

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1111 of 2014 (O&M)

Date of Decision: 14.02.2020

Swaran Singh and Another

... Appellant(s)

Versus

Sukhdayal Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. K.R.Dhawan, Advocate
for the appellants.

Mr. Kuldip Sanwal, Advocate
for respondents No.1 and 2.

Mr. G.S.Gill, Advocate
for respondents No. 3 to 6.

Anil Kshetarpal, J.

The plaintiff/appellants have filed the present regular second appeal against the grant of decree for refund of earnest money along with interest while declining to grant decree for specific performance of the agreement to sell as granted by the trial Court.

The execution of the agreement to sell dated 02.05.2000 has been proved and this Court does not find any reason to interfere in the aforesaid finding of fact arrived at by the Courts below.

The learned first Appellate Court has noticed that there was a long drawn litigation between Smt. Harbans Kaur on the one hand and Baldev Singh and Nachhattar Singh, on the other hand since 1991 which culminated only before the Hon'ble Supreme Court. Smt. Harbans Kaur was

mother of defendant/respondents No.1 & 2. It has come on record that Smt.Harbans Kaur had appointed Buta Singh and Nachhattar Singh as her attorneys to litigate on her behalf. When the execution petition was pending, Smt.Harbans Kaur died and the defendants, also having immense faith, executed general power of attorney dated 02.05.2000 in favour of Buta Singh and Nachhattar Singh. The alleged agreement to sell is also of the same date. The Scribe as well as the attesting witnesses on both the documents are same. The plaintiffs are Swaran Singh (son of Buta Singh) and Smt. Charan Kaur (wife of Nachhattar Singh).

Still further, it has been found by the learned first Appellate Court that the agreement to sell is with respect to the land measuring 80 kanals, whereas share of the defendants comes to 78 kanals & 18 marlas. Further, the agreement to sell is with respect to the land comprised in specific khasra numbers, whereas it was un-partitioned joint land. Further, a bare look at the agreement to sell which has been scribed on a plain paper with special adhesive stamps affixed shows that there is vacant space/gap after typing three lines, which is unusual. Still further, a bare look at the register of the Scribe, it is apparent that entries No. 67 & 68, with reference to power of attorney and agreement to sell, are comparatively written with narrow spacing in between the various lines when compared with entry No. 66, which is also on the same page. Further, the power of attorney dated 02.05.2000 is without any vacant space/gap and is regularly typed. Further, there is an unusual period of approximately three years between the date on which the agreement to sell was executed and the target date.

Keeping in view the aforesaid facts, the learned first Appellate

Court has held, particularly keeping in view the fact that Buta Singh and Nachhattar Singh have been representing Smt. Harbans Kaur as well as the defendants, that the plaintiffs are not entitled to the discretionary relief of specific performance of agreement to sell.

As per recital in the agreement to sell, the possession of the land has been handed over to the plaintiffs, whereas it is the admitted case that the possession of the land is with Baldev Singh and Rachhpal Singh, with whom late Smt. Harbans Kaur was litigating. Thus, the recital in the agreement to sell that the possession has been delivered is also false.

The regular second appeals in this Court are regulated by Section 41 of the Punjab Courts Act, 1918, which reads as under:

“41. Second appeals—(1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely :

- (a) the decision being contrary to law or to some custom or usage having the force of law.*
- (b) the decision having failed to determine some material issue of law or custom or usage having the force of law.*
- (c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 (V of 1908), or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits.*

Explanation—A question relating to the existence or validity of a custom or usage shall be deemed to be a question of law

within the meaning of this section.

(2) An appeal may lie under this section from an appellate decree passed ex parte”.

Keeping in view the aforesaid facts, the conclusion drawn by the learned first Appellate Court does not require any interference.

Dismissed.

The miscellaneous application(s), if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

February 14, 2020
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No