

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

04.05.2009 executed by defendants, pertaining to land measuring 3 kanals 17 marlas comprised in rectangle No.19, Killa No.2 min (3-17) for a total sale consideration of Rs.11,50,000/- and at the time of execution of the agreement, a sum of Rs.5,50,000/- was paid by plaintiffs as earnest money. The agreement to sell was signed by the parties, in the presence of witnesses, namely, Sukhdev Singh and Harnek Singh and according to it, the sale deed was to be executed on 05.06.2009. Subsequently, the said date was extended to 25.06.2009, and again, it was extended upto 15.07.2009. Meanwhile, another sum of Rs.4 lacs was received by the defendants as earnest money from the plaintiffs. As per the pleadings, previously defendants were owner in possession of the above said land bearing Rect No.19 Killa No.2 min.(3-17) but later on changes took place and a private partition was effected between co-sharers and mutation No.4261 entered and sanctioned in the revenue record and on the basis of this mutation, defendant Gurdeep Singh *alias* Gurmeet Singh became owner. Rect No.19 Killa No.2 (8-0) and Harnaib Singh became owner of land measuring 6 kanal 0 marla Rect. no.19 Killa No.13/1 (4-0) and 8/3 (2-0). Harnaib Singh received this land in family settlement, although at present he has no share in Rect.No.19 Killa No.2 as he received land in Killa No.13/1 (4-0) of Rect. No.19 and he is bound to execute sale deed in favour of the plaintiff out of this khasra number. A civil suit is also pending to set aside the private partition and in this way the plaintiff has filed the present suit against both the defendants regarding killa No.2 Rect.19 and if finally the partition is accepted then in the alternative defendant Harnaib Singh is bound to execute sale deed out of his share as he agreed to sell 33/77 share out of 3 kanal 17 marlas and Gurdeep Singh *alias* Gurmeet Singh agreed to sell 44/77 share which comes 2 kanal 4

marlas and in this way total land becomes 3 kanal 17 marlas. Further, the plaintiffs were always ready and willing to perform their part of the contract and willing to do the needful, as the plaintiffs remained present in the office of Sub-Registrar, Muktsar, but the defendants did not turn up for execution of sale deed thereby compelling them to institute the suit.

The defendants contested the suit by filing their written statement, wherein they took preliminary objections regarding its maintainability, etc. and on merits, it was pleaded that they never executed any agreement on 04.05.2009 and no partition has been effected between the parties. Further, it was pleaded that the plaintiffs being their relatives settled their dispute by deciding that they would change khasra girdawaris of their land by mutual consent as per their share. It was admitted by the defendants that the plaintiffs are co-owners in possession of suit land. Further, while denying the other averments in the plaint, it was prayed that the suit be dismissed.

By filing replication, plaintiffs denied the stand of the defendants in the written statement and reiterated their claim made in the plaint.

Thereafter, the trial Court framed six issues and after considering the evidence adduced by the parties, decreed the suit vide judgment and decree dated 06.01.2014. Being dissatisfied with the judgment and decree dated 06.01.2014, defendants preferred an appeal and the same was dismissed vide impugned judgment and decree dated 04.09.2017. Hence this regular second appeal.

Learned counsel for the appellants has argued that the parties are closely related and since the partition claimed by the plaintiffs at the time of execution of the agreement to sell on 04.05.2009, stands set aside by way of a

decree dated 04.10.2014, passed by District Judge, Sri Muktsar Sahib, therefore, the impugned judgment and decree dated 06.01.2014 passed by trial Court and further upheld by appellate Court on 04.09.2017 cannot be executed. During the course of hearing, learned counsel has produced the decree dated 04.10.2014 and does not dispute this fact that the said decree was passed by the first appellate Court much after the date of judgment and decree dated 06.01.2014 passed by the trial Court in the present suit relating to the agreement to sell dated 04.05.2009. Learned counsel has further argued that the agreement to sell dated 04.05.2009 was got executed by plaintiffs by pressurizing the defendants on the pretext of partition. He submits that the impugned judgment and decree deserves to be set aside.

Learned counsel for the caveator/respondent has argued that the decree already stands executed in favour of the plaintiffs and the argument based upon the judgment and decree dated 04.10.2014 relating to partition between the parties shall have no bearing as far as the merits of the present case are concerned. He submits that the agreement to sell and the payments received by the defendants were duly proved, therefore, the Courts have rightly decided the issues in favour of the plaintiffs.

After hearing the learned counsel for the parties and considering the material on record, this Court finds that the agreement to sell dated 04.05.2009 (Ex.P-1) is signed by the parties and the defendants have not disputed their signatures on the said instrument, though they have pleaded that the same were obtained by the plaintiffs by exercising pressure/misrepresentation, however, in this regard, no evidence was adduced. The plaintiffs have adduced sufficient documentary material to establish valid

execution of agreement to sell, as well the readiness and willingness to perform their part of the contract. Further, agreement was scribed upon the stamp papers, which were purchased by defendant Harnaib Singh and this fact has been proved by witness-Gurbhajan Singh.

The argument based upon the judgment and decree dated 04.10.2014 relating to the partition was not raised before the first appellate Court and has been raised before this Court only at the time of arguments. No such ground relating to the said judgment and decree is pleaded in the grounds of appeal. Admittedly, regular second appeal bearing No.57-2015 arising from the said judgment and decree dated 04.10.2014 is also pending adjudication.

No other argument has been raised.

Thus, this Court has no hesitation in holding that the findings recorded by the trial Court on material issues are based upon proper appreciation of evidence, therefore, the first appellate Court has rightly upheld the judgment and decree dated 06.01.2014.

Resultantly, finding no merit in this appeal, much less involvement of any substantial question of law, the same is dismissed.

(MANOJ BAJAJ)
JUDGE

14.09.2022
vanita

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