

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

RSA 547 of 2019 (O&M)

Date of Decision: August 23, 2021

(1) Soni Devi @ Sona Devi ...Petitioner
Versus
Virender Singh and others Respondents

RSA 702 of 2019 (O&M)

(2) SantoshPetitioner
Versus
Virender Singh and others Respondents

RSA 2224 of 2019 (O&M)

(3) Shiv NarainPetitioner
Versus
Virender Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Harsh Kinra, Advocate
for the appellant in RSA 547 of 2019 and
RSA 702 of 2019.

Mr. Sandeep K. Sharma, Advocate
for the appellant in RSA 2224 of 2019.

Mr. Gunjan Mehta, Advocate
for respondent No. 1.

Service of respondents No. 2 and 3 already
dispensed with vide order dated 27.11.2020.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through video-conferencing on account of outbreak of pandemic COVID-19.

The above detailed three regular appeals though by different sets of appellants then defendants are out of common judgment dated 27.09.2018 of the learned Additional District Judge, Rohtak, who were common parties to the initial suit for specific performance and possession filed by the then plaintiff Virender Singh, now respondent and having been decreed by the Court of learned Additional Civil Judge, Senior Division, Rohtak vide judgment and decree dated 29.11.2011. The order has been upheld by the learned first Appellate Court.

Thus, being between the same parties wherein common interests are involved and having common question of law and facts involved are being taken up and disposed off together.

Undisputed facts that emancipate are that Soni Devi, Santosh and Shiv Narain are co-owners of the land alongwith other seven co-owners, namely, Nihali Devi, Satwanti, Geeta Devi, Sita Devi, Gobind Ram, Sat Narain and Ram Narain who entered into an Agreement to sell dated 19.11.1998 in respect to their suit land measuring 16 Kanals.

It is essential to detail here that one Fateh Singh (since deceased) was head of the family comprising of Nihali Devi being his widow, Satwanti, Geeta Devi and Sita Devi being daughters and Gobind Ram, Sat Narain and Ram Kumar being sons. The family got partitioned their land vide Mutation No. 4043 dated 26.02.1999 by Asstt. Collector Grade II Rohtak.

As a consequence of this the share amongst them came as follows:-

“1/5th Share of 8 Kanals to Nihali Devi, Sita Devi, Geeta Devi, Satwanti, Ram Kumar and 1/5th share of 8 Kanals to Gobind, Sat Narain, Shiv Narain, Santosh, Soni Devi”.

During the course of time vide sale deed dated 27.07.1999 Satwanti sold her 1/5th share to Surya Cooperative Housing Building Society, vide sale deed dated 24.03.1999. Sita Devi and Geeta Devi sold their 2/5th shares, and Nihali Devi, Ram Kumar 2/5th share to Surya Cooperative, Sat Narain sold and so did Gobind their 1/5th share vide sale deeds dated 17.06.1999 and 15.06.1999 respectively to M/s Panch Sheel Housing Building Society, Rohtak.

The defendants agreed to sell of 16 Kanals of land to be sold for a total sale consideration for Rs.25,00,000/-. The plaintiff paid earnest money of Rs.2,50,000/- and half of the property of the Western side was to be sold vide sale deed up to 20.02.1999 and remaining Eastern portion of this property was

to be sold through registered sale deed up to 20.05.1999. Sat Narain and Gobind Lal sold each their 1/5th share vide sale deeds No. 2455 dated 17.06.1999 and No. 2403 dated 15.06.99 favouring Panch Sheel Housing Building Society Rohtak (in short, '**the Society**') in pursuance of the agreement on the directions of the plaintiff Virender Singh. Satwanti daughter of Fateh Singh sold her 1/5th share of her property through registered sale deed dated 23.03.1999 while Sita Devi and Geeta Devi sold 2/5th of their share and Nihali Devi and Ram Kumar also sold 2/5th of their share in favour of the said Society vide registered sale deed dated 24.03.1999. It is, subsequently, Sat Narain, plaintiff by virtue of the agreement on the asking of the plaintiff sold his 1/5th share in the property to M/s Panch Sheel Housing Building Society, Rohtak through registered sale deed dated 17.06.1999, Sh. Gobind Lal through sale deed dated 15.06.1999 also sold his 1/5th share. The agreement dated 18.11.1998 was extended by the defendants from time to

time on 20.02.1999 up to 26.02.1999, on 26.02.1999 up to 26.03.1999, on 18.05.1999 up to 20.06.1999 and on 21.06.1999 up to 15.07.1999. In pursuance of these agreement to sell the defendants were under obligation to execute the sale deed on receipt of payment of balance amount of the money. It is, thereafter, a dispute arose between the parties, whereby, the plaintiff instituted a suit in question calling upon the dependants to undergo their part of the agreement to sell and, thus, get executed the sale deeds of the land in question.

The stand of defendant is of simplicitor denial of having executed the agreement to sell and the suit was not maintainable being false and frivolous and even the question of having received any earnest money and to the similar effect was the stand in their reply by defendants No. 1 and 2.

From the pleadings of the parties, following issues were framed:-

1. Whether any agreement to sell dated 19.11.1998 and

Tehrirs dated 20.02.1999, 26.02.1999, 18.05.1999 and 21.06.1999 were executed by the defendants in favour of the plaintiff? OPP.

2. Whether any earnest money of Rs.2,50,000/- lacs was paid by plaintiff to the defendants? OPP.
3. Whether the plaintiff has always remained ready and willing to perform his part of contract? OPP.
4. Whether the plaintiff is entitled to relief for decree for specific performance of contract? OPP.
5. Whether agreement to sell dated 19.11.1998 and Tehrirs dated 20.02.1999, 26.02.1999, 18.05.1999 and 21.06.1999 are result of fraud and forgery? OPD.
6. Whether the suit is barred by limitation? OPD.
7. Whether the present suit is not maintainable in the present form? OPD.
8. Whether the suit has been filed in collusion of Nihali Devi etc. ? OPD

9. Whether the plaintiff has concealed material facts from the Court? OPD.

10. Whether the plaintiff has no locus standi to file the present suit? OPD.

11. Relief.

The plaintiff to prove his case examined PW1 Karan Singh, PW2 Ram Dhari Document Writer and the plaintiff himself testified as PW3 followed by the testimony of PW4 Rajender Singh and PW5 Gulab Singh Dalal.

The defendants examined Shiv Narain as DW1, Santosh as DW2 and Sona Devi as DW3.

It is, consequent thereupon, the impugned findings were recorded.

Heard Mr. Harsh Kinra, Advocate for the appellant in RSA 547 of 2019 and RSA 702 of 2019, Mr. Sandeep K. Sharma, Advocate for the appellant in RSA 2224 of 2019 and Mr. Gunjan Mehta, Advocate for respondent No. 1.

and perused the records.

The testimony of PW1 Karan Singh clerk in the Office of Deputy Commissioner proved the factum of sale of certain land by the defendants being a registered document certainly carries weight besides being notice to public at large of this transaction. The sale deeds in question executed by the respondents have been proved on the record as Ex.P1 to Ex. P6. Nothing has come in the evidence to question the veracity of these sale deeds which totally have remained unrebutted. Moreover, all these transactions are by the siblings and, therefore, lends credence to the fact that the family had certainly made these transactions including the disputed agreement to sell.

The main material testimonies are of DW2 Santosh and DW3 Sona Devi and they could not displace the facts that Sat Narain had already executed sale deed Ex. P-5 in favour of the then plaintiff. The documents, sale deeds Ex. P-1 to P-6 find

mention of agreement to sell dated Ex. P-7 showing that defendants had executed the sale deeds in accordance with the agreement to sell Ex.P7. What undermines the case of the defendants is that the testimony of PW4 Rajender Singh who is a witness to the agreement to sell Ex.P7 and had categorically stated that the same was executed in his presence and the parties have thumb marked/signed in his presence. This witness has also proved the factum of passing of money amounting to Rs.2,50,000/- as earnest money by the plaintiff to the defendants and has further elaborated the extension of period of execution of sale deeds on 20.02.1999 and 18.05.1999 to which he is a witness. PW5 Gulab Singh Dalal has led credence to the execution of agreement to sell Ex. P-7 and, therefore, all these witnesses having remained unrebutted whose testimonies cannot be lightly brushed aside and needs to be accepted.

No doubt the defendants in their stand have sought to deny the execution of the agreement and the transaction, the

trial Court during the appreciation of the evidence has of its own clearly observed and remarked that on close examination of the signatures/thumb marks on the documents establish the falsehood of the stand of the defendants. Moreover, the plaintiff has initially proved the burden that lay upon him which subsequently shifted upon the defendants who had totally failed to undo the facts of the plaintiffs' case. There is nothing substantial on the records to rebut the documents proved on the record. Even the testimony of PW Shiv Narain who has tried to disprove the documents has been nullified by the deposition of Document Writer PW2 Ram Dhari, the scribe of the document, who had categorically stated that it was none but the parties who executed the sale deed as vendor and vendee and was duly witnessed by the plaintiff. The most damaging evidence that has brought about is the stand of Shiv Naraian defendant where in his cross-examination he accepts the fact that he has purchased the stamp papers on which the documents were

executed and, therefore, onus shifts upon him to rebut the stand of the plaintiff. The Courts below has taken cognizance of the evidence that as entire sale consideration stood paid and sale deed Ex.P-8 executed was reflective of the fact that it was none but the defendants who were subsequently trying to wriggle out of their previous commitment. Since the plaintiff upon whom the onus lay initially had proved the valid execution of agreement to sell, passing of consideration and his willingness and readiness to perform his part of the contract. Therefore, such a contract was certainly enforceable in terms of Section 10 of the Specific Relief Act, 1963 (in short, '**the Act**') and there is no impediment brought to the notice of this Court by the counsel for the appellant if there was any bar in terms of Section 12 of the Act for non-performance of such a contract or if these contracts in terms of Section 14 of the Specific Relief Act were unenforceable. Upon perusal of the judgment of the Courts below who have delivered the concurrent findings have rightly

concluded that since the relief of specific performance is a discretionary relief based on equity and truthfulness and once a party is able to establish the necessary ingredients entails decreeing of the suit.

There being no illegality or perversity in the findings of the lower Courts, this Court is not inclined to show any indulgence.

All the appeals being devoid of merits stand dismissed.

August 23, 2021
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No