

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

105

**RSA-3257-2019 (O&M)
Decided on : 20.05.2022**

Chand Singh (Deceased) through LRs and others

... Appellant(s)

Versus

Gurjant Singh

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Dinesh Kumar Chaudhary, Advocate
for the appellant(s).

Mr. Anil Kumar Garg, Advocate
for the caveator/respondent.

MANJARI NEHRU KAUL, J. (Oral)

This is the Regular Second Appeal against the concurrent findings recorded by both the Courts below. The learned first Appellate Court vide judgment and decree dated 19.03.2019 upheld the judgment & decree dated 31.03.2016, passed by the Addl. Civil Judge (Sr. Divn.), Nabha, whereby, the suit instituted by the respondents/defendants for seeking possession by way of specific performance of the agreement to sell dated 05.02.2010 and for permanent injunction, was allowed and the appellants/defendants were directed to execute and register the sale-deed in favour of the respondents/plaintiffs.

Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

3. Brief facts as pleaded by the plaintiff (respondent(s) herein) while instituting the suit for possession by way of specific performance of the agreement to sell dated 05.02.2010 and with consequential relief of

permanent injunction in respect of suit land measuring 16B-6B, being 326/553 share, out of land measuring 27B-13B, comprised in Khewat No. 240/365, Khasra Nos. 461 (5-18), 462 (9-13), 1636/463 (1-11), 1660/528/1 (2-4), 529/2 (3-6), 1912/530/2 (5-1), situated at village Bhari Panechan, Tehsil Nabha, as per Jamabandi for the year 2004-2005, along with share in motor 10 HP and Kotha motor, connection motor, security, khal, pahi, paha, chah trees etc., situated in village Bhari Panechan, Tehsil Nabha, may be noticed as thus:-

On 05th February, 2010, the defendant (appellant herein) entered into an agreement to sell the suit land with the plaintiff at the rate of Rs.1,25,000/- per Bigha. Rs.6,25,000/- was paid by the plaintiffs to the defendant as earnest money, who in turn, agreed to execute the sale-deed in favour of the plaintiff on 04.02.2011, after getting the land redeemed from the Bank. As per the agreement arrived at between the parties, the possession of the suit land was to be delivered to the plaintiff at the time of the execution and registration of the sale-deed, which fact was duly incorporated in the agreement. On 06th April, 2010, a sum of Rs.1,25,000/- was again paid by the plaintiff to the defendant towards earnest money and a receipt of acknowledgement of total amount of Rs.7,45,000/- was duly executed by the defendant in the said regard. On the appointed date, 04.02.2011 i.e. the date fixed for execution and registration of the sale-deed, the plaintiff remained present along with the balance sale consideration in the office of the joint Sub-Registrar, Bhadson, for getting the sale-deed executed in his favour, however, despite waiting for the defendant for the whole day till 05:00 p.m., the defendant did not turn up. Resultantly, the plaintiff got his presence marked by way of an affidavit, which was duly

attested by the Executive Magistrate, Bhadson. The plaintiff pleaded that he had always been ready and willing to perform his part of the agreement, however, it was the defendant, who failed to perform his part of the agreement and thus, committed a breach of the agreement to sell.

4. On being put to notice, the defendant failed to put in an appearance before the trial Court, as a result of which, he was proceeded against *ex-parte*. However, subsequently, on an application filed by son of the defendant under Order 22 Rule 4 read with Order 9 Rule 7 of the CPC, the *ex-parte* proceedings were set-aside and the son of the defendant was brought on record as his legal representative. In the written statement filed by the legal heir of the defendant, it was denied that the agreement to sell dated 05.02.2010 was ever executed. Rather, the defendant submitted that the agreement to sell was a false and fabricated document, which had been prepared by the plaintiff after conniving with the witnesses and the scribe. Receipt of the earnest money was also denied by the defendant. It was claimed that the signatures on the said acknowledgement receipt were forged, as the defendant was not in India on the said date. All other allegations contained in the plaint were also denied by the defendant.

5. On the basis of the pleadings and evidence led, both the Courts recorded concurrent findings and decreed the suit in favour of the plaintiff by directing the defendants to get the sale-deed executed and registered in favour of the plaintiff as per the agreement dated 05.02.2010 and 06.04.2010, after receiving the balance sale consideration amount within a stipulated time.

6. Learned counsel for the appellant-defendant while impugning the judgments passed by the both the Courts below, submits that in a suit for

specific performance of agreement to sell, it was incumbent upon the plaintiff to prove his readiness and willingness to perform his part of the contract. However, the Courts below ignored that the plaintiff had failed to produce his bank accounts from which it could be gathered that he had the requisite money to pay towards the balance sale consideration of amount. He further submits that the plaintiff did not even served any notice upon the defendant to inform him that he had the requisite amount of money to pay as part of the remaining sale consideration. Learned counsel thus submits that in the absence of any evidence in the aforesaid regard, it was abundantly clear that the plaintiff were incapable of performing his part of the agreement.

7. He further submits that the rate of agricultural land in the vicinity of the suit land was not less than Rs.12,00,000/- per bigha and hence, it could not be believed that the defendant would have agreed to sell the suit land for as low as Rs.1,25,000/- per bigha. In the circumstances, learned counsel submits it was evident that the agreement to sell and the other related documents including acknowledgement receipts *qua* the earnest money received, were forged and fabricated, which had been prepared by the plaintiff after conniving with the witnesses and the scribe.

8. On the other hand, learned counsel for the caveator/respondent (plaintiff) while vehemently opposing the submissions made by the counsel opposite, submits that the agreement to sell dated 05.02.2010 stood duly proved from the deposition of the witnesses to the agreement PW-2/Narinder Singh, as well as, document writer PW-3/Pardeep Kumar Sharma, during trial. He further submits that PW-3/Pardeep Kumar Sharma, had made the relevant entries with respect to the agreement to sell, as well

as receipt, in his register, which were duly proved as Ex.P6 & Ex.P7, during trial. Still further, Ex.P3, i.e. the affidavit of the plaintiff, showing his presence in the office of the Joint Sub-Registrar, Bhadson, on 04.02.2011, lent credence to the fact that the plaintiff was present on 04.02.2011 and also ready and willing to perform his part of the contract.

9. Learned counsel for the caveator/respondent while vehemently controverting the submissions made by the counsel opposite that the agreement to sell on the face of it was forged and fabricated as the defendant was abroad during the said time, submits that in support of his submissions the defendant examined only himself as DW-1 and the copy of the passport, on which he placed reliance, was not even proved in accordance with law, as the defendant failed to examine any official from the Passport Office to prove that the defendant was not in India from 05th February, 2010 till 06th April, 2010.

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

11. This Court on the basis of the evidence led has no hesitation in affirming the concurrent findings of fact recorded by both the Courts below for the reasons to follow:-

- I. The onus to prove the execution of the agreement to sell dated 05.02.2010, between the parties, was on the plaintiff. In support of his case, besides, examining himself as PW-1, the plaintiff also examined PW-3/Pardeep Kumar Sharma (licensed document writer) and PW-2/Narinder Singh (marginal witness of the agreement to sell). Both these witnesses corroborated

the pleaded case of the plaintiff. While PW-3 proved the agreement to sell and the execution of the receipt dated 06.04.2010 by the defendant, as well as, the entries made by him in his register as Ex.P6 & Ex.P7, respectively. In the said regard, PW-2 also corroborated the execution of agreement dated 05.02.2010 and the receipt dated 06.04.2010 by the defendant. It may be noticed that both agreement to sell as well as the entries Ex.P6 & Ex.P7, bear the thumb impressions of the defendant - Chand Singh (deceased) and his son Malkeet Singh, in token of their consent. Both these witnesses supported the factum of payment of Rs.6,25,000/- having been made by the plaintiff to the defendant on the day of the execution of the agreement and another amount of Rs.1,25,000/- on 06.04.2010.

- II. No doubt it was asserted that on the date i.e. 05.02.2010, when the agreement to sell (Ex.P1), was entered into, the defendant DW-1/Malkeet Singh, was not in India and was abroad and hence, he could not have been a signatory to the said agreement, however, the copies of the Passport (Ex.PA to Ex.PG) produced during trial, reveal that there was no visa endorsement of any country on any of those pages. In the circumstances, a big question mark indeed arises *qua* the authenticity of the submissions made by the learned counsel that the defendant was not in India, when the agreement to sell

was entered into. This Court has no hesitation in rejecting this submission of the learned counsel for the appellant-defendant, as the same comes across as unreliable.

It is also pertinent to notice here that defendant-Malkeet Singh during the course of trial strangely denied that he had signed the written statement, affidavit including his examination-in-Chief and even his statement made before the Court, from which, it can be safely inferred that he is not a truthful witness and for reasons but obvious, he intentionally denied his signatures on all these documents.

Further more, upon being pointedly asked, learned counsel for the appellant/defendant failed to refer to anything on record to show that the conclusions arrived at by the Courts below were either contrary to the record or suffered from any material illegality. The appeal, being devoid of merit, is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.

(MANJARI NEHRU KAUL)
JUDGE

May 20, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No