

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

RSA No.2582 of 2018 (O&M)

Date of decision: 22nd December, 2021

Jagjit Singh

... Appellant

Versus

Shashi Bala & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Krishan Singh, Advocate for the appellant.

Mr. Tribhawan Singla, Advocate for respondents No.1 and 2.

None for respondents No.3 to 5.

FATEH DEEP SINGH, J.

The factual background in this regular second appeal by Jagjit Singh stems from judgment and decree dated 23.09.2015 of the Court of learned Civil Judge (Junior Division), Ludhiana when the trial Court in its findings in a suit for possession by way of specific performance of the agreement to sell dated 10.03.2005 with consequential relief of permanent injunction seeking order of restraint against the defendants had passed the following order:-

“... .. It is ordered that the suit titled as Shashi Bala vs. Sukhjinder Singh is decreed with costs for the alternative relief and plaintiffs are entitled for recovery of earnest money of Rs.10,00,000/- along with interest @ 6% per annum from the date of filing of the suit till its realization. However, the suit filed by plaintiff titled as Jagjit Singh vs. Sukhjinder Singh is decreed with costs and

plaintiff Jagjit Singh is declared as owner in possession of property measuring 500 sq. yards out of Khasra No.594/1, Khata No.364/425 along with its superstructure situated within the revenue estate of Village Jawaddi, H.B. No.160, Tehsil and District Ludhiana and defendants are restrained from interfering in peaceful possession of the plaintiff and from dispossessing the plaintiff forcibly and illegally, except in due course of law.”

In appeal, the Court of learned Additional District Judge, Ludhiana vide impugned findings dated 11.12.2017 while disposing off two civil appeals bearing No.61 of 23.04.2014 titled ‘Shashi Bala & others vs. Sukhjinder Singh & others’ and No.63 of 24.11.2015 titled ‘Shashi Bala & another vs. Sukhjinder Singh & others’, held as follows:-

“33. So, the appeals of the appellants are allowed with costs and impugned judgment and decree are set aside. The suit of the appellants for specific performance of the agreement is decreed subject to appellants depositing balance sale consideration of ₹67.50 lacs within a period of two months from the date of decree and on deposit of balance sale consideration and Sukhjinder Singh, Kulwinder Singh to be joined by Jagjit Singh subsequent purchaser would execute the sale deed of suit property in favour of appellants within a period of one month thereafter failing which appellants shall be entitled to get the sale deed executed through the intervention of the Court. Decree sheet in appeals be drawn separately. A copy of this judgment be placed on the file of civil appeal No.63 of 24.11.2015, No.CA/1034/2015 titled Shashi Bala

vs. Sukhjinder Singh. Lower Court file be returned, while the appeal files be consigned to the record room.”

It is against these findings, present appellant Jagjit Singh has come up before this Court.

In view of the recent pronouncement in ‘**Kirodi (since deceased) through his LR vs. Ram Parkash & others**’ Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon’ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Heard Mr. Krishan Singh, Advocate for the appellant; Mr. Tribhawan Singla, Advocate for respondents No.1 and 2; and perused the records of the case.

As has been fairly conceded at the bar, two civil suits bearing No.664 of 22.11.2005 and No.110 of 29.05.2008 were initially filed which were disposed off by the Court of learned Civil Judge (Junior Division), Ludhiana. The background of this litigation is that the present appellant Jagjit Singh claims that defendants Sukhjinder Singh and Kuljinder Singh who were owners in possession of the suit property approached him for the sale of the same and vide sale deed dated 09.12.2005 Sukhjinder Singh and Kuljinder Singh defendants executed the documents in favour of appellant plaintiff Jagjit Singh. The sale was

duly registered accompanied by delivery of possession and mutation bearing No.19247 was also sanctioned. Subsequently, it transpired that a civil suit had been filed by other defendants on the basis of an agreement to sell dated 10.03.2005. Defendants No.1 and 2 though did not specifically denied the execution of the sale deed but claimed that the plaintiff was aware of the agreement having been entered into by Mohinder Singh attorney of the defendant but claimed that the power of attorney stood cancelled and revoked, and admitted the claim of the plaintiff appellant Jagjit Singh to be a bonafide purchaser. However, defendants No.3 and 4 stoutly opposed the relief denying the ownership of defendants No.1 and 2 over the property and thus, put to question the sale deed on the basis of which present appellant had invoked jurisdiction of the Court. The trial Court framed the following issues:

1. Whether plaintiff is entitled to declaration as prayed for? OPP
2. Whether plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether suit is not maintainable? OPD
4. Whether plaintiff has not come to the Court with clean hands? OPD
5. Relief.

Upon consolidation of the two suits bearing No.664 and 110, the plaintiff examined PW1 Sandeep Garg, PW2 Subhash Chander,

Accountant, PW3 Harinder Singh, PW4 Mohinder Pal and H.L. Singla as PW5. On the other hand, present appellant Jagjit Singh examined Budh Singh as DW1, Gurdeep Singh as DW2 and Bhagirath Singh as DW3. In rebuttal, documents Ex.PX/1 to Ex.PX/4 were tendered, leading to passing of the above detailed judgments by the trial Court as well as learned first appellate Court.

The moot point revolves around the very factum of registered sale deed executed in favour of appellant Jagjit Singh which is dated 09.12.2005. The suit has been filed subsequently. The agreement to sell is shown to have been executed by Mohinder Singh on behalf of original owners and his agreement to sell dated 10.03.2005 was still in limbo when the sale deed was got executed. Moreover, being an unregistered agreement to sell in view of law laid down in '**Ameer Minhaj vs. Dierdre Elizabeth (Wright) Issar & others**' 2018(3) RCR Civil 468, cannot override a sale deed under Section 54 of the Transfer of Property Act and needs to be adjudicated its legal worth which is not forthcoming in the impugned judgment. None of the parties before this Court ever happened to challenge the sale deed in favour of appellant Jagjit Singh and no issue has been framed thereto by the learned trial Court and what has come about is purely entitlement to possession by way of specific performance of the agreement to sell dated 10.03.2005 between Mohinder Singh and defendants No.3 and 4. Even the very plea that is

sought to be pleaded as to lis-pendens has never been raised at any stage of the suit till its decision.

The vehement argument that is sought to be raised by Mr.Tribhawan Singla, Advocate representing respondents No.1 and 2 to the submissions of Mr.Krishan Singh, Advocate for the appellant that the sale deed in favour of the appellant is a sham transaction, is not at all established on the records. Merely because the registered sale deed is shown to be at a lesser value than the agreement to sell does not under the law renders the sale deed subject to suspicion. Admittedly, as is the case of the parties, the property subject matter of dispute is the ancestral undivided property therefore, as long as definite shares are not determined between the parties, no one could claim a preferential right over a definite portion of the property in question. It is an admitted fact on the records that defendants Sukhjinder Singh, Kuljinder Singh and Harjinder Singh are sons of Mohinder Singh. The learned Civil Judge while appreciating the evidence in the suit for specific performance, has given a categoric finding that there is nothing established on the records as to the claim of the then plaintiffs that they had approached the attorney of the defendants to get the sale deed executed and therefore has questioned the very claim of the parties as to readiness and willingness to undergo their part of the contract. Besides the fact, though it is claimed by the opposing party that Jagjit Singh appellant was aware of the agreement to sell between the parties at the time of execution of the sale

deed but not an iota of evidence has come on the record to substantiate the same nor any issue has been framed to adjudicate on such an aspect of the matter. Had it been a registered document, it would have been a notice to the public at large of such a transaction and being purely private transaction not much legal worth can be attached to such a writing which can even be brought about subsequent thereto.

The dispute is over a 500 square yards of plot out of Khasra No.594/1 Khata No.364/425 inclusive of the superstructure thereon in the area of village Jawaddi, Tehsil and District Ludhiana. The observations of the learned first appellate Court that the plaintiff Shashi Bala who claims to be a party in whose favour agreement to sell has been executed, never stepped into the witness box to corroborate her claim in respect of which she claims to have submitted an affidavit Ex.P6. A presumption has been sought to be drawn from the ratio laid down in '**Vidhyadhar vs. Manikrao & another**' reported in 1999(2) SC 573 where the Supreme Court has clearly held that when a party does not step into the witness box and offer herself for cross-examination, a reasonable and legitimate presumption can be drawn that her case is not truthful.

In the case before this Court, a peculiar situation arises that over the same very property a registered sale deed has come about in favour of appellant while an agreement to sell is claimed by the opposite side and thus, in such a situation the Court can resort to the provisions of Chapter VI Sections 73 and 74 of the Indian Contract Act, 1872 and

award appropriate damages/compensation as the party in whose favour agreement to sell is claimed to have been executed has suffered such a breach and therefore such a breach can be adequately compensated by damages for this breach of contract. Since in the present case, certainly the seller was entitled to ensure that there is concluded contract but it is not executed, certainly it would be in the interest of the parties to award damages which the learned Court below has failed to consider and the liquidated damages can be awarded at such a failure to get the sale deed executed. The situation before this Court clearly demands that to assuage the feelings of wrong done to the parties must be compensated adequately. In fact one of the co-sharers had entered into an agreement to sell while the other had straightaway sold off the property and thereby both of them have deceitfully put the buyers/prospective buyers to a disadvantage and made undue gains to which they were not entitled to. More so, at this belated stage it would not be in the interest of the parties to reopen the matter as by virtue of the sale deed, appellant has come to be owner in possession of the disputed property and as long as the sale deed is not challenged and holds good and the possession is not restored, both of which have never been challenged, no fruitful purpose would be subserved. This Court is dismayed over the fact that the Courts below have lost sight of the fact that a specific plea of revocation of the power of attorney has been pleaded regarding which no issue has been framed. Even the claim of the property being coparcenary, joint, unpartitioned

and undivided property has not been taken care of by the Courts below. It would be too preposterous for reopening the claim of the parties and rather after almost 17 years, would be highly unjustified and rather would complicate the matter and put them to more inconvenience and disadvantageous position. The learned first appellate Court in the impugned findings and how it could hold that the appellant should execute the sale deed in favour of prospective buyers who have executed the agreement to sell, has certainly run into an error and needs to be set aside. Furthermore, without revoking the sale deed dated 09.12.2005 in favour of appellant Jagjit Singh, how could a Court hold it so, is anybody's guess. Thus, in the light of what has been detailed and discussed above, grant of reasonable compensation by way of return of the earnest money with interest and damages to be made and assessed by the executing Court needs to be granted to the plaintiffs who have filed a suit for specific performance of the agreement to sell dated 10.03.2005 and on the other hand appellant who has come to be the owner in possession of the property subject matter of dispute would remain so. In the light of the same, present appeal stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

December 22, 2021

rps

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