendant no.1 for the purpose of execution of an agreement to sell dated 07.06.1994. He also identified his signatures on the back of the stamp papers

bearing Sr. No. 1943 and 1944, Ex.PW3/A and Ex.PW3/B, respectively. Plaintiff also examined PW-5-Chuhar Singh, another witness of the agreement to sell dated 07.06.1994. PW-5 tendered his duly sworn affidavit Ex.PW5/A in his evidence. He has deposed on the same lines as PW-4. Plaintiff-respondent no.1-Gian Singh, himself stepped in the witness box as PW-6. 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 07.06.1994 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 07.06.1994 as a witness and he also denied that any consideration was passed from the plaintiff to defendant no.1 in his presence, DW-3, went on to state that the plaintiff had obtained his thumb impressions on blank papers. Thus, it is apparent that DW-3 has admitted his signatures /thumb impressions on the agreement to sell dated 07.06.1994, 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 plaintiff 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 plaintiff 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 nos.2 and 3 has also admitted in categorical terms, that defendant no.1-Amar

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 the plaintiff over the suit property. Therefore, execution of the agreement to sell dated 07.06.1994 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 appellants 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 appellants 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 07.06.1994, cannot be issued in favour of the plaintiff.

Furthermore, learned Courts below have rightly held that the suit land measuring 1 Kanal 18 Marlas, is clearly identifiable. It is not denied that there is no pleading to this effect. Admittedly, defendant no.1 executed sale deed dated 14.11.2006 in favour of his daughters-in-law in respect to this land measuring 1 Kanal 18 Marlas. Thus, the learned Courts below have rightly decreed the suit.

Another argument vehemently raised by learned counsel for the appellants is that the present appellants are *bona fide* purchasers 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 appellants by defendant no.1, who is none other but their father-in-law, is a sham transaction only in order to subvert the rights of the plaintiff. It is beyond comprehension and imagination that DW-2-Ranjit Kaur would not have knowledge of the agreement to sell dated 07.06.1994 executed by her own father-in-law in favour of the plaintiff, who is also her relative. Moreover,

possession of the suit property is specifically admitted by the witnesses examined by the defendants. It is relevant to note that DW-Kulwant Singh in his cross-examination admitted that on the date when sale deed dated 14.11.2006 was executed, plaintiff-Gian Singh was present in the office of the Sub-Registrar, Radaur. It is thus clear that plaintiff-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 appellants in this respect.

It is to be noted that agreement to sell dated 07.06.1994 was executed for sale consideration of ₹1,00,000/- and the sale deed purportedly executed after twelve years in 2006 was for a sale consideration of merely ₹1,20,000/-. Possession of the plaintiff over the suit property is admitted by the defendants. Apart from the fact that there is no such evidence to show passing of the consideration amount of ₹1,20,000/-, it is opposed to all logic and common sense that property which was agreed to be sold for a sum of ₹1,00,000/- in the year 1994 could be sold by any person for ₹1,20,000/- in the year 2006. 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-law in favour of his own daughters-in-law i.e., the present appellants.

The defendants failed to prove any element of fraud on the part of the plaintiff. Defendant no.1 never disputed his signatures/thumb

impressions on the agreement to sell dated 07.06.1994. The question of limitation has also been correctly decided by the learned Courts below as 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 appellants, that the learned First Appellate Court has erred in declining the application moved by the appellants, 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 appellants 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 defendant no.1, father-in-law of the appellants, 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 appellants, 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 appellants is unable to deny that no such plea was ever raised by the present appellants in their pleading and neither was it so stated in the deposition of defendant no.1 or the witnesses. 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 appellants, 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. Defendant no.1, did not deny his signatures on the agreement to sell. The present appellants are the daughters-in-law of defendant no.1. The plea sought to be raised, in any case, is contrary and contradictory to the appellants own stand. Therefore, 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 plaintiff doubtful in any manner.

Learned counsel for the appellants, 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 call for no interference in this regular second appeal.

No other argument has been raised.

There is a delay of 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 re-filing of this appeal has been rendered academic. Application is accordingly disposed of.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 14.12.2012 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.