

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

RSA-1402-2009 (O&M)
Date of decision : 05.03.2020

Harninder Singh and others

...Appellants

Versus

Ravinder Kumar Prabhakar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Deep Goyal, Advocate for appellant Nos.1 and 3.

Mr. K.B. Sharma, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.2, 3 and 4 have filed the present Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for possession by way of specific performance of the agreement to sell.

Kartar Singh and his brother namely Gian Singh were joint owners of Bay Shop No.60, Sector-23-C, Chandigarh. Kartar Singh entered into the agreement to sell with the plaintiff-respondent who was tenants in possession, with respect to his half share on total sale consideration of ₹1,00,000/- on receipt of ₹35,000/- through Pay Order as earnest money. As per agreement to sell which is in writing, the parties had agreed to get the sale deed executed on 31.01.1995. The agreement to sell was attested by two marginal witnesses namely Ranjit Singh son of Kartar Singh (proposed vendor) and Mela Ram. On 04.02.1994, Kartar Singh got attested an affidavit admitting the execution of the agreement to sell and receipt of

earnest money. Since, Kartar Singh did not come forward, therefore, after serving notice Ex.P5, present suit was filed on 21.10.1995. During the pendency of the suit, Kartar Singh died and his legal heirs were brought on record. The legal heirs had denied the execution of the agreement to sell and claimed that Kartar Singh was exclusive owner of the property.

At the outset, it must be noticed that other brother and co-sharer of Kartar Singh i.e. Gian Singh has also sold his half share in favour of wife of the plaintiff-respondent for sale consideration of ₹1,00,000/-.

Learned trial Court as well as First Appellate Court, on appreciation of evidence, decreed the suit after recording a finding that the plaintiff was always ready and willing to perform his part of the contract.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgment passed by the Courts below.

Learned counsel for the appellants contended that in fact the agreement to sell was executed as a security document and value of the property owned by Kartar Singh was approximately ₹25,00,000/-. Hence, he submitted that the Courts committed an error in decreeing the suit.

This Court has carefully analyzed the argument of learned counsel for the appellants. However, finds no substance. The agreement to sell is in writing duly signed by Kartar Singh. The agreement to sell has been drafted on a non-judicial stamp paper running into three papers/sheets. Each sheet of paper has been signed by Kartar Singh. One of the attesting witness of the agreement to sell is Ranjit Singh son of Kartar Singh. Although, he was impleaded as legal heir of Kartar Singh after the death of

Kartar Singh but did not appear in evidence to dispute his signatures. Further, Mela Ram, other marginal witness, has appeared in evidence and identified the signatures. Although, learned counsel for the appellants submitted that Mela Ram has, in cross-examination, stated that the agreement to sell was not signed in his presence, however, such evidence cannot be accepted particularly when Ranjit Singh has not appeared in evidence. Mela Ram, in examination-in-chief, has stated that it was signed in his presence, as also the execution of the agreement to sell is not being disputed by the defendants particularly when they have taken a stand that it was for a loan transaction. Still further, the earnest money has been paid through Pay Order issued by the Bank, receipt whereof is not disputed.

As regards argument of learned counsel that the value of property on the date of agreement to sell was ₹25,00,000/-, it is sufficient to notice that remaining half share of the property has been sold by the brother of Kartar Singh for a sum of ₹1,00,000/-.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Accordingly, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

05.03.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No