

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.992 of 2015 (O&M)
Date of Order: 18.05.2022

Jarnail Singh

..Appellant

Versus

Vineet Vermani and another

..Respondents

RSA No.3470 of 2015 (O&M)

Narinder Gupta

...Appellant

Versus

Vineet Vermani and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S.Attariwala, Sr. Advocate, with
Mr. Atul Goyal, Advocate, and
Mr. Mayank Dev Singh, Advocate
for the appellant (in RSA No.992 of 2015)

Mr. Sanjiv Gupta, Advocate
for the appellant(in RSA No.3470 of 2015)
for the respondent (in RSA No.992 of 2015)

Mr. Aman Kashyap, Advocate
for the respondent no.1

ANIL KSHETARPAL, J(Oral)

Defendant No.1 and 2 have filed two separate Regular Second Appeals against a common judgment passed by the First Appellate Court.

The plaintiff filed a suit for the recovery of Rs.19,86,400/-. He claims that Sh. Narinder Gupta (defendant no.1) entered into an agreement to sell in his favour with respect to plot measuring 8½ marlas on 03.01.2006. As per the agreement to sell, the sale deed was to be registered on or before 25.03.2006. He received Rs.4,50,000/- as earnest money and thereafter, kept receiving various installments of the sale consideration. It

was pleaded that Rs.13,46,000/- has been received in total by Sh. Narinder Gupta (Defendant No.1). Sh. Narinder Gupta entered into an agreement to sell on the basis of the agreement to sell executed by Sh. Jarnail Singh in his favour. When the dispute arose, Sh. Jarnail Singh acknowledged the payment in favour of Sh. Narinder Gupta and on receipt of the additional amount of Rs.1,00,000/-, entered into a fresh agreement to sell dated 31.03.2006. The plaintiff claims that when he went to the site he found that the plot in question has already been transferred in favour of Smt. Jaswinder Kaur by one Sh. Narinder Kumar and she is in possession, thus, the suit was filed for recovery of the entire paid amount.

The defendants contested the suit while asserting that they were permitted to execute the sale deed and in fact vide agreement dated 31.03.2006, the possession of the plot was also delivered to the plaintiff. The defendants claim that they are prepared to honour the agreement to sell and it is the plaintiff who does not want to take the property.

The trial Court dismissed the suit, whereas the First Appellate Court on reappreciation of evidence has decreed the suit while ordering refund of the amount received by defendant no.1 and 2, along with interest @ 6%.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book as well as the record of the courts below which was requisitioned.

The learned counsel representing Sh. Jarnail Singh contends that Sh. Jarnail Singh along with his brother Sh. Kewal Singh purchased 2 kanals and 9 marlas by a registered sale deed. Out of the aforesaid land measuring 49 marlas, Sh. Jarnail Singh was the owner to the extent of 39

marlas, whereas Sh. Kewal Singh was the owner to the extent of 10 marlas. He contends that Sh. Jarnail Singh constructed his house on 3½ marlas (100 sq. yds.), whereas he sold three plots in the following manner:-

- (1) 10 Marlas plot in favour of Smt. Devinderjeet Kaur vide sale deed dated 18.01.2006
- (2) 9 Marlas plot in favour of Smt. Surjit Kaur vide sale deed dated 16.02.2006
- (3) 8 Marlas plot in favour of Sh. Amarjit Singh vide sale deed dated 12.09.2006.

He submits that he is still left with 8½ marlas land and he was always prepared to execute the sale deed.

The learned counsel representing Sh.Narinder Gupta contends that the First Appellate Court has erred in observing that Sh. Jarnail Singh sold excess land. He submits that Sh. Jernail Singh is still left with 8½ marlas of land which could have been transferred in favour of the plaintiff. Hence, the suit for recovery of the amount paid was not maintainable.

This Bench has examined the sale deed dated 19.08.2005, Ex.D1. It is evident that the share in the unpartitioned land to the extent of 49 marlas (equivalent to 2 kanals and 9 marlas) has been purchased. It is evident that thereafter, Sh. Jarnail Singh and Sh. Kewal Singh divided the same land into plots. Some area of the land must have gone in making of the passage which was carved out in order to carve out the separate plots.

The learned counsels representing the appellants in both the cases have tried to impress upon the Court that the property purchased by Sh. Jarnail Singh and Sh. Kewal Singh was already in the share of a separate plot and a passage was existing already. From the careful reading of Ex.D1,

it is evident that only the undivided portion in a joint khata was purchased and there is no recital that the undivided share was in the shape of separate plots. In these circumstances, it is evident that Sh. Jarnail Singh has no clear title. There is a serious dispute about the availability of the plot which was agreed to be sold.

At the end, the learned counsel representing Sh. Jarnail Singh has submitted that the decree for recovery should also be against Sh. Narinder Gupta.

In the considered view of the Court, this matter cannot be decided in this appeal. Sh. Jarnail Singh may, if so advised, file a suit for recovery, if permissible under law.

Keeping in view the aforesaid facts, no ground to interfere with the findings of fact arrived at by the First Appellate Court is made out.

Both the appeals are dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

May 18, 2022

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(ANIL KSHETARPAL)
JUDGE

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