

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

RSA-918-2021 (O&M)
Date of decision: 07.12.2021

Ajmer and another	Vs.	...Appellants
Pawan Kumar and others		...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.MJS Bedi, Advocate,
for the appellants.

Mr. Munish Kumar Garg, Advocate,
for the caveator.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the defendants are in second appeal before this Court assailing the trial Court judgment and decree dated 28.01.2016, as upheld by the learned First Appellate Court vide its judgment and decree dated 17.02.2020.

3. Briefly stated, facts as noticed by Courts below are that the defendant No.1 being owner of 114/2245th share in the suit property had entered into agreement to sell the same to the plaintiff for a sale consideration of Rs.6,05,625/- and received earnest money in the sum of Rs.1,00,000/- and Rs.1,50,000/- respectively. It is next maintained that the date for execution of the sale deed was fixed as 20.09.2011 and remaining sale consideration was to be paid on the day of execution of the sale deed. It is also submitted that the above said terms of the agreement were reduced in

writing in the form of two agreements to sell and the parties to the agreement i.e. plaintiff and defendant No.1 duly executed the agreements in the presence of attesting witnesses namely Shamsher son of Dhari and Shiv Charan son of Mansa Ram both residents of village Nagura, Jind. It is further asserted that the plaintiff duly appeared in the office of Joint Sub Registrar, Alewa on 20.09.2011 along with balance sale consideration, expenses of stamp, registration etc. and drafts sale deed but the defendants no.1 did not appear. Therefore, the plaintiff filed a written application in the office of Joint Registrar, Alewa for marking his presence in his office on that day. It is also stated that now the plaintiff had come to know that defendant No.1 has executed impugned sale deed dated 22.01.2010 in favour of defendants No.2 and 3, defendant No.3 has further sold his share to defendant No.2 vide sale deed dated 13.10.2010 which is under challenge and defendant No.2 has further alienated the same to defendants No.4 and 5 vide impugned sale deed dated 17.06.2011. It is further pleaded that defendants No.2 and 5 had due knowledge of both agreements to sell dated 23.10.2008 in favour of plaintiff. Thus, it is submitted that the sale deeds under challenge are illegal, null and void and not binding on the rights of the plaintiff. However, on the basis of impugned sale deeds, defendants No.4 and 5 are threatening to alienate the suit property. It is next maintained that the plaintiff requested the defendants No.1, 4 and 5 to execute and get registered for the sale deed of the suit property in favour of the plaintiff. But the request of plaintiff has been declined by the defendants. Suit was contested by the defendants.

4. Based on the rival pleadings, following issues were framed:

1. Whether defendant No.1 executed an agreement to sell dated 23.10.2008 in favour of plaintiff qua the disputed property as alleged?OPP

2. Whether the plaintiff is always ready and willing to perform his part of agreement as alleged?

3. Whether the plaintiff is entitled for permanent injunction? OPP

4. Whether the suit of the plaintiff is not maintainable in the present form as alleged?OPD

5. Whether the plaintiff has no cause of action and locus standi to file the present suit as alleged? OPD

6. Relief.

Following additional issues were framed vide order dated 12.01.2016:-

5(a) Whether registered sale deed No.1700 dated 22.01.2010, sale deed No.1086 dated 13.10.2010, sale deed No.547 dated 17.06.2011 are illegal , null and void, without consideration, not binding on the rights of the plaintiff, liable to be set aside, as alleged? OPP

5(b) Whether the defendant No.1 had entered into an agreement to sell on 08.03.2006, as alleged, if so to what effect? OPD

5(c)Whether the defendants No.2 and 3 are bonafide purchaser of the suit land for consideration, as alleged, if so to what effect? OPD”

5. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

6. On appraisal of evidence vis-a-vis pleadings, issue Nos.1 to 3and 5(a) were decided in favour of the plaintiff. Issue Nos.4 and 5 and 5(b) and 5 (c) were decided against the defendants and suit was decreed by the trial court.

7. First Appellate Court dismissed the appeal, hence Regular Second Appeal before this Court.

8. I have heard the learned counsel and perused the judgments of both the Courts below. Relevant part of trial Court judgment with which I am in agreement, is as under:

“38 It is further worthwhile to note that DW1 Dalbir who is attesting witness to the agreement DW-1 and son of deceased defendant no.1 who was vendor in the agreement testified during his cross-examination that at the time of the execution of agreement Zile Singh was in possession of the suit property as lessee. It is also significant to note that the agreement to sell Ex.D1 is dated 09.03.2006. It is further noteworthy that as per averments in the written statement of defendants the suit property measuring 4 kanals was leased out in favour of Zile Singh son of Ganeshi Ram by defendant no.1 on 05.10.2007. Thus, it is duly established that the agreement to sell Ex.D1 was executed on or after 05.10.2007 and the same is antedated.

39. It is also pertinent to note that the stamp vendor of the stamp on which agreement to sell Ex.D1 is written has not been examined by the defendants to prove that the stamp was sold on 09.03.2006 and therefore to rule out the possibility of antedated preparation of agreement to sell Ex.D1.”

The aforesaid findings rendered by the trial Court in paras 38 and 39 of its judgment have been rightly upheld by the First Appellate Court in para 28 which are based on the appreciation of cogent evidence adduced by the plaintiff.

9. That apart in the course of arguments, on a Court query nothing has been pointed out either on record or even otherwise shown to have been produced before the trial Court or the statement of any of the witnesses with regard to any remittance made in the year 2006 when the alleged agreements to sell were executed prior in time vis-a-vis agreement in favour of plaintiff executed by defendants No.1 and 2, who have duly proved their agreement-to-sell executed on 23.10.2008 Ex. P-1 and P-3.

10. It is settled position in law that an agreement to sell, which is prior in time has to prevail over the subsequent one and once the Courts

below have held that appellants had ante dated agreement Ex.D1, the natural course to follow was to treat Ex.P-1 and P-2 being prior in time and have to necessarily prevail over Ex.D-1.

11. Relevant part of Appellate Court judgment, with which I agree, is as below:

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“26. After hearing the arguments advanced by learned counsel for the parties, it is observed that the dispute between the parties is with regard to the agreements to sell in favour of the respondent-plaintiff by appellant-defendant No.1. The plea of appellant-defendant No.1 is that the land in question was already agreed to be sold by him to appellants-defendants No.2 to 5. Perusal of the documents relied upon by the appellants-defendants shows that there is no mention of the agreement to sell Ex.D1 in the sale deed Ex.P5 which is alleged to have been executed in pursuance of the agreement Ex.D1. The appellants-defendants No.2 to 5 have pleaded that the collector rate of the suit property on the day of execution of the sale deed was Rs.4,99,000/- and thus the amount of sale consideration was mentioned in the sale deed as such and stamp duty on said amount was paid and since the amount of sale consideration mentioned in the agreement Ex.D1 was Rs.6,60,000/-, the agreement was not referred to in the sale deed and by doing so, they have caused loss to the exchequer by evasion of stamp duty.

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28. DW1 Dalbir, the attesting witness to the agreement Ex.D1 and son of deceased appellant-defendant No.1 who was vendor in the agreement stated in his cross-examination that at the time of the execution of agreement Zile Singh was in possession of the suit property as lessee which fact is also pleaded in the written statement. The agreement to sell Ex.D1 is dated 09.03.2006 and as per the written statement, the suit property measuring 4 kanals was leased out in favour of Zile Singh son of Ganeshi Ram by defendant no.1 on 05.10.2007. Thus, the agreement to sell Ex.D1 was executed on or after 05.10.2007 and the same is antedated. The stamp vendor has not been examined to prove that the stamp was purchased on 09.03.2006 to rule out the possibility of antedated preparation of agreement to sell Ex.D1. Moreover, as per statement of DW4 Satyawar, vendee in the agreement to sell Ex.D1 and who also signed the sale deed Ex.P5 on behalf of vendees Smt. Bedo and Sumitra, the payment of Rs.1,50,000/- and Rs.5,10,000/- at the time of execution of the agreement to sell and the sale deed

was made from the home and there is no withdrawal of money from any bank making the transaction doubtful.

29. *The learned trial Court rightly observed that the agreement to sell Ex.D1 is an ante dated, without consideration and appellant-defendants no.2 and 3 cannot be held to be bonafide purchasers. Resultantly, the respondent-plaintiff is entitled to get sale deed of the suit property executed in his favour in pursuance of the agreements Ex.P1 and Ex.P3 and the sale deed Ex.P5 which was executed after the execution of the agreements Ex.P1 and Ex.P3 is illegal, null and void and not binding on the rights of the respondent-plaintiff. The sale deeds Ex.P6 and Ex.P7 vide which the appellants-defendants No.2 and 3 allegedly purchased the suit property vide sale deed Ex.P5 have no right, title or interest in the suit property as they could not have conferred any better title on the vendees in the sale deeds Ex.P6 and Ex.P7. Thus, the sale deeds Ex.P6 and Ex.P7 are also illegal, null and void and not binding on the rights of the respondent-plaintiff.”*

12. To my mind, judgments under challenge have been rendered after due and proper appreciation of evidence adduced by the respective parties. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

13. Furthermore, no question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

14. I find no substance in the insipid argument of learned counsel for the appellant that the agreement to sell Ex.P-3, which has been believed by the Court below could not have been ordered to be specifically performed since there is a clause that in case failure to specifically perform an agreement, double the amount had to be given to vendor. The said double payment clause is an alternative clause and in case of agreement to sell

immovable property, it gets kicked in only if party invokes that option or the Court finds good reasons to refuse specific performance.

15. Being not so, the alternative clause was not rightly enforced.

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

17. Pending application/s, if any, shall also stand disposed of.

18. No order as to costs.

07.12.2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No