

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

**RSA-979-2022 (O&M)
Date of Decision : 21.08.2023**

Hardev Singh

..... Appellant

Versus

Surender Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Munish Kamboj, Advocate
for the appellant.

VIKRAM AGGARWAL, J (ORAL)

1. This is plaintiff's second appeal against the decisions of the Courts below vide which the suit filed by the appellant-plaintiff for possession of agricultural land measuring 5 kanals 6 marlas in village Kanganpur, District Sirsa (fully described in the plaint) (hereinafter referred to as the disputed land), was dismissed by the Civil Judge (Senior Division), Sirsa vide judgment and decree dated 31.07.2017 and the appeal preferred against the said judgment was also dismissed by the Addl. District Judge, Sirsa vide judgment and decree dated 10.01.2022.

2. The case set up by the appellant-plaintiff was that an agreement to sell had been executed by one Balkar Singh and the present respondent-defendant Surender Singh on 24.12.2009 in favour of the appellant-plaintiff vide which they had agreed to sell land measuring 10 kanals 12 marlas (being half share out of total land measuring 21 kanals 4 marlas). The total sale consideration was fixed as Rs.17,50,000/-. A sum

of Rs.2,50,000/- was paid as earnest money. The balance amount was to be paid at the time of execution of the sale deed. The actual physical possession of the disputed land was given to the appellant-plaintiff and the ownership rights had to be given to him at the time of execution of the sale deed. The execution of the agreement to sell was witnessed by Jeewan Singh, Baldev Singh and Tara Singh. It had been agreed that in case the appellant-plaintiff failed to perform his part of the contract, the earnest money would be forfeited. It had further been agreed that in case of a similar failure on the part of the vendors, the appellant-plaintiff would be entitled to get the agreement enforced through the Court of law.

On 04.06.2010 i.e. the date fixed for the execution of the sale deed, the appellant-plaintiff appeared before the Sub Registrar but the vendors did not appear. A suit for possession by way of specific performance of the agreement to sell was filed by the appellant-plaintiff. Thereafter, a compromise was arrived at between the parties. Under the circumstances, the suit was withdrawn by the appellant-plaintiff. The respondent-defendant also gave a statement before the Appellate Court where his appeal against the grant of ad-interim injunction was pending, regarding withdrawing the appeal on account of a compromise having been arrived at between the parties and the said appeal was stated to be withdrawn.

Balkar Singh complied with the compromise and executed a sale deed with regard to his share of land measuring 5 kanals 6 marlas on 27.07.2012 whereas the present respondent-defendant did not get the sale deed executed despite having assured orally that he would get the sale deed executed. Under the circumstances, the suit was filed.

3. The suit was resisted by the respondent-defendant. In the written statement, preliminary objections regarding maintainability, cause of action, concealment of true and material facts etc. were raised. It was averred that the agreement to sell dated 24.12.2009 was a manipulated document. The present respondent-defendant was the owner in possession of the disputed land. He had never entered into an agreement to sell and had never received any earnest money. He had filed a complaint against the present appellant-plaintiff and the alleged witnesses with regard to the manipulated and forged agreement in which the appellant-plaintiff and some other persons had been summoned to face trial. It was also averred that no compromise had been arrived at and the suit had been withdrawn by the appellant-plaintiff with his own will. No statement was given by the respondent-defendant in Court. The execution of the sale deed by Balkar Singh was also denied.

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

1. Whether the plaintiff is entitled for possession by way of specific performance of contract for sale agreement dated 24.12.2009 executed by the defendnat in favour of plaintiff (as detailed described in the head note of the plaint) as prayed ? OPP
2. Whether the suit of the plaintiff is not maintainable ? OPD
3. Whether the plaintiff has no cause of action to file the present suit ? OPD

4. Whether the suit is bad for want of non-joinder or mis-joinder of necessary party as prayed for ? OPD
5. Whether the plaintiff is estopped to file the present suit by his own act and conduct as prayed for ? OPD
6. Relief.

5. Parties led their respective evidence.

6. The trial Court dismissed the suit filed by the appellant-plaintiff. Reference was made to the statement of the appellant-plaintiff Ex.P6 suffered in the previous suit on 27.07.2012 wherein it had been stated that the appellant-plaintiff had arrived at a compromise with the respondent-defendant and that he did not wish to pursue the suit. The said suit was dismissed as having been withdrawn. The statement of Balkar Singh was also recorded as Ex.P7 and statement of the present respondent-defendant was also recorded in which he stated that he had no objection if the compromise Mark C-1 was implemented. It was held that no permission was sought by the appellant-plaintiff to file a fresh suit nor any condition was imposed that in case the respondent-defendant failed to comply with the terms of the agreement, he would have the right to initiate proceedings against him. The trial Court went on to hold that even the compromise Mark-C1 (Ex.P-10) had not been signed by the respondent-defendant and it only mentioned that a compromise had been arrived at between the plaintiff and Balkar Singh. Infact it was mentioned in the said compromise Mark C-1 that they would withdraw qua the rights of defendant No.2 Balkar Singh and the name of the present respondent-defendant was not mentioned. In appeal also, a similar view was taken.

7. I have heard learned counsel for the appellant.
8. Since the judgments themselves are clear on facts and law, the record was not summoned.
9. Learned counsel for the appellant has submitted that both the Courts below have gravely erred in rejecting his claim. It has been submitted that the suit had been withdrawn by the appellant-plaintiff on a compromise having been arrived at between the parties and the very fact that Balkar Singh had executed a sale deed with regard to his share would go on to show that the compromise had duly been arrived at between the parties. Learned counsel has contended that it does not appeal to logic that the appellant-plaintiff would arrive at a compromise only with one of the defendants in that suit and not with both the defendants. Learned counsel has contended that the present respondent-defendant took undue advantage of the technicality of the suit having been withdrawn by the appellant-plaintiff without seeking any permission to file a fresh suit in case of violation of the compromise.
10. Before advertng to the merits of the appeal, it would be essential to observe that that the requirement of framing of a substantial question of law in second appeal in terms of the provisions of Section 100 of the Code of Civil Procedure and as had been laid down in various pronouncements by the Hon'ble Apex Court including **Hero Vinoth (minor) versus Seshammal 2006 (5) SCC 545**, was subsequently held to be not there by the Hon'ble Apex Court. It was held that in the States of Punjab and Haryana, it is the provisions of the Punjab Courts Act, 1918 which would be applicable and, therefore, Section 100 CPC would not hold the field and, accordingly, there would be no requirement of framing

substantial question of law in second appeal. With regard to the States of Punjab and Haryana, it was so held in Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) and Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92 respectively.

11. Reverting to the present case, I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit. Admittedly, the appellant-plaintiff had initially filed a suit for specific performance of agreement to sell dated 24.12.2009 alleged to have been executed by one Balkar Singh and the present respondent-defendant with regard to land measuring 10 kanals 12 marlas. During the pendency of the said suit, a compromise is stated to have been arrived at between the parties. The compromise was produced on record as Mark C-1 (Ex.P-10). The same was signed only by Balkar Singh and not by the present respondent-defendant. Infact, the present-respondent-defendant had withdrawn the appeal preferred by him against the order of the trial Court vide which ad-interim injunction had been granted. The statement withdrawing the appeal is on record as Ex.P1 in which it had only been stated that the respondent-defendant was withdrawing the appeal on account of a compromise having been arrived at between the parties. Further, the compromise dated 25.07.2012 (Ex.P10) showed that only Balkar Singh was ready to get the sale deed executed. No doubt, respondent-defendant Surender Singh stated that he had no objection if the compromise was implemented, however, the same did not bind him as he was not a party to the said compromise and had not appended his signatures thereon. As per the Courts below, the said compromise had signatures of only the present appellant-plaintiff and Balkar Singh. Infact,

the respondent-defendant also took a stand that he had never executed an agreement to sell and to prove this, he relied upon a report Ex.D1 and evidence of DW1, who was the retired Assistant Director (Documents) of Forensic Science Laboratory, Madhuban. Still further, the respondent-defendant had filed a complaint against the appellant-plaintiff and the alleged witnesses to the agreement to sell and the accused had been summoned to face trial.

12. Not only this, while withdrawing the suit on 27.07.2012, the appellant-plaintiff did not take any permission from the Court to file a civil suit on the same cause of action in case of failure to adhere to the terms and conditions of the compromise. It has to be borne in mind that the earlier suit was for possession by way of specific performance of the agreement to sell and the present suit was also a suit for possession by way of specific performance of the same agreement to sell. Without any permission having been sought at the time of withdrawal of the previous suit, the current suit would also not be maintainable as was rightly held by the Courts below.

13. In the considered opinion of this Court, both the Courts below considered the matter on both law and facts and rightly dismissed the claim of the appellant-plaintiff. I find no reason to interfere in the well reasoned judgments passed by both the Courts below.

Accordingly, finding no merit in the present appeal, the same is hereby dismissed.

(VIKRAM AGGARWAL)
JUDGE

21.08.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No