

RSA-1434-2021 (O&M)

CM-5630-C-2021

CM-5631-C-2021

CM-5632-C-2021

Date of Decision: 03.12.2021SOHAN SINGH (DIED) THROUGH LR. AMARDEEP SINGH AND
ANOTHER

.....Appellants

Versus

BHAG SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Rajesh Gupta, Advocate
and Ms. Manjula Gupta, Advocate
for the appellants.

ARUN MONGA, J. (ORAL)**CM-5630-C-2021**

Civil Misc. Application is allowed, as prayed for. Annexures A-1 to A-5 are taken on record, subject to all just exceptions.

CM-5632-C-2021

This is an for bringing on record the legal representative of appellant-Sohan Singh, who died on 25.12.2018. The legal representative of deceased-appellant is mentioned in para No.2 of the application.

For the reasons stated in the application, the same is allowed subject to all just exceptions.

Registry to take steps accordingly.

Main case

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

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiffs are in second appeal before this Court assailing the trial Court judgment and decree dated 01.03.2018, as upheld by learned First Appellate Court vide its judgment and decree dated 12.02.2021.

3. Briefly stated, facts as noticed by Courts below are that the respondents are the sons and LRs of Phula Singh. Phula Singh was the owner and in exclusive possession over the suit property and he had mortgaged the land on 12.08.1985 in favour of the plaintiffs vide mortgage deed No.1946 dated 12.08.1985 for an amount of Rs.28,000/- after affixing his thumb impression. On 19.05.1992, Phula Singh entered into agreement to sell regarding the suit property for a consideration of Rs.2,00,000/- and Rs.98,000/- were paid as earnest money to him. Though, the defendants were in knowledge of the fact regarding the mortgage deed, agreement to sell and possession of the suit property, they cultivated the land and made the same fertile. At the time of agreement to sell dated 19.05.1992, the litigation regarding the suit property was pending and stay order was passed by the Court. This fact was also mentioned in the agreement to sell. Though, the civil litigation came to an end in December, 2013 and stay order had been vacated, the defendants have failed to execute the sale deed in their favour. In response to the legal notice served upon the defendants, they denied the execution of agreement to sell dated 19.05.1992. Upon notice, the defendants appeared and filed their written statement, stating therein, *inter alia* that the suit is not maintainable in the present form, suit is bad for non-joinder and mis-joinder of necessary parties and the plaintiffs have no locus standi to file the suit.

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

- 1. Whether plaintiffs are entitled to the relief of specific performance? OPP*
- 2. Whether in the alternative, plaintiffs are entitled for suit for recovery? OPP*
- 3. Whether plaintiff is entitled to relief of permanent injunction, as prayed for ? OPP*
- 4. Whether the suit is not maintainable? OPD*
- 5. Whether sit is bad for non-joinder and mis-joinder of necessary parties? OPD*
- 6. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 7. Whether plaintiffs have concealed the material facts from the court, if so, its effect? OPD*
- 8. Whether suit is time barred? OPD*
- 9. Whether plaintiffs are estopped by their own act and conduct to file the present suit? OPD*
- 10. Relief.*

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, trial Court decided issue Nos.1 to 3, in favour of the defendants and against the plaintiffs. Issues No.4 to 9 were decided in favour of the plaintiffs and against the defendants and suit was dismissed.

7. First Appellate Court dismissed the appeal. Hence Regular Second Appeal before this court.

8. Suit was filed on 07.07.2014, giving rise to this appeal. During course of arguments, on a Court query, learned counsel for the appellant concedes that the mortgage deed is of the year, 1985 followed by agreement to sell, which was executed in the year, 1992 but there is no plausible justification coming forth with regard to delay upto 07.07.2014 in filing the suit for specific performance, claiming the execution of the aforesaid agreements, which in any case, as per the findings of the Court below, the appellant has miserably failed to prove. I am in agreement with the findings rendered by the Courts below as upheld by the First Appellate Court. Learned First Appellate Court while re-appreciating the cogent evidence gave valid reasons as below :-

“19. So far as the execution of agreement to sell dated 19.05.1992, the same has been denied by respondents-defendants then under those circumstances, it was more onerous upon the appellants-plaintiffs to prove that its terms and conditions were real and genuine. There is no cogent other evidence available on file except a recital in the agreement to sell dated 19.05.1992 which has not been denied by respondents-defendants but it has also not been proved by appellants-plaintiffs to the hilt, on the basis of which the appellants-plaintiffs could prove the payment of earnest money. There is no evidence available on file on behalf of appellants-plaintiffs which could show that they were ready and willing to perform their part of agreement to sell in question. The appellants-plaintiffs did not take any action in furtherance of their part performance in respect of agreement to sell in question during the life time of Phula Singh. He died on 05.08.1999. No action was taken by vendees in furtherance of getting the sale deed executed in their favour. In considered opinion of this Court, mere filing of suit after service of notice upon respondents-defendants does show their readiness and willingness. Section 16(C) of Specific Relief Act needs more vigilance on part of vendee to seek enforcement of their contractual rights under the agreement to sell. So this court is of further considered view that in view of the observations and findings recorded above, it has been held that Phula Singh had no sale-able or transferable title in the suit land as on 19.05.1992 therefore he was not legally competent to execute any agreement to sell in favour of

appellants-Plaintiffs. Therefore, appellants-Plaintiffs have not proved the issue no.1 the onus of which has been placed upon appellants-plaintiffs and they cannot be held entitled to the relief of Specific Performance of agreement to sell dated 19.05.1992. There is nothing wrong and erroneous found in the finding recorded by learned lower court on this issue. Accordingly, findings returned by lower court deciding the said issue against plaintiffs is hereby upheld and maintained.

20. *So far as claim of refund of earnest money of Rs.98,000/- and damages of Rs.1,02,000/- on account of mental tension and agony that the appellants-plaintiffs, covered under issue no.2, the same has not been proved by appellants-plaintiffs on lower court file with cogent evidence on record. Except for a recital in the agreement to sell dated 19.05.1992 there is no evidence on file which could prove the exchange hands of money as consideration in respect of agreement to sell in question. Except the Appellant-Plaintiff Pritam Singh appearing into witness box as PW1 and deposed through his affidavit EX PW1/A, there is no other testimony/statement of any other witness nor there is any other evidence, which could corroborate the factum regarding the payment of earnest money. Hence this Court is appeal is agreed with the findings recorded by lower Court vide which appellants-plaintiffs were held not entitled even for recovery of earnest money or that of damages as claimed. The findings vide which issue no.2 has been decided against the appellants-Plaintiffs, there is nothing wrong and erroneous found in the findings recorded by lower court on issue no.2 and the same is hereby upheld and maintained.*

21. *So far as claim of injunction against respondents regarding alienation of suit property, this Court is of considered view that since the year 1984 and much prior to filing of suit by appellants-plaintiffs, the respondents-defendants are coming owners in possession of suit property on the basis of family settlement and they are true owners of the suit property. They cannot be restrained from enjoying the property in question in their own manner. It is settled principle of law that a true owner cannot be denied enjoyment of property. More over the appellants-Plaintiffs have claimed that they are in possession of the suit land as mortgagees with possession since 12.08.1985 through a registered mortgage deed which has been proved on file as EX. P1. But in pursuance of this agreement of mortgage, the appellants-plaintiffs have failed to prove their physical possession in the suit land. Admittedly, the suit property is agriculture and cultivating land. The appellants-plaintiffs could have produced evidence on file in the shape of KhasraGirdawri in evidence to show their possession in the suit land. Hence in considered opinion of this court the findings recorded by lower court on issue no.3 holding that the appellants-plaintiffs have failed to show their physical and cultivating possession over the suit land is correct finding and the same has been found based on correct appreciation of evidence available on the file. There is nothing wrong and erroneous found in said findings of lower court and the same is hereby upheld and maintained.”*

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. Apart from merits of the case, even otherwise, I am of the opinion that both the Courts below have taken an equitable view. Even otherwise, there is no ground to interfere on merits to disturb the said concurrent findings of the trial Court and the First Appellate Court. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

10. Furthermore, no question of law, much less a substantial question of law, a *sine qua non* for entertaining regular second appeal, is involved herein, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code, 1908.

11. 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.

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

13. No order as to costs.

December 03, 2021
gurpreet

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No