

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

**RSA No.86 of 2018 (O&M)
Date of Decision : 15.10.2019**

Satwant Singh

.....Appellant

Versus

Balwinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. G.S.Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 25.11.2013 and as even the appeal preferred against the said decree failed and was dismissed on 04.10.2016, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for possession by way of specific performance of the contract. In brief, the case set out by him was that the plaintiff and defendant No.1 had entered into an agreement to sell dated 07.11.2001, qua a land measuring 18 bighas for a total sale consideration of Rs.9,00,000/- @ Rs.50,000/- per bigha. Rupees 1,00,000/- were paid to the defendant as earnest money at the time of execution of the agreement itself. The balance sale consideration was to be paid up to 31.12.2002 i.e. the date fixed for execution and registration of the sale deed.

For, the cultivated crop was standing in the suit land the possession thereof was agreed to be handed over to the plaintiff on 30.05.2002. However, a further sum of Rs.2,00,000/- were paid by the plaintiff on 13.12.2001 and defendant No.1 acknowledged the receipt of this amount under his signatures on the backside of the agreement. For, defendant No.1, failed to clear the outstanding loan obtained from the financial institution and deliver possession on the agreed date, with the intervention of the relatives of the parties it was agreed that plaintiff would be delivered possession only on receipt of the entire sale consideration on execution of the sale deed. Accordingly, on receipt of part payments the date for execution of the sale deed was extended from time to time and eventually 30.04.2006 was fixed for the said purpose. Plaintiff was always ready and willing to perform his part of the contract on payment of Rs.60,000/- as balance sale consideration. But defendant No.1 executed two sale deeds of an even date i.e. 30.03.2006 in favour of defendants No.2 and 3, which were not binding upon the rights of the plaintiff.

In defence, defendant No.1 denied to have entered into any agreement to sell with the plaintiff and the agreement dated 07.11.2001, was alleged to be forged and fabricated document. Rather, it was clarified that plaintiff happened to be the real nephew of the defendant, who had cordial relations with him and his father. The defendant did not have any male issue except three daughters, therefore, he had faith and confidence in the plaintiff. And, he even used to obtain loan from the plaintiff from time to time to meet his needs and obligations and plaintiff would obtain his

signature on papers purporting to be in respect of the loan obtained. The entire amount of loan obtained by the defendant between November 2001 till January 2006 was Rs.8,40,000/- which he returned with interest on 17.04.2006, totalling Rs.12,00,000/-.

In a separate written statement filed by defendants No.2 and 3 they set up a plea of being a bona fide purchaser for consideration.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that plaintiff failed to bring the original agreement on record. Rather, his case was that he had lost the agreement along with a draft of Rs. 60,000/- dated 27.04.2006. To prove the loss: a copy of DDR No.18 dated 21.11.2007, was proved on record to show that while travelling from Dhuri to Jalandhar on 29.09.2007, the plaintiff lost his bag. It was observed that plaintiff failed to render any explanation as to why and for what purpose he was carrying all these documents even though the date fixed for execution of the sale deed i.e. 30.04.2006 had gone long ago and even the demand draft dated 27.04.2006 was valid for a month which too had expired. For, the agreement dated 07.11.2001, purport to have been lost he moved an application seeking permission of the Court to prove the said agreement by way of secondary evidence which was allowed. Significantly, though plaintiff prayed for and was granted leave to prove the agreement by way of secondary evidence but he failed to seek permission, nor the Court granted any, to prove the endorsement, allegedly made at the back of first leaf as also the second leaf of the agreement, vide which he paid certain amounts to defendant No.1 on

different occasions and the time for executing the sale deed was extended. Thus, in terms of the agreement dated 07.11.2001, propounded by the plaintiff, sale deed was to be executed on or before 31.12.2002, and, therefore, the suit to seek specific performance thereof could be filed up to 30.12.2005, whereas the present suit was instituted on 29.11.2007. And was thus beyond limitation. Not just that even the attesting witnesses of the agreement namely Sukhwinder Singh and Varinderjit Singh were not examined. Likewise, plaintiff even failed to examine the scribe of the alleged agreement. And, once the plaintiff failed to prove the execution of the alleged agreement he was not entitled to a decree for specific performance. Undoubtedly, the plaintiff did pray for an alternate relief for recovery of Rs.16,80,000/- (Rs.8,40,000/- as earnest money and a equal share of sum of Rs.8,40,000/- for damages) but as he even failed to prove the endorsement vide which the alleged payments were advanced to defendant No.1 on different occasions, he was not even entitled to alternate relief. Concededly no permission was sought or granted by the Court to prove those endorsement by way of secondary evidence. The plaintiff had moved an application under Order 41 Rule 27 of the CPC vide which he sought to prove the writing/endorsement alleged to have been made on the backside of first leaf and second leaf of the agreement dated 07.11.2001 (Ex.P7), for, inadvertently the formal proof of these writings while exhibiting the agreement (Ex.P7) had been left. However, preceded by due consideration, the said application was dismissed by the Appellate Court on 04.10.2016, as plaintiff had failed to seek permission to prove the alleged

receipts by way of secondary evidence. On the contrary, Puran Singh DW3 testified in his deposition that he along with Satwant Singh (plaintiff), Balwinder Singh (defendant) and Rajinder Kaur wife of Balwinder Singh visited Punjab National Bank, Sherpur on 17.04.2006, and withdrew an amount of Rs.12,00,000/- that were given to the plaintiff. The statement of Puran Singh DW3 and copy of pass book Exs.D1 and D2, fully substantiated the version of defendant-Balwinder Singh. *Ex facie*, the plaintiff had not only failed to prove the execution of the agreement dated 07.11.2001, but even as per the said agreement the sale deed was to be extended up to 31.12.2002, and thus, the suit filed by him on 29.11.2007, was beyond limitation.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts. The appeal being devoid of merit is accordingly dismissed.

15.10.2019

Manoj Bhutani

(ARUN PALLI)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No