

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

RSA-1252-2019(O&M)

Date of decision:-29.11.2022

Gurdip Singh

...Appellant

Versus

Gurmeet Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Kanwarpal Singh, Advocate for
Mr.A.S. Manaise, Advocate
for the appellant.

Mr.C.M. Munjal, Advocate
for respondent No.1/caveator.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Gurmeet Singh had brought a suit against Gurdip Singh, Punjab Raj Federation Co-operative Society, Batala as well as Pritam Kaur seeking specific performance of agreement to sell dated 26.10.2009 entered into between plaintiff and defendant No.1 – Gurdip Singh with regard to sale of 2 kanals 13 marlas out of land measuring 52 kanals 18 marlas of land situated at village Mari Buchian, Tehsil Batala, District Gurdaspur after getting the suit land redeemed from the defendant No.2; in the alternative suing for recovery of Rs.3,78,500/- as refund of earnest money as well as

compensation and damages. In that suit the plaintiff had sought relief of permanent injunction also.

2. As per the case of the plaintiff, Gurdip Singh – defendant No.1 had entered into a written agreement to sell dated 26.10.2009 with him for sale of 2 kanals 13 marlas of land at the rate of Rs.6,50,000/- per acre, receiving a sum of Rs.1,89,000/- as earnest money; the date for execution and registration of sale deed was fixed as 22.2.2010; defendant No.1 had agreed to get the suit land redeemed from defendant No.2 and thereafter execute the sale deed in favour of plaintiff on receipt of balance consideration amount. According to the plaintiff, he has been ready and willing to perform his part of contract, however, defendant No.1 did not come forward to do his part; the plaintiff had gone to the office of Sub-Registrar, Shri Hargobindpur on 24.2.2010 for the purpose of getting the sale deed executed and registered in his favour, however the defendant did not come present with the result the transaction of sale could not be completed. According to the plaintiff on 22.2.2010, the date fixed for execution of sale deed as well as 23.2.2010, office of Sub-Registrar, Shri Hargobindpur was not functioning, therefore, he had gone there on the next working day i.e. 24.2.2010. As per the version of the plaintiff while he had gone to the office of Sub-Registrar, Shri Hargobindpur on 24.2.2010, he was carrying with him the balance payment and money to meet necessary expenses for execution of the sale deed, however, defendant No.1 had not appeared; the plaintiff got his presence marked by way of attestation of affidavit from Executive Magistrate, Shri Hargobindpur.

3. As the version of the plaintiff goes defendant No.3 Smt.Pritam Kaur had been alleging that Gurdip Singh – defendant No.1 had sold the land in dispute to her. According to the plaintiff such sale, if any, is illegal, null and void ineffective qua rights of the plaintiff because defendant No.3 was fully aware of agreement to sell entered into between Gurdip Singh – defendant and plaintiff. Feeling aggrieved by such conduct of defendant No.1, the plaintiff had approached the Court by way of filing suit for grant of specific performance etc.

4. On notice, all the three defendants appeared and filed separate written statements contesting the suit.

5. In the written statement filed by defendant No.1, he had denied having entered into any agreement to sell the suit land with the plaintiff or receiving any amount as earnest money. According to such defendant, the agreement to sell set up by the plaintiff is a forged and fabricated document and cannot be got specifically enforced. Refuting the remaining assertions, he prayed for dismissal of the suit.

In the written statement submitted on behalf of defendant No.2, it stated that the land of defendant No.1 – Gurdip Singh was mortgaged with it/House fed/Shri Hargobindpur Society; however the mortgage had been got redeemed by paying full mortgage amount and now the property is free from encumbrance. Such defendant sought dismissal of the suit.

In the written statement put forward on behalf of defendant No.3, she had denied the assertions in the plaint contending that as per her knowledge Gurdip Singh had executed an agreement to sell in favour of

plaintiff on 2.6.2008 for the land measuring 2 kanals 13 marlas at the rate of Rs.9 lakhs per acre; that agreement was scribed by Lakhwinder Singh Mamman, Deed Writer and the date of execution for sale deed was fixed as 30.4.2010 but the plaintiff did not get that agreement implemented and procured a false and fabricated agreement dated 26.10.2009 in connivance with Deed Writer and alleged attesting witnesses. According to such defendant, she is a bona fide purchaser for consideration with respect to 8 kanals of land out of 52 kanals 18 marlas purchased by her from defendant No.1 vide two different sale deeds dated 10.9.2010 for 6 kanals 10 marlas and 19.9.2012 for 1 kanal 10 marlas. Denying the remaining assertions, such defendant also craved for dismissal of the suit.

6. The plaintiff had filed replications controverting the allegations in the written statements whereas reiterating the averments in the plaint.

7. On the pleadings of the parties, following issues were framed:

(I) Whether Plaintiff is entitled for specific performance of contract of the agreement to sell or any other alternative relief ? OPP.

(II) Whether Plaintiff has always remained ready and willing to perform his part of the agreement to sell ? OPP.

(III) Whether the alleged sale deeds dated 10.09.2012 & 19.09.2012 executed by defendant no. 1 in favour of 16 dated no. 3 is hit by rule of lis pendence ? OPP.

(IV) Whether agreement to sale deed 26.10.2009 is false and

fabricated ? OPD.

(V)Whether Plaintiff has no cause of action to file the present suit ?

OPD.

(VI)Whether suit is not properly valued ? OPD.

(VII)Whether Court has no jurisdiction to try the present suit ? OPD.

(VIII)Whether suit is not maintainable in the present form ? OPD.

(IX)Whether defendant no. 3 is bonafide purchaser for value with consideration and without notice ? OPD.

(X)Relief

7. The parties led evidence in support of their respective claims.

In order to prove his case, Plaintiff himself stepped into witness box as PW-1 and further examined Lakhwinder Singh Mamman, Advocate as PW-2, Ajit Singh as PW-3, Gulzar Singh as PW-4, Rahul Sharma as PW-6 and Gulshan Kumar as PW-7. Thereafter, Plaintiff closed evidence after tendering certain documents.

8. In rebuttal, defendant no. 1 Gurdip Singh himself stepped into witness box as DW-1 and further examined Pritam Kaur as DW-3 and thereafter, learned counsel for defendants closed evidence after tendering certain documents.

9. After hearing the learned counsel for the parties, the trial Court decided issues No.(I), (II), (IV) and (V) in favour of the plaintiff and against the defendants; issues No.(III) and (IX) were decided in favour of plaintiff against the defendants, issues No.VI and VII in favour of plaintiff and against the defendants, issue No.VIII in favour of plaintiff

and against the defendants. As a result of findings on issues, the suit of the plaintiff was decreed with costs and a decree for specific performance of agreement to sell dated 26.10.2009 Ex.P1 in respect of land measuring 2 kanals 13 marlas out of land measuring 52 kanals 18 marlas situated at village Mari Buchian, Tehsil Batala, District Gurdaspur was ordered to be passed in favour of the plaintiff and against the defendants. The plaintiff was directed to deposit balance sale consideration amount within one month from the date of receipt of copy of judgment and decree and thereafter defendant No.1 was directed to get the sale deed executed and registered in favour of the plaintiff in terms of agreement to sell aforesaid within two months, failing which, the plaintiff would be at liberty to get the sale deed executed and registered in his favour through agency of the Court. Such judgment and decree were passed on 26.9.2016

10. Feeling aggrieved by the said judgment and decree, the defendant No.1 had filed an appeal in the Court of District Judge, Gurdaspur, which was assigned to learned Additional District Judge, Gurdaspur, who vide judgment and decree dated 26.11.2018 dismissed the appeal affirming the judgment and decree passed by the trial Court.

11. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant No.1 Gurdip Singh has preferred the present regular second appeal before this Court. The plaintiff/respondent No.1 Gurmeet Singh had filed a caveat petition and counsel representing him had put in appearance.

12. I have heard learned counsel for the parties besides going through the record.

13. Both the Courts below by properly analysing the evidence in view of the settled legal position and considering the facts and circumstances of the case have arrived at the conclusion that defendant No.1 Gurdip Singh did enter into an agreement to sell dated 26.10.2009 with plaintiff Gurmeet Singh for sale of 2 kanals 13 marlas of land belonging to him situated at village Mari Buchian, Tehsil Batala, District Gurdaspur @ Rs.6,50,000/- per acre, receiving Rs.1,89,000/- and that plaintiff has been ready and willing to perform his part of contract but the transaction could not mature since defendant No.1 had backed out of the same. Though the defendant No.1 had denied the execution of such agreement but plaintiff by leading enough cogent and convincing evidence including his own statement as PW1 besides examined PW2 Lakhwinder Singh Mamman, Advocate, Scribe of the agreement Ex.P1, PW4 Gulzar Singh an attesting witness of agreement and PW7 Gulshan Kumar, Stamp Vendor, who stated that on 26.10.2009, he had issued stamp paper of Rs.500/- to Gurdip Singh for the purpose of agreement entering the same in his register and having made an endorsement on the back of stamp paper successfully proved the execution of agreement to sell Ex.P1. Although defendant Gurdip Singh appearing as DW1 had denied the execution of the agreement but during his cross-examination, he identified his signatures on Ex.P1 at Points B and C. Therefore, the trial Court was fully justified in returning a finding that plaintiff had successfully proved the execution of the agreement to sell Ex.P1 and payment of earnest money of Rs.1,89,000/-.

14. It may be mentioned here that the plaintiff had also

succeeded in proving that he has been ready and willing to perform his part of the contract through out. Though as per the legal position, if defendant denies the execution of agreement to sell, then he cannot take up a plea that plaintiff has not been ready and willing to perform his part of contract. Nevertheless, the plaintiff has successfully establish so on record. Defendants No.1 and 3 had though labelled the agreement to sell Ex.P1 as a forged and fabricated document but they failed to bring on record even an iota of evidence to show that as to how it was so. Therefore, these allegations do not merit any attention.

15. As regards sale deeds dated 10.9.2010 and 19.9.2012 executed by defendant No.1 in favour of defendant No.3, those were executed during the pendency of the civil suit, which was filed on 20.3.2010 and were clearly hit by principle of *lis pendens*, in terms of Section 52 of the Transfer of Property Act. Defendant No.3 does not come out to be a bona fide purchaser for consideration, rather, she being real aunt of defendant No.1 residing in the same house is taken to have knowledge of defendant No.1 having executed agreement to sell Ex.P1 with the plaintiff. The Courts below have rightly rejected the plea of defendant No.3 being a bona fide purchaser for consideration.

16. The suit was rightly and correctly decreed by the trial Court. The First Appellate Court of Additional District Judge, Gurdaspur was justified in affirming that judgment and decree passed by the trial Court. The present regular second appeal filed by the defendant No.1 clearly lacks merit.

17. No substantial question of law or fact arises in this appeal.

18. Thus I do not find any illegality or infirmity in the judgments passed by the Courts below. Rather the same are based upon proper appraisal and appreciation of evidence and correct interpretation of law.

19. Finding no merit in the appeal, the same stands dismissed.

29.11.2022

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No