

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.117

RSA No. 1742 of 2022 (O&M)

Date of Decision: 16.12.2022

Dinesh Kumar

.... Appellant

Versus

Amandeep Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Ms. Bhawna Kapur, Advocate
for the appellant.

TRIBHUVAN DAHIYA, J. (ORAL)

CM No. 9490-C of 2022

Application for placing on record the copy of the plaint in Civil Suit No.770 dated 28.11.2014, is taken on record, subject to all just exceptions.

Application is allowed.

CM No.6396-C of 2022

Application for placing on record the copy of the plaint in Civil Suit No.39 dated 16.03.2011 and the judgment dated 04.02.2014, is taken on record, subject to all just exceptions.

Application is allowed.

CM No.5732-C of 2022

Application is allowed as prayed for.

Main case

This is plaintiff's second appeal against the concurrent findings of both the Courts below.

2. The facts of the case in brief are, the appellant/plaintiff (hereinafter referred to as the 'plaintiff') filed a suit for declaration and permanent injunction claiming himself to be the beneficiary of an agreement to sell dated 13.03.2013, executed by one Ranjit Singh, who happened to be the father of respondents/defendants No.1 & 2 and husband of defendant No. 3. The date of execution of sale deed was kept open. It was also pleaded that pursuant to execution of the agreement, entire sale consideration was paid to Ranjit Singh. The plaintiff also claimed to be holding a judgment and decree passed by the civil Court, whereby prohibitory injunction was issued in his favour for protecting possession of the suit land. The sale deed in terms of the agreement was not executed by Ranjit Singh. The plaintiff later came to know that the suit land had already been auctioned in the execution proceedings titled *Punjab State Supplies v. Beant Enterprises etc.*, leading to the suit land being sold in favour of defendant No. 4, who was decree holder thereof.

3. Upon notice, only respondent/defendant No. 4 contested the suit. Averments of the plaint were denied, besides alleging that the agreement to sell dated 13.03.2003 was forged and fabricated document prepared by the plaintiff in connivance with defendants No. 1 to 3, only to avoid the sale of suit property.

4. Upon completion of pleadings, the following issues were settled between the parties:

- (i) Whether the plaintiff is entitled to the relief of declaration, as prayed for?OPP
- (ii) Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for?OPP
- (iii) Whether the plaintiff has got no cause of action to file the present suit?OPD
- (iv) Whether the plaintiff has not come to the Court with clean hands and has suppressed the real facts?OPD
- (v) Whether the suit is time barred?OPD
- (vi) Whether the suit in the present form is not maintainable?OPD
- (vii) Whether the plaintiff is estopped by his own act & conduct, omission & commission to file the present suit?OPD
- (viii) Relief.

5. Issues No. 1, 2 and 6 were decided by the trial Court against the plaintiffs while dismissing the suit. The remaining issues 3, 4, 5 and 7 remained non-pressed. Resultantly, the same were decided in favour of the plaintiff. The suit was dismissed with costs. The findings were affirmed by the lower appellate Court.

6. Both the Courts below have concurrently held that the agreement to sell in question, dated 13.03.2003, was not proved on record. It was held to be a vague document, which could not be relied upon. Besides, the agreement to sell is dated 13.03.2003. Whereas, the suit based thereupon

was instituted by the plaintiff only on 28.11.2014, which was subsequent to

the auction proceedings dated 21.09.2013 conducted at the instance of defendant No.4 in Execution Application No.41 of 23.10.2010. No evidence was led to establish as to how the said auction proceedings could be termed illegal or invalid.

7. The plaintiff, as PW-1, himself categorically stated in the cross examination that the original agreement to sell could not be placed on the record. His witnesses also admitted that there was no date mentioned on the back side of the stamp paper that was purchased and used for preparation of the agreement to sell in question. Therefore, not only the date of execution of the sale deed was not mentioned in the agreement, there was no proof regarding the date on which the stamp paper for execution of the agreement was prepared. The plaintiff also admitted that he did not remember even name of the deed writer who scribed the agreement to sell. Therefore, both the Courts below rightly held that the agreement to sell had not been proved on record.

8. Instead of filing suit for specific performance on the basis of agreement to sell dated 13.03.2003, the plaintiff filed the instant suit for declaration. The Courts below are right in observing that this appeared to have been done to avoid payment of Court fee. On this account also, the suit could not have been entertained.

9. It is, therefore, apparent that the suit in question was filed by the plaintiff for oblique motive, to challenge the execution proceedings on the basis of the agreement to sell, which itself could not be established on records. A questionable procedure was adopted by filing the suit for declaration instead of a suit for specific performance of the agreement. It was rightly dismissed, and there is no ground to interfere with the

well-reasoned findings of the Courts below in that regard. No substantial question of law arises for consideration either.

10. Appeal stands dismissed.

11. Since, the main petition stands decided, all pending applications, if any, are disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

16.12.2022
payal

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