

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

RSA-4275-2011 (O&M)

Date of decision: 12.12.2022

Gurbachan Singh

...Appellant

Versus

Melo and others, LR of Bhag Singh

...Respondents

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

Present: None.

H.S. MADAAN, J. (Oral)

Plaintiff Gurbachan Singh had brought a suit for specific performance of agreement to sell dated 25.12.1991 against defendant Bhag Singh, contending that the latter had agreed to sell the plot measuring 2 biswas with him for a consideration amount of Rs.30,000/-, receiving Rs.17,000/- as earnest money. At the time of execution of written agreement on 25.12.1991, the final date for execution of the sale deed was fixed as on or before 15.06.1993, however, on that day, the defendant did not turn up for completion of transaction, although, the plaintiff remained present in the office of Sub Registrar, throughout the day having balance consideration amount. According to the plaintiff, he has been ready and willing to perform his part of the contract throughout. On failure of defendant to come forward to execute the sale deed, the plaintiff filed a suit for grant of

relief of specific performance in the alternative suing for recovery of Rs.34,000/- along with interest and damages.

2. On notice, the defendant appeared and filed written statement, contesting the suit, denying that he had entered into any agreement to sell with the plaintiff or received any earnest money. He set up a counter version stating that he had borrowed a sum of Rs.15,000/- from the plaintiff and in lieu thereof, the plaintiff got executed an agreement in his favour and that he has returned the said amount to the plaintiff in the presence of witnesses on 01.01.1992. A writing was scribed in that regard by the plaintiff in the presence of witnesses. Refuting the remaining averments in the plaint, defendant prayed for dismissal of the suit.

3. Plaintiff filed replication controverting the allegations in the written statement, whereas reiterating the averments in the plaint.

4. From the pleadings of the parties, following issues were framed by the trial Court:-

- (1) Whether the plaintiff is entitled to decree of specific performance of agreement to sell dated 25.04.1991, regarding the suit property fully described in head note of plaint? OPP
- (2) Whether the plaintiff has paid earnest money of Rs.17,000/- to the defendant? OPP
- (3) Whether the plaintiff is ready and willing to perform his part of agreement? OPP
- (4) Whether suit of plaintiff is not maintainable? OPD
- (5) Whether the agreement to sell dated 25.04.1991 is

forged and fabricated document? OPD

(6) Whether the agreement dated 25.4.1991 is without consideration? OPD

(7) Whether the plaintiff has not come to the Court with clean hands? OPD

(8) Whether the plaintiff has no cause of action to file the present suit? OPP

(9) Relief.

5. Parties were given opportunities to lead evidence in support of their respective claims.

6. After hearing arguments, the trial Court gave issue-wise findings and as a result thereof, the suit of the plaintiff was decreed for specific performance of agreement to sell dated 25.12.1991 issuing a direction to the defendant to execute the sale deed on the basis of that agreement after receiving balance consideration amount within three months from the date of passing of judgment/decreed on 06.12.2003.

7. Feeling aggrieved, the plaintiff had preferred an appeal before District Judge, Sangrur, which was assigned to Addl. District Judge, Sangrur. Bhag Singh had expired and was represented by his Lrs and vide judgment dated 12.08.2005, the appeal was accepted and judgment and decree passed by the trial Court was set aside and suit of the plaintiff for alternative relief for recovery of Rs.17,000/- was decreed with costs along with interest @ 9% p.a.

8. Feeling aggrieved by that judgment, plaintiff Gurbachan Singh has approached this Court by way of filing the present Regular

Second Appeal. The appeal was filed belatedly, however, delay of 1708 days in re-filing of the appeal was condoned by this Court, vide order dated 11.09.2015. Thereafter, the case stood adjourned for arguments. Counsel for the appellant either sought adjournment or absented himself on various occasions. Cost of Rs.2000/- was also imposed upon the appellant but that cost was also not deposited. For four successive dates of hearing, nobody has put in appearance on behalf of the appellant.

9. After going through the file, I do not find any merit in the appeal. The judgment passed by the Ist Appellate Court is quite detailed and well reasoned. While coming to the conclusion that basically it was a money transaction between the parties which was given the form of an agreement to sell. The relief part of the judgment passed by learned ADJ, Sangrur contained in para No.10 is reproduced for ready reference:-

“The case file reveals that the appellant has entered into agreement to sell in favour of the respondent on 18.8.1989 vide Ex.D1. Before the agreement may be implemented, the respondent got another agreement to sell executed from the appellant vide Ex.P1 executed on 25.12.1991. A bare look at both the agreements goes to show that both the agreements have been executed by one and the same person and relate to the same property of the appellant. When one agreement was subsisting there was no need to execute another agreement to sell, which shows that the agreement to sell is not real one. Rather it seems

to be a money transaction. Another look at the Ex.D2, on agreement dated 18.8.1989 Ex.D1, shows that the amount of Rs. 15,000/- obtained by the appellant from the respondent was returned to him and the respondent admitted in his cross-examination that before the execution of the agreement in question there used to be money transaction between the parties. The respondent further admitted that the previous agreement was cancelled and under that agreement Rs. 15,000/- was returned by the appellant defendant. He further admitted that both the agreements relate to the same property. He clearly identified his signatures on Ex.D1. This leaves no manner of doubt that it was a money transaction between the parties and not an agreement to sell of the property belonging to the appellant. Secondly, another look at Ex.P1 i.e. agreement to sell shows that the agreement to sell was executed on 25.12.1991 and the date fixed to execute the sale deed and get the same registered was 15.6.1993. it is common knowledge that in case of real agreement to sell such a long time as given in this agreement is not normally fixed. This confirms that the agreement to sell was in fact a money transaction.”

10. The judgment by learned ADJ, Sangrur shows due application of mind and having been passed in the light of factual and legal position, whereas, it was not with regard to judgment passed by the trial Court. Learned Addl. District Judge was justified in denying the relief of specific performance to the plaintiff and decreeing the suit for alternative relief that is for recovery. No substantial question of law

or fact is involved in this case. The appeal is found to be without merit and is dismissed accordingly.

12.12.2022
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(H.S. MADAAN)
JUDGE

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