

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

RSA-5695-2018 (O&M)

Date of decision : 31.01.2020

Gurdit Singh

...Appellant

Versus

Bohar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Varun Dhawan, Advocate for the appellant.

ANIL KSHETARPAL, J.

The plaintiff-appellant has filed the present Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court resulting in dismissal of the suit filed by the plaintiff for specific performance of the agreement to sell dated 09.11.2006.

The suit was filed on 23.07.2011. The alleged agreement to sell is dated 09.11.2006 through which the defendant is alleged to have agreed to sell land measuring 16 kanals being half share of land measuring 32 kanals at the rate of ₹4,00,000/- per acre for a total sale consideration of ₹8,00,000/-, on receipt of ₹5,00,000/- as earnest money. As per agreement to sell, the parties had decided to execute and register the sale deed on 08.12.2008. Subsequently, on 08.12.2008 by mutual agreement, time for execution and registration of the sale deed was extended to 24.07.2009. The

plaintiff claims that he visited the office of the Sub-Registrar and got his presence marked.

The defendant contested the suit and pleaded that he has been selling his agricultural produce through a commission agent firm at Dharamkot owned by Balraj Singh who never used to issue 'J' form to his customers. He did not render proper accounts resulting in a dispute between the defendant and Balraj Singh. Thereafter, the defendant stopped selling his agricultural produce through agency of Balraj Singh. Balraj Singh got enraged and used some signed papers of the defendant which were already lying there and drafted an agreement to sell. It is pleaded that the aforesaid papers were signed for obtaining bonus on the crop produced by the defendant from Central Government as well as State Government. Satwinder Kumar is also good friend of Balraj Singh and they are grabbing land of illiterate farmers. It was pleaded that market price of the land is ₹20,00,000/- per acre at the time of alleged execution of the agreement to sell.

Learned trial Court, on appreciation of evidence, has held that although the agreement to sell is proved, however, the same was never intended to be acted upon in the facts and circumstances of the present case. Thus, the Court held that the plaintiff is entitled to refund of the earnest money paid alongwith interest at the rate of 9% per annum from the date of execution of the agreement to sell till filing of the suit and during the pendency of the suit and alongwith interest at the rate of 6% per annum as future interest from the date of decree, till its realisation.

The defendant had filed the first appeal.

Learned First Appellate Court, on re-appreciation of evidence, has accepted the appeal while recording following reasons:-

- 1) Defendant-Bohar Singh was not the exclusive owner of the property as he was only co-sharer alongwith his brother, therefore, the suit property was undivided share in the joint property.
- 2) As admitted by the plaintiff-Gurdit Singh, he, before entering into this bargain, never visited the suit property or seen it which is astonishing.
- 3) Although, Gurdit Singh has taken a stand that he had seen khasra number of the suit land but even that stand is not correct. A perusal of the jamabandi Ex.P4 shows that the suit land was mortgaged with OBC Bank, Dharamkot against a loan of ₹9,00,000/- borrowed by Bohar Singh and Pippal Singh (his brother). On being confronted, when the plaintiff appeared in evidence, he feigned ignorance regarding the encumbrance. Still further, there is no recital in the agreement to sell that before the stipulated date, Bohar Singh shall be required to pay off the loan. The plaintiff has also admitted that he never obtained a copy of the jamabandi or khasra girdawri or any other revenue record from the concerned Patwari before entering into the deal.
- 4) PW-Balraj Singh has admitted that father of the defendant had been selling his agricultural produce through his Commission Agency. He has disclosed that he is doing the business of Commission Agency under the name of M/s Kalsi Commission Agent Grain Market, Dharamkot. He has further disclosed that previously he was running

Commission Agency under the name of M/s Rachpal Singh and Balraj Singh Commission Agent, Dharamkot and he has opened branches at Village Bhoepur and Dharamkot. He also disclosed that he is running another Commission Agency in the name of M/s Kissan Commission Agent at Dharamkot.

- 5) Second attesting witness-Satwinder Kumar is also a Commission Agent running his firm under the name of M/s Lahori Ram Raj Rishi. It is admitted that they are business friends.
- 6) It is admitted by Gurdit Singh that market rate of the agricultural land per acre in the village in question is about ₹20/25 lacs per acre. Surinder Kumar, another witness examined by the plaintiff, admit that market rate of the land is ₹10/12 lacs per acre.
- 7) There is no explanation as to why after entering into the alleged agreement to sell on 09.11.2006, and payment of ₹5,00,000/- out of total sale consideration of ₹8,00,000/-, the date for execution and registration of the sale deed was fixed after a period of more than 2 years to 08.12.2008 on which date again the time was extended to 24.07.2009. Thus, between the alleged agreement to sell and target date for execution and registration of the sale deed, there is a huge gap of 2 years and more than 9 months. Still, the suit was not filed immediately. The plaintiff filed the suit only on 23.07.2011. The plaintiff has failed to explain any reason.
- 8) The First Appellate Court has also found that the endorsement Ex.P2 extending the target date for execution and registration of the sale deed from 08.12.2008 to 24.07.2009 is doubtful as careful perusal

thereof, it is apparent that endorsement has been fabricated by using the space available, before the defendant and attesting witnesses had already put their signatures/thumb impressions. No reason has come as to why the plaintiff used same pen, ink, writing instrument, ink pad after a period of more than 2 years from the date of execution of agreement to sell. Further, from careful examination of endorsement Ex.P2, it is apparent that the writing has been condensed to squeeze in the available space.

- 9) Still further, the agreement to sell Ex.P1 has not been scribed by a regular Deed Writer, although, it is admitted that there are 15 to 20 licenced Deed Writers who operate from Tehsil Complex, Dharamkot, the place where the alleged agreement to sell was scribed. The plaintiff as well as both the marginal witnesses have failed to disclose the name of the scribe.

This Court has heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that learned First Appellate Court has erred in reversing the judgment of the trial Court ordering refund of the earnest money alongwith the interest. He submitted that First Appellate Court should not have interfered with the judgment of the trial Court.

This Court has considered the submissions. However, find no substance therein.

As noted above, learned First Appellate Court has recorded

various reasons before reversing the judgment of the trial Court. Learned counsel for the appellant has failed to prima facie prove that the reasons recorded by the learned First Appellate Court, on appreciation of evidence, suffer from any error. Learned counsel for the appellant failed to draw attention of the Court to any misreading or non-reading of any substantive evidence. He further failed to point out any error of law in the impugned judgment passed by the learned First Appellate Court.

Keeping in view the aforesaid facts, this Court finds no ground to interfere. Hence, the present Regular Second Appeal is dismissed in limine.

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

31.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No