

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

**RSA-3072-2012 (O&M)
Reserved on 20.05.2022
Pronounced on : 25.05.2022**

Trilok Singh and others . . . Appellant(s)

Versus

Rattan Singh . . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Santosh Sharma, Advocate
for the appellant(s).

Mr. Sandeep Singh, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The instant appeal has been filed against the concurrent findings of the Courts below, whereby, the suit of the respondent/plaintiff for specific performance of the agreement to sell dated 26.05.2003, bearing deed No. 228, registered with Sub-Registrar, Safidon, was decreed.

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

The pleaded case of the plaintiffs is that defendant No.1 – Mahender Singh was owner in possession of the land in dispute comprising in Khewat No. 173, Khatoni No. 204, Rect. No.142, Killa no. 21/1 (7-2) measuring 7 Kanals 2 Marlas to the extent of 2/3rd share corresponding to 4 Kanals 2 Marlas and Khewat No. 740 Khatoni No. 857, Rect. No. 142, Killa No. 21/2 (0-18), 22 (8-0), 23 (8-0), measuring 16 Kanals 18 Marlas, total land in both Khewat measuring 21 Kanals 13 Marlas, situated in revenue estate of village Safidon. The defendant No.1 agreed to sell the suit land (measuring 21 Kanals 13 Marlas) to the plaintiff vide registered agreement

to sell dated 26.05.2003 @ Rs.3,00,000/- per acre. The defendant No.1 received Rs.4,00,000/- as earnest money from the plaintiff. It was agreed upon by defendant No.1 that he would get the sale-deed executed in respect of the suit property on or before 15.01.2004, on receipt of the remaining sale consideration. In addition to this, it was also agreed upon that in case of any default on the part of the defendant, the petitioner would get double the amount of the earnest money received by the defendant, besides, getting the sale-deed executed through Court of law. On 15.07.2003, defendants No.2 & 3 i.e. the minor grandsons of defendant No.1 – Mahender Singh, filed a suit for declaration bearing No.190, dated 15.07.2003, in respect of the suit land against the plaintiff, which was, however, dismissed as withdrawn by them on 08.08.2003. Thereafter, it came to the fore that the defendant No.1 had executed a General Power of Attorney (GPA) bearing Deed No.19, dated 07.07.2003, registered with Sub-Registrar Safidon, in favour of his son Trilok Singh and on the basis of the GPA, Trilok Singh, in collusion with defendant No.1, transferred the suit land vide a release deed No.856 of 09.07.2003, registered with Sub-Registrar, Safidon, in favour of defendants No.2 & 3. The release deed was not binding upon the plaintiff, as it seemingly had been done to avoid the execution of the sale-deed in favour of plaintiff by playing fraud upon him and also to prevent the plaintiff from purchasing the suit land. Even though, the defendants were asked by the plaintiff to execute the sale-deed in respect of the suit land, but in vain.

On being put to notice, defendant No.1 denied the execution of the agreement to sell in favour of the plaintiff. It was submitted that agreement to sell dated 26.05.2003 (Ex.P1), was a forged and bogus

document. He further submitted that he had appointed Trilok Singh, as his Power of Attorney, who in turn, had executed the release deed in favour of his sons i.e. defendants No.2 & 3, who were now owner in possession of the suit land. Defendants No.2 & 3 filed their separate written statement wherein it was submitted that the suit land was a coparcenary property of Hindu Undivided Family (HUF), which had been transferred to them by defendant No.1, vide release deed No.856, dated 09.07.2003. It was, thus, submitted that not only was the agreement to sell in question, null and void, but defendant No.1 was not even competent to execute the sale-deed in question, much less, alienate it in any manner whatsoever.

On the basis of the pleadings and evidence led, the trial Court decreed the suit of the plaintiff by holding that the plaintiff had a right to take possession of the suit property after execution of the sale-deed and directed defendant No.1 to execute the sale-deed in favour of the plaintiff within three months from the date of decree. The appeal preferred against the judgment and decree passed by the trial Court, was dismissed by the lower Appellate Court vide impugned judgment & decree dated 23.04.2012. Hence, the instant appeal.

Learned counsel for the appellant *inter alia* contends that both the Courts below failed to appreciate that since the suit property was an ancestral property (HUF), thus, the agreement to sell dated 26.05.2003 allegedly executed by defendant No.1 – Mahender Singh, in favour of respondent-plaintiff was un-sustainable in the eyes of law, as defendant No.1 being Karta of HUF could not have alienated it for any purpose other than legal necessity, and no evidence whatsoever had been led in support of any such legal necessity. He further submits that since the suit land was

joint and not partitioned, the share of the parties could not be segregated. Besides this, learned counsel also submits that the plaintiff was not ready and willing to perform his part which is evident from the fact that on 15.01.2004 i.e. the date fixed for execution of the sale-deed, the plaintiff got his presence marked in the office of the Sub-Registrar, however, thereafter, he did not even make any efforts to get the sale-deed executed. Hence, in absence of willingness and readiness on the part of the plaintiff, the suit of the plaintiff was wrongly decreed.

Per contra learned counsel for the respondent/plaintiff submits that defendant No.1 had taken self contradictory stands, as on the one hand he alleged that the agreement to sell was a forged document, however, on the other hand during his deposition before the trial Court did not deny the execution of the agreement to sell. Hence, in the wake of his own admitted case, no other evidence was required to be produced to prove the factum of defendant No.1 and the plaintiff indeed entering into an agreement to sell on 26.05.2003. He further submits that the execution of the agreement to sell also stood proved from the testimonies of both the scribe as well as the attesting witnesses, who supported the case of the plaintiff in its entirety. Learned counsel has strongly disputed the submissions made by the counsel opposite that the suit property was an ancestral property (HUF) by submitting that except for the bald assertions of the defendants, there was no evidence produced by the defendants in support thereof.

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

It is not in dispute that defendant No.1 was owner in possession of the suit property. Defendant No.1 while appearing before the trial Court,

made a statement on oath wherein he admitted that he had received Rs.4,00,000/- as earnest money from the plaintiff, in lieu of the agreement to sell (Ex.P1) and further while admitting the claim of the plaintiff stated that he has no objection if the suit is decreed. Still further, both PW-1/Rakesh Kumar (attesting witness to the agreement to sell) and PW-2/Ajeet Singh (Scribe of the agreement to sell) while stepping into the witness-box, categorically deposed that the agreement to sell (Ex.P1) had been executed in their presence. It would also be relevant to notice that the agreement to sell (Ex. P1) is a registered document and also bears the photographs of both these witnesses. In the circumstances, the contentions of the defendant Nos.2 and 3 that the agreement to sell (Ex.P1) was a forged and fabricated document deserves to be rejected, more so, in light of the aforesaid admission made by defendant No.1.

Coming to the next contention of the learned counsel for the appellants/defendants that the suit property being ancestral and owned by HUF could not have been alienated by defendant No.1 also deserves to be rejected. No evidence *qua* the suit property being coparcenary or joint hindu family property, was produced by the defendants in support of their submissions. The relevant revenue records, on which the learned counsel tried to place reliance in support of his submissions does not even obliquely reflect any such entries from which it could be inferred that the suit property was either the joint hindu family or coparcenary property.

From a perusal of the evidence on record, it is evident that defendant No.1 – Mahender Singh, had already agreed to sell the suit property to the plaintiff vide agreement to sell dated 26.05.2003 (Ex.P1) and as such there was a privity of contract between both him and the plaintiff. It

is only thereafter, that Trilok Singh s/o defendant No.1 obtained a GPA from his father and transferred the suit property by way of a release deed in favour of his sons i.e. defendants No.2 & 3. It is clearly discernible that this was done by Trilok Singh in connivance with his father i.e. defendant No.1 to defeat the rights of the purchaser i.e. the plaintiff.

As a sequel to the above, the instant appeal being devoid of merits, stands dismissed, The judgments & decrees passed by both the Courts below are affirmed.

(MANJARI NEHRU KAUL)
JUDGE

May 25, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*