

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

-.-

**RSA-1473-1990 (O&M)
Reserved on : 30.01.2023
Date of Decision: 08.02.2023**

Sheo Karan and Another

...Appellants

Versus

Sheo Dhan (Died) through LRs

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjay Mittal, Advocate for the appellants.

Mr. Vivek Singla, Advocate for the respondent.

ALKA SARIN, J.

The present regular second appeal has been preferred by the plaintiffs-appellants against the concurrent findings returned by both the Courts below dismissing their suit for specific performance.

The plaintiff-appellants filed a suit for specific performance of agreement to sell 06.10.1976 praying that they be declared as owner in possession of half-share in the Well in dispute comprised in Khasra No.17/10 and the defendant-respondent be directed to execute an exchange deed in favour of the plaintiffs-appellants as per the terms and conditions mentioned in the agreement to sell dated 06.10.1976 with regard to the property detailed in the

said agreement Ex.P/1. It was pleaded in the plaint that the defendant-respondent had constructed a Well in land comprised in Khasra No.17/10 in the area of Village Kharana after obtaining a loan amount of Rs.8000/- from the Primary Land Mortgage Bank, Mohindergarh. An agreement was executed between the parties on 06.10.1976 that the plaintiff-appellants shall be co-sharers in the Well in dispute qua $\frac{1}{2}$ share on payment of $\frac{1}{2}$ share of the total loan amount. 10 marlas comprised in Khasra No.17/10 was also given to the plaintiffs-appellants. It was agreed that the plaintiff-appellants shall pay an amount of Rs.2665.80 to the defendant-respondent on or before 26.10.1976 and the remaining loan amount shall be paid in installments in equal shares. It was also agreed that an exchange deed shall be executed and 9 kanals 2 marlas out of total land measuring 20 kanals and 17 marlas being $\frac{1}{4}$ th share in the land comprised in Khasra No.48/13, 30 (4-6), 7/1 shall be given to the defendant-respondent and in lieu of that 7 kanals land from Khasra No.17/10, 2 kanals land towards South out of the 5 Kanals and 16 marlas land comprising Khasra No.17/1/1 will be given to the plaintiff-appellants. It was agreed that the exchange deed shall be executed after the loan amount of the Primary Land Mortgage Bank is paid. It was further the case that the plaintiff-appellants had paid Rs.6470.15 paisa qua their $\frac{1}{2}$ share regarding the payment of the total loan amount and had also installed electric meter and pumping set on the Well in the dispute. The total loan of the Bank was paid upto May 1980 and the cause of action arose 07 days prior to the filing of the present suit. The defendant-respondent contested the suit and filed his written statement wherein the stand taken was that the agreement was forged and without consideration and further that even if the execution of the agreement to sell was proved, the plaintiff-appellants had committed default regarding the performance of the contract.

On the basis of the pleadings of the parties, following issues were framed :

1. Whether the plaintiffs and the defendant had mutually executed the agreement of exchange and sale dated 06.10.1976 with respect to the suit land as alleged ? OPP
2. If issue No.1 proved, what were the terms and conditions of the agreement of exchange and sale ? OPP
3. Whether the plaintiffs have no locus-standi to file the present suit ? OPD
4. Whether the suit is not maintainable in the present form ? OPD
5. Whether the suit is barred by limitation ? OPD
6. Whether the agreement in question is forged, fictitious, based on mis-representation, fraud and is without consideration, as alleged ? OPD
7. Relief.

On issue Nos.1 and 6 the Trial Court held that no amount was paid at the time of execution of the agreement. However, the agreement Ex.P/1 was held to be validly executed and Issue No.6 was accordingly decided against the defendant-respondent. On Issue No.2, the Trial Court held that the payments as alleged by the plaintiff-appellants were found to be not proved and accordingly the issue was decided against the plaintiff-appellants. On Issue No.3 it was held by the Trial Court that since the performance of the contract could not be made due to the fault of the plaintiff-appellants hence the plaintiff-appellants had no locus-standi to file the present suit. On issue No.4, the suit was held maintainable. Issue No.5 was also decided in favour of the plaintiff-appellant.

As a result, vide impugned judgment and decree dated 28.02.1986 the suit of the plaintiff-appellants was dismissed as it was held that the plaintiff-appellants failed to fulfill the terms and conditions of agreement Ex.P/1. Aggrieved by the said judgment and decree, an appeal was preferred which also met the same fate vide impugned judgment and decree dated 29.03.1990 passed by the Lower Appellate Court. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellants has contended that both the Courts below have not appreciated the evidence on the record and that it was duly proved that the amounts were paid as agreed in the agreement Ex.P/1 and that the suit of the plaintiff-appellants deserved to be decreed.

Heard

In the present appeal, both the Courts below have concurrently found that the amounts as alleged to have been paid by the plaintiff-appellant were not proved. Certain amounts were stated to have been paid to one Jaswant Singh, who is not a signatory to the agreement Ex.P/1, and therefore the payment cannot be attributed as payment under the agreement Ex.P/1. Some amounts were also not paid on the agreed date. Learned counsel for the plaintiff-appellants has not been able to convince this Court or show any evidence on the record to prove that the amounts stood duly paid by the plaintiff-appellants as envisaged in the agreement Ex.P/1.

Pure findings of fact have been returned by both the Courts below warranting no interference by this Court in second appeal. No question of law, much less substantial question of law, arises in the present appeal. In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. The present appeal, which is wholly devoid of

any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

08.02.2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO