

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

**RSA No.5821 of 2017 (O&M)
Date of Decision.07.03.2019**

Gursahib Singh

...Appellants

Vs

Balkar Singh (now deceased) through his LRs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate and
Mr. APS Sandhu, Advocate
for the appellants.

Mr. Parminder Singh Kanwar, Advocate
for respondent No.1 (i).

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AMIT RAWAL J. (ORAL)

Costs of ₹2000/- has been paid.

Notice of motion.

Mr. P.S. Kanwar, Advocate accepts notice for the
respondent No.1 (i).

The present regular second appeal is directed for
expunging of the observation rendered by the lower Appellate Court
while accepting the appeal of the appellant-defendant No.3 holding
him not to be a bona fide purchaser by virtue of sale deed dated
20.04.2007.

Plaintiff Daljinder Singh instituted the suit for specific
performance of agreement to sell dated 17.05.2006 executed by
Balkar Singh, defendant No.1 in favour of plaintiff in respect of the
property bearing plot No.100, measuring 296.66 sq. yards forming
part of Khasra No.329 min by challenging the power of attorney

dated 16.04.2007 executed by defendant No.1 in favour of defendant No.2 and sale deed dated 20.04.2007 executed by Balkar Singh through his attorney, defendant No.2 in favour of the appellant-defendant No.3 Gursahib Singh or alternative relief of recovery of ₹7,80,000/- i.e. ₹3,90,000/- as earnest money paid and ₹3,90,000/- as damages along with interest @18% per annum on the premise that defendant No.1 had agreed to enter into agreement to sell qua suit property for sale consideration of ₹23,75,000/-, ₹2,40,000/- as earnest money was paid in the presence of two witnesses. The plaintiff marked his presence before the Registrar on 30.08.2006 and approached defendant No.1 with witnesses to receive balance sale consideration but he kept on deferring the matter by making lame excuses, but, agreed to execute the sale deed on 12.09.2006. He also received a sum of ₹1,50,000/- through cheque bearing No.349415 dated 02.09.2006, which was duly encashed but again did not come forward for performing his part of the agreement. Even legal notice dated 15.09.2006 was served and another amount of ₹2 lakh was paid in the presence as part of the sale consideration without any writing, thus, filed suit on 22.12.2007.

Defendant No.1 in the written statement admitted execution of the agreement to sell and receipt of ₹2,40,000/- out of total sale consideration and the stipulated date fixed as 30.08.2006. It was explained that the original sale deed qua disputed property was handed over to the plaintiff but feigned ignorance regarding the presence of plaintiff before the office of Registrar and also qua extension of date till 12.09.2006. Receipt of cheque of ₹1,50,000/-

was admitted but denied execution of the power of attorney in favour of defendant No.2 and the sale deed by defendant No.2 in favour of defendant No.3.

Defendants No.2 and 3 filed separate written statements and opposed the suit. It was explained that defendant No.1 agreed to sell the suit property in favour of answering defendant vide agreement to sell dated 6.1.2006 and received a sum of ₹3,70,000/- and the target date for execution of the sale deed was fixed as 16.04.2007. On the same date, defendant No.1 executed power of attorney in favour of the answering defendant after receiving the amount of ₹80,000/- through cheque dated 18.04.2007 and sale deed was executed on 20.04.2007.

Plaintiff in support of the evidence examined seven witnesses and closed the evidence whereas the defendants examined seven witnesses and closed the evidence.

The trial Court on the basis of aforementioned pleadings and evidence decreed the suit. An appeal was preferred by defendant No.3 before the lower Appellate Court. During the pendency of the appeal, parties to the *lis* i.e. appellant-defendant No.3 and respondent-plaintiff compromised the matter. During the pendency of appeal, plaintiff expired and his wife Paramjit Kaur and children were brought on record as legal representatives. Legal representatives made statement in the Court of having effected the compromise with appellant-defendant No.3 Gursahib Singh and gave up the claim regarding relief of specific performance. But the lower Appellate Court by noticing contents of the agreement to sell dated 6.1.2006

Ex.D1 propounded by the defendants held that the appellant-defendant No.3 was not a bona fide purchaser as failed to prove that the appellant had become owner by virtue of the sale deed Ex.D4.

Mr. P.S. Kanwar, learned counsel appearing on behalf of the respondent No.1(i) argued that the finding recorded by the lower Appellate Court with regard to the sale deed is perfect legal and justified as the sale deed Ex.D4 did not reflect the agreement to sell dated 6.1.2006. DW2 Manjit Singh, marginal witness of the sale deed admitted that the sale consideration was not paid in his presence. Jaswinder Singh while appearing as the witness admitted that he had not seen the property in dispute nor the possession of the suit property was ever handed over to Balkar Singh at any point of time and rightly so declined the appellant-defendant No.3 not to be owner of the property.

I have heard learned counsel for the parties and appraised the paper book and of the view that following substantial question of law arises for determination by this Court:-

“Whether the lower Appellate Court in the absence of any appeal or counter claim set up by defendant No.1 set aside the sale deed dated 20.04.2007 being not valid in favour of appellant-defendant No.3?”

It is a classic case where the vendor had put himself at advantageous stage and siphoned more money from appellant-defendant No.3 for the simple reason that the sale deed of 2007 Ex.D4 was never challenged by setting up any counter claim or any independent suit, much less, filed any appeal before the lower

Appellate Court. The lower Appellate Court in such circumstances ought not to have adjudicated the aforementioned controversy purportedly by exercising the powers under Order 41 Rule 33 CPC. It is strange that defendant No.1 has taken the money as advance from the plaintiff and also balance sale consideration but thereafter, volte faced, by accepting the agreement to sell and receipt of earnest money, much less, total sale consideration but it cannot be forgotten that he executed a power of attorney dated 16.04.2007 in favour of defendant No.2 Jaswinder Singh, who through his attorney sold it to the appellant-Gursahib Singh. If at all, there was some grievance, the same could be redressed by filing counter-claim or separate suit as for settlement of account remedy lied elsewhere. The appellant-defendant No.3 has been grinded by arriving at compromise with the legal heirs of Daljinder Singh, which must have been on account of some monetary consideration and the opposition qua expunging of findings with regard to sale deed objected to the aforementioned prayer is reflection of greed.

In view of such circumstances, substantial question of law is answered in favour of the appellant-defendant No.3 and against the respondents, respondent No.1 and 3 being represented by legal representatives. The sale deed is held to be valid. Accordingly, the regular second appeal is allowed.

(AMIT RAWAL)
JUDGE

March 07, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No