

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-543 of 2018 (O&M)

Date of decision: 15.01.2020

Jasvir Kaur

... Appellant

versus

Chamkaur Singh & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Brijeshwar Singh Bhalla, Advocate,
for the appellant.

ARUN MONGA, J. (ORAL)

1. The appellant-defendant No.4 is aggrieved of the judgments passed by both the Courts below, decreeing the suit filed by respondent No.1-plaintiff for specific performance of agreement to sell dated 29.08.2005 executed by Harbans Singh, predecessor-in-interest of defendants in favour of plaintiff. Being the legal heirs of Harbans Singh, the appellant and her brothers i.e. respondents No.2 to 4 herein, have been directed to execute the sale-deed in respect of the land measuring 7 kanal 19 marlas, subject matter of the agreement, in favour of plaintiff after receiving the remaining sale consideration.

2. The suit was filed by the plaintiff on the broad averments that Harbans Singh entered into an agreement to sell his land measuring 7 kanals 19 marlas for an amount of Rs.5,05,500/- and received Rs.1,55,000/- as an earnest money. The date fixed for execution of sale-deed was 03.11.2005, but before it could be done, Harbans Singh died on 19.09.2005. It was the

case of the plaintiff that Jagroop Singh, son of Harbans Singh though acknowledged the agreement vide writing dated 28.10.2005 and assured to get the sale-deed executed till 30.10.2006, but failed to do so. Hence, the suit was filed against the legal representatives of Harbans Singh, who inherited the estate of the deceased.

3. Defendants No.1 to 3(respondents No.2 to 4 herein, sons of Harbans Singh) and defendant No.4(appellant herein, daughter of Harbans Singh) filed separate written statements, more or less with the similar stand. In nutshell, their stand was that Harbans Singh needed money for his treatment and had obtained loan from the plaintiff. The plaintiff converted those documents into alleged agreement to sell. According to them, Harbans Singh was not competent to execute the alleged agreement to sell due to pendency of civil suit filed by one of the sons for declaration and permanent injunction, wherein interim stay had been granted by the Civil Court on 0508.2005.

4. On appraisal of the evidence led by both the parties on the issues, so framed, the trial Court vide judgment dated 03.07.2014 held that the plaintiff had proved the due execution of agreement to sell by leading cogent and convincing evidence in the shape of marginal and attesting witnesses. The stand taken by the defendants was negated being without substance. Accordingly, as noticed above, they were directed to execute the sale-deed as per agreement to sell in question.

5. The appellant and her brother Jagroop Singh, on the one hand and other brothers Jagtar Singh and Jugraj Singh by filing separate appeals unsuccessfully challenged the findings of the trial Court before the Appellate Court below. Their appeals have been dismissed vide common

judgment dated 12.01.2017, re-affirming the findings returned by the trial Court. Hence, this regular second appeal by defendant Jasvir Kaur alone.

6. I have heard learned counsel for the appellant and have gone through the paper book carefully.

7. The Courts below placed implicit reliance on the testimonies of plaintiff(PW1) coupled with marginal and attesting witnesses i.e. PW3 and PW4 respectively to conclude the due execution of agreement to sell dated 29.08.2005 by Harbans Singh in favour of the plaintiff. The defendants failed to substantiate their plea of having taken loan from plaintiff and that of fraud and misrepresentation by leading cogent and convincing evidence. No material particulars about the loan viz. the date, time, nature of loan and the quantum of amount taken were proved on record. One of the defendants Jagroop Singh even did not dispute the acknowledgment dated 29.08.2005 made by him on the agreement itself, after the death of Harbans Singh. Though, said undertaking was held not binding on the other defendants, but it was rightly taken as an important factor to prove the readiness and willingness of the plaintiff to perform his part of the agreement by approaching the legal representatives of Harbans Singh to get the sale-deed executed. The conclusion of Courts below was based on the strength and quality of evidence adduced by the plaintiff to prove his case and not on solely on the basis of acknowledgment *ibid*. Harbans Singh was admittedly recorded as co-sharer in the revenue record. The defendants though claimed that due to pendency of another suit instituted at the instance of one of the defendants against Harbans Singh, the latter had no competence to sell the suit land, but it has come on record that the defendants produced the proceedings of that suit till 01.09.2005 only. Further proceedings and fate of

the suit were not brought on record. It was also not proved whether any contempt proceedings were initiated against Harbans Singh during his lifetime. In the totality, it was held that Harbans Singh was within his right to enter into agreement to sell the suit land.

8. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is called for to disturb the concurrent findings of facts recorded by the Courts below.

9. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

10. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

11. Pending applications stand disposed of.

12. No order as to costs.

(ARUN MONGA)
JUDGE

January 15, 2020

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Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No