

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

131

RSA-872-2022 (O&M)
Date of decision: 17.05.2022

Chajju Ram (deceased) through his LRsAppellant

Versus

Bhupinder Kumar Saini and othersRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Shekhar Verma, Advocate
for the appellant.

Mr. Ashwani Talwar, Advocate
for respondent No.1.

MANJARI NEHRU KAUL, J. (ORAL)

The appellant before this Court is plaintiff in a suit which was filed by him for a decree of possession by way of specific performance of an agreement to sell dated 14.03.2003 in respect of land comprising in khewat No.92 Old 79 khatauni No.126 khasra No.3//4/2 of the land comprising in khewat No.92 Old khatauni No.127 khasra No.3//4/2 min, 5 min, 24//22 min, 106 min khatauni No.127, khasra No.3//4/2 min, 24//21/2, min, khatauni No.128 khasra No.3//5 min, 106 min, khatauni No.130 khasra No.2//10 min, 5 min, 24//22 min, 106 min, khatauni No.130, khasra No.2//10 min, 3//6 min, 7/1 min, 33//2 min, 3/1, 8/1 khatauni No.131 khasra No.2//1, 10 min, 3//6 min, 7/1 min, 33//2, 3/1, 8/1 khatauni No.131 khasra No.2//1, 10 min, 3//6 min, 7/1 min, 27//34, 33//1/2, 2 min, khewat No.93 old khatauni No.132 khasra No.6//1 min, 2 min, 3/1, 9/2 min, khatauni No.133, khasra No.6//8,9/1, 9/2 min, khatauni No.134 khasra No.6//9/2 min, 10 min, 12/1, 12/2, khatauni No.135 khasra No.6//1 min, 2 min, 10 min, 11, khatauni

No.136 khasra No.4//18, 22, 23 and 5 kanals 7 marlas being 1/2 share of the land comprising in khewat/khatauni No.48 old 42/63 khasra No.6//6, 27//28 as per jamabandi for the year 2006-07, 2001-02, and the previous jamabandis as well and other other immovable properties (hereinafter referred to as 'suit property') situated in the revenue estate of village Bhagwanpur H.B.2148, Tehsil and District Panchkula. Along with consequential relief of permanent injunction to restrain the defendants from mortgaging, alienating, encumbering the suit land themselves or through their attorneys or interfering in any other manner in the possession of the plaintiff over the same, was also sought.

The parties to the *lis* hereinafter shall be referred to by their original status in the plaint.

The case as set up by the plaintiff is that one Sadhu Ram son of Sh. Baru Ram was the owner of the suit property. After the death of Sadhu Ram, all the legal heirs i.e. the defendants, after due deliberations and consultation with each other sent defendant No.1 to India as their representative to enter into a deal with the plaintiff for selling their entire property including the suit land as detailed above. Accordingly, the plaintiff and defendant No.1 entered into an agreement to sell dated 14.03.2003 wherein defendant No.1 agreed to sell the entire property of the defendants on their behalf for a total consideration of Rs.15 lakhs. On the same day, defendant No.1 received Rs.2,30,000/- in cash as earnest money from the plaintiff, in the presence of the witnesses. As per the terms and conditions of the aforementioned agreement to sell, time was not the essence of the contract as no date was fixed for execution and registration of the sale

deed. However, the last date for payment of the remaining sale consideration was fixed within two years from the date of the agreement to sell i.e. 14.03.2003. Subsequently, on 21.12.2003 various payments amounting to a total sum of Rs.1,70,000/- were made by the plaintiff and his sons through cheques, which were duly received by defendant No.8 and a writing to the said effect dated 21.12.2003 was also made. Thereafter, on 19.09.2004, defendant No.8 was again paid a total of Rs.1,50,000/- through cheques. On 30.01.2005, another sum of Rs.2 lakhs was paid vide DD No.376107, drawn in the name of defendant No.1. Another amount of Rs.6 lakhs was paid on 25.02.2005 vide demand draft drawn in the name of defendant No.1. The remaining amount of sale consideration in the sum of Rs.1,50,000/- was received by defendant No.2 in March, 2005 at the time of his visit to India. Therefore, after receiving whole of the sale consideration amount of Rs.15 lakhs, the plaintiff was treated as owner of the suit property by all the defendants and accordingly possession of the suit property was also delivered to him in September, 2004 in part performance of the agreement to sell dated 14.03.2003. The plaintiff had been in possession of the suit land ever since then. He had even installed a tubewell in the suit property by spending a sum of more than Rs.5 lakhs. Defendant No.2, after giving a photocopy to the plaintiff, took the original receipt dated 06.03.2005 qua Rs.1,50,000/- to USA on the pretext of getting it signed from other defendants. The plaintiff and his sons were in contact with the defendants for execution and registration of the sale deed. The defendants repeatedly assured the plaintiff that they would get the sale deed executed in his favour after the marriage

of defendant No.7 which was fixed for 17.06.2009 as at that time defendants No.1 to defendants No.6 would be visiting India from USA, for the marriage. On 02/03.10.2009, defendant No.8 contacted the plaintiff's son namely Jai Singh, telephonically and asked him to come to the office of Sub Registrar, Barwala on 06.10.2009 for the execution and registration of the sale deed in favour of the plaintiff along with all the necessary papers and requisite expenses. The plaintiff went to the office of Sub Registrar, Barwala on 06.10.2009 along with the requisite papers and expenses, however, even after waiting for the whole day for defendant No.8, she did not turn up. The plaintiff then got his presence marked on 06.10.2009. Since the plaintiff had performed his part of the agreement to sell by making the payment of the entire sale consideration and the defendants on the other hand had failed to execute and register the sale deed, legal notice was also sent by him to the defendants to get the sale deed executed and registered but in vain. Hence, the plaintiff was left with no other option but to institute the suit in question.

The defendants on being put to notice appeared and filed their separate written statements. Defendant No.1 in his written statement alleged that the plaintiff was trying to grab the immovable properties including the suit land of all the defendants which had been inherited by them upon the death of Sadhu Ram i.e. father of defendant No.1. Defendant No.1 asserted that the agreement to sell dated 14.03.2003 and the receipt were nothing but sham documents and in the absence of any power of attorney executed by defendants No.2 to 8 in favour of defendant No.1 he was incompetent to enter into any

agreement to sell qua the shares of defendants No.2 to 8. It was also averred that no details of the properties were mentioned in the agreement to sell and still further the payments alleged to have been made by the plaintiff to defendant No.1 were for other purposes and not towards the alleged agreement to sell.

Defendants No.2 to 7 while filing their written statement took a categorical stand that they had not authorized anyone much less defendant No.1 to deal with their share of the property inherited by them from late Sadhu Ram. Defendant No.8 in her separate written statement took similar grounds as defendants No.2 to 7.

On the basis of the pleadings and other evidence led by the parties, the trial Court dismissed the suit of the plaintiff with costs. However, the trial Court directed defendants No.1, 2 and 8 to refund the amount of Rs.15 lakhs received from the plaintiff along with 10% interest from the date of receipt of the said amount till its actual realization.

The learned appellate Court upheld the findings recorded by the trial Court. Hence, the instant appeal.

Learned counsel for the appellant/plaintiff while impugning the judgments passed by both the Courts below has vehemently argued that the Courts below had erred in holding that defendant No.1 had no authority to enter into an agreement to sell on behalf of defendants No.2 to 8. Learned counsel submitted that defendant No.1 was in fact the Karta of the family and had been managing the properties of the family. It was in fact in this background that defendant No.1 had entered into the agreement to sell on behalf of

other defendants, after obtaining their consent. Learned counsel submitted that defendants No.2 and 8 had ratified the agreement to sell by their own conduct as they had received part of the sale consideration.

Learned counsel for the plaintiff further submitted that even in the absence of the description of the land in the agreement to sell there could be no ambiguity qua the properties which were agreed to be sold by defendant No.1 as the parties were closely related and well known to each other. Moreover, they were *ad idem* qua the sale of the entire property of Sadhu Ram in Village Bhagwanpur, therefore, the agreement to sell was wrongly held to be void on account of it being uncertain.

Learned counsel for the plaintiff further submitted that his case was squarely covered by the illustration (d) to Section 29 of the Indian Contract Act, 1872 read with Section 95 of the Indian Evidence Act, 1872. Hence, the absence of any details of the properties in the agreement to sell could neither make it uncertain nor void. It was finally submitted that when the agreement to sell and the payment of Rs.15 lakhs to the defendants stood duly proved, coupled with the fact that the plaintiff was ready and willing to perform his part of the agreement, the suit ought to have been decreed in his favour.

Per contra, learned counsel for the respondent/defendant No.1 while vehemently opposing the submissions made by the counsel opposite submitted that the agreement to sell was null and void and not binding on defendants No.2 to 8 as they had not authorized anyone much less defendant No.1 to enter into any agreement to sell qua their

share, on their behalf. He further submitted that the agreement to sell was ambiguous qua the description of the property agreed to be sold and thus it was a highly suspicious document which lent credence qua the same being a forged and fabricated one.

Learned counsel for defendant further submits that the money transactions between the parties were fraudulently projected as payments towards agreement to sell by the plaintiff, however, in fact they were actually the payments of *Batai* of the land of defendants, since the plaintiff was managing the land on their behalf.

I have heard learned counsel for the parties and perused the material placed on record.

The first and foremost question which arises for consideration of this Court is qua the enforceability of the agreement to sell dated 14.03.2003. The said agreement to sell was entered into between the plaintiff and defendant No.1 which as per the plaintiff was entered into by defendant No.1 on behalf of all the other defendants, being karta of the Hindu Undivided Family of the defendants, as he was managing the properties of the joint family.

It would be relevant to point out that no evidence on record was led which could even remotely suggest that defendant No.1 was either the karta of the family or he had been authorized by the other defendants to enter into an agreement to sell on their behalf. Rather it was admitted by the plaintiff as well as PW8 Kapoor Chand during their cross-examination that defendant No.1 had no power of attorney or any other authority to act on behalf of the other defendants much less to enter into an agreement to sell qua the land falling in the shares of

defendants No.2 to 8. The onus to prove that defendant No.1 was karta of the joint family property was upon the plaintiff, however, he failed to lead any evidence to discharge the said onus.

Thus, in the light of the above this Court concurs with the observations of both the Courts below that defendant No.1 had no authority to enter into the agreement to sell on behalf of the other defendants.

The contention of the learned counsel for the appellant that there was no ambiguity qua the description of the property is also devoid of merit. It was agreed upon by the plaintiff to purchase the entire property of Sadhu Ram, however, the plaintiff also sought specific performance in respect of the land measuring 5 kanals 7 marlas owned by defendant No.6, in her own rights as she did not inherit the same from her husband Sadhu Ram. Both the agreement to sell as well as the receipt strangely are totally silent about this land and even otherwise it cannot be said to be part of 'entire land of Sadhu Ram' since he had no proprietary rights over the same. Therefore, this ambiguity in the agreement to sell qua the description of the property would indeed render the agreement to sell void for uncertainty.

As a sequel to the above, this Court does not find any infirmity in the judgments and decrees passed by both the Courts below which are based on sound appreciation of the evidence led by the parties.

Dismissed.

17.05.2022

Vinay

(MANJARI NEHRU KAUL)

JUDGE

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