

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

RSA-372-2021 (O&M)
Date of decision: 09.07.2021

Hardev Singh

...Appellant

Versus

Labh Singh and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Siddharth Gupta, Advocate for the appellant.

ANIL KSHETARPAL, J.

The plaintiff has filed this regular second appeal assailing the correctness of the concurrent findings of fact arrived at by the Courts below. The plaintiff-Hardev Singh filed a suit for possession by way of specific performance of the contract with a consequential relief of permanent injunction. He claims that defendant No.1 entered into an agreement to sell on 03.11.2009 with respect to a land measuring 5 marlas on receipt of earnest money of Rs.1,00,000/- out of a total sale consideration of Rs.5,00,000/-. He claims that defendant No.1 was owner of land measuring 20 marlas in khewat No.179//160, khatauni No.218-19, khasra No.74 situated in village Khangesra, Tehsil and District Panchkula. He claims that defendant No.1 previously sold land measuring 10 marlas to defendant No.2 vide a registered sale deed dated 16.11.2007. Defendant No.2 in turn sold the aforesaid land measuring 10 marlas to the plaintiff's mother (Smt. Jaspal Kaur) vide a registered sale deed dated 17.09.2008. Thereafter, defendant No.1 agreed to

sell a plot of land measuring 2 marlas in favour of Jaspal Kaur vide an agreement to sell dated 12.10.2008 on receipt of the entire sale consideration. Thus, the plaintiff claims that her mother has constructed a house on 12 marlas of land. Thereafter, the agreement in question was entered into with respect to land measuring 5 marlas on 03.12.2009. He claims that on the target date for execution and registration of the sale deed, he visited the office of Sub Registrar on 03.03.2010 along with the balance amount of Rs.4,00,000/-, however, defendant No.1 did not come forward. Thus, the plaintiff filed the present suit.

Defendant No.1 contested the suit by taking a stand that no agreement to sell with regard to 5 marlas of land as alleged by the plaintiff was entered into as he had already sold the entire land in favour of defendant No.2. The defendant took a stand that he had taken a loan of Rs.60,000/- with an agreement to pay back the same with interest and the plaintiff had taken his thumb impression on plain papers. The signatures of Kulwinder Singh and Hardeep Singh were taken as guarantors on the aforesaid papers.

Defendant No.2 filed the written statement claiming that she is purchaser of entire 20 marlas of land from defendant No.1. She further claims that in fact suit has been filed by the plaintiff in collusion with defendant No.1. She further claims that she is a bona fide purchaser for consideration. She further claims that defendant No.1 sold 10 marlas land vide a sale deed dated 16.11.2007. Thereafter, defendant No.1 sold land measuring 4 marlas vide another sale deed dated 23.06.2008 which was registered on 26.06.2008.

She further claims that defendant No.1 agreed to sell the remaining plot measuring 6 marlas in her favour vide an agreement to sell dated 22.12.2008 for a total agreed sale consideration of Rs.4,65,000/- on receipt of Rs.2,00,000/-. Thereafter, a sale deed of 6 marlas was executed and registered by defendant No.1 in her favour on the collector rate on 22.02.2010.

In order to properly understand the various transactions between the parties, learned First Appellate Court has compiled the information in a table, which is extracted as under:-

Date	Nature	Area	Vendor/ perspective	Vendee/ perspective	Ex/Mark	status
16.11.2007	sale deed	10 marlas	def no. 1	def. no. 2	-	admitted
26.6.2008	sale deed	4 marlas	def no. 1	def no. 2	Ex.D-6	admitted
17.9.2008	sale deed	10 marlas	def no. 2	Jaspal Kaur	-	admitted
22.10.2008	A to sell stipulated date	2 marlas	def no. 1	Jaspal Kaur	Mark C	Denied by def no.1
22.12.2008	A to sell	6 marlas	def no. 1	def no. 2	Ex.D-4	denied by the plaintiff
3.12.2009	A to sell Stipulated date 3.3.2010	5 marlas	def no. 1	plaintiff	Ex.P-1	Denied by defendants
22.2.2010	sale deed	6 marlas	def no. 1	def no. 2	Ex.D-7	Disputed by the plaintiff

Both the Courts on appreciation of evidence have found that although the plaintiff has successfully proved the execution of the agreement to sell, however, defendant No.2 has a superior right as she has a prior agreement to sell from defendant No.1 in her favour. Thus, both the Courts below have ordered that the plaintiff shall be entitled to recover an amount of

Rs.2,00,000/- which is double the amount of earnest money.

Heard learned counsel for the appellant at length and with his able assistance perused the paper book.

Learned counsel representing the appellant contends that once plaintiff's agreement to sell has been proved on receipt of the earnest money, both the Courts below have erred in refusing to grant the relief of possession by way of specific performance. He further contends that the payment of sale consideration under the sale deed dated 22.12.2008 is not proved.

On perusal of the tabulated information, it is undisputed that defendant No.1-Sh. Labh Singh was owner of 20 marlas of land comprised in khasra No.74. Undisputedly, he sold 10 marlas of land to defendant No.2 vide a sale deed dated 16.11.2007. Thereafter, he sold 4 marlas of land vide another sale deed dated 26.06.2008 to defendant No.2. The validity of both the sale deeds is not in dispute. Thereafter, defendant No.2 sold the land measuring 10 marlas to plaintiff's mother Jaspal Kaur. This sale deed is also not in dispute. The plaintiff claims that defendant No.1 executed an agreement to sell with respect to 2 marlas of land in favour of his mother-Jaspal Kaur on receiving full sale consideration. This agreement to sell has neither been produced nor proved.

On sale of 14 marlas of land which is not in dispute, defendant No.1 was left with 6 marlas of land. There is no explanation why he would enter into an agreement to sell with respect to 5 marlas of land only. Still further, it is the case of the plaintiff that his mother purchased 12 marlas of

land in total (10 marlas through a registered sale deed from defendant No.1 whereas 2 marlas of land was purchased from defendant No.1 through an agreement to sell dated 12.10.2008). Defendant No.1 had already sold 4 marlas of land to defendant No.2 vide a sale deed dated 26.06.2008 which is not in dispute. If the plea of the plaintiff is to be accepted as it is, defendant No.1 was left only with 4 marlas of land. There is no explanation as to why the plaintiff agreed to purchase 5 marlas of land although the defendant No.1, as per his own case, was left only with 4 marlas of land in the aforesaid khasra number.

The execution of the agreement to sell by defendant No.1 in favour of defendant No.2 on 22.12.2008 has been proved by examining its marginal witness Sh. Gyan Chand. Both the Courts below have concurrently found that the agreement to sell dated 22.12.2008 on payment of Rs.2,00,000/- as earnest money stands proved. Learned counsel representing the appellant has failed to put forth any convincing argument to successfully assail the correctness of such finding.

The execution of the sale deed dated 22.12.2008 by defendant No.1 in favour of defendant No.2 has also been proved. Defendant No.2 has also examined her son Bindu @ Binder Kumar who had transacted on behalf of his mother. Defendant No.2 has also appeared in evidence as DW1. She has been put through effective/intensive cross examination. On appreciation of evidence, both the Courts have found that her as well as her son's depositions are believable.

Now let us analyse the arguments of learned counsel for the appellant. No doubt, both the Courts have found that the plaintiff has successfully proved the execution of the agreement to sell on payment of earnest money. However, that by itself is not sufficient to grant the relief of possession by way of specific performance. Defendant No.2 has a prior agreement to sell in her favour. Thus, the equitable rights of the plaintiff are subject to the legal rights of defendant No.2. The plaintiff claims that agreement to sell in his favour was entered on 03.12.2009. Defendant No.1 had already agreed to sell the property to defendant No.2. Defendant No.1 executed a registered sale deed dated 21.02.2010 in favour of defendant No.2. The plaintiff filed the suit on 17.07.2010. Thus, the Courts below have correctly declined the relief of specific performance.

The next argument of learned counsel representing the appellant is with regard to lack of evidence with respect to the payment of sale consideration. In this regard, it may be noted here that defendant No.1 does not dispute the receipt of sale consideration under the sale deed dated 22.12.2008. The plaintiff has failed to lead any evidence to prove that the sale deed dated 22.12.2008 was without consideration. Defendant No.1 has admitted before the Sub Registrar that he has already received the entire sale consideration from defendant No.2. In the sale deed, it is specifically recorded that defendant No.1 had already received the sale consideration of Rs.1,65,000/-. The sale deed being a registered document raises a presumption of correctness. It was for the plaintiff to rebut the presumption

of law in which he has failed.

The learned counsel for the appellant has submitted that in the agreement to sell dated 22.12.2008, a total sale consideration of Rs.4,65,000/- is recited, whereas the sale deed dated 21.02.2010 is with respect to a total sale consideration of Rs.1,65,000/-. It may be noted here that defendant has explained that the sale deed was registered at the collector's rate. The defendants may have saved on payment of stamp duty. However, that by itself cannot be a ground to doubt the correctness of a registered sale deed.

Keeping in view the aforesaid discussion and finding no merit in the case, the appeal is dismissed in limine.

All the pending miscellaneous applications, if any, are also disposed of.

09.07.2021

ashok

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No