

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

RSA-1022-2023 (O&M)
Date of decision: 12.12.2023

Suresh Bala and another

...Appellants

Versus

Suresh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Saurabh Dalal, Advocate for the appellants.

Mr. Mayank Gupta, Advocate for the caveator-respondent.

KARAMJIT SINGH, J. (ORAL)

1. The present appeal has been filed by the appellants-defendants against the judgments dated 08.08.2018 passed by the Court of Addl. Civil Judge (Sr.Divn.), Jind and 10.01.2023 passed by the Court of Additional District Judge, Jind whereby concurrent findings have been recorded against the appellants and the suit filed by respondent Suresh Kumar for specific performance and declaration stands decreed while the suit filed by the appellants for declaration to the effect that agreement to sell dated 03.02.2016 alleged to be executed by Jagdish Singh, husband of appellant No.1 with regard to suit property is false and fictitious document and not binding on the appellants, was dismissed.

2. The brief facts of the case of respondent are that Suresh Kumar filed suit for specific performance of agreement to sell dated 03.02.2016

which was executed by Jagdish Singh in favour of respondent with regard to suit property. That said Jagdish Singh died after the execution of aforesaid agreement to sell and appellants are widow and daughter of said Jagdish Singh. The total sale consideration was Rs.13,50,000/- and Jagdish Singh received Rs.9,60,000/- as earnest money from respondent at the time of execution of said agreement to sell.

3. The civil suit filed by respondent Suresh was contested by appellants and they filed written statement.

4. Appellants filed separate civil suit challenging the validity of aforesaid agreement to sell dated 03.02.2016. The said civil suit was contested by respondent who filed written statement.

5. Both the civil suits were consolidated by the learned trial Court and civil suit titled Suresh Kumar Vs. Suresh Bala & Ors. was ordered to be treated as lead case. On the pleadings of parties, following issues were framed:-

1. Whether the plaintiff is entitled to a decree for specific performance of agreement to sell dated 03.02.2016 subject matter of the suit along with consequential relief of permanent injunction restraining the defendants from alienating the suit property as prayed for? OPP
2. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
3. Whether the plaintiff has not come to the Court with clean hands? OPD
4. Whether the plaintiff is estopped from filing the present suit by his on act and conduct? OPD
5. Whether the plaintiff has concealed proof and material facts from the Court? OPD
6. Relief.

6. In order to prove his case, respondent Suresh Kumar stepped into witness box as PW1 and also examined PW2 Ram Mehar, attesting witness of agreement to sell dated 03.02.2016 (Ex.P1), PW3 Naresh Kumar,

Registry Clerk who deposed regarding registration of agreement to sell (Ex.P1), PW4 Rajesh Namberdar, who identified his signatures on Ex.P14 being its witness. PW5 Fateh Singh also deposed regarding agreement to sell Ex.P1 being its scribe. He also produced his register containing the relevant entry with regard to execution of aforesaid agreement to sell. PW6 Suresh Kumar, Stamp Vendor proved the stamp papers on which the agreement to sell in question was scribed. He also proved relevant entry of his register regarding sale of stamp papers in question. Respondent Suresh Kumar also tendered documents Ex.P2 to Ex.P20, copy of death certificate of Jagdish Singh (Mark PA).

7. On the other hand, counsel for the appellants examined DW1 Suresh Bala, DW2 Surender, DW3 Subhash and also tendered documents Ex.DW2/B, Mark-A and Mark-C.

8. After hearing both the counsel for parties, the learned trial Court came to the conclusion that agreement to sell dated 03.02.2016 is a genuine document which was executed by Jagdish Singh in favour of respondent for total sale consideration of Rs.13,50,000/- out of which Rs.9,60,000/- were paid as earnest money by the vendee to the vendor and further concluded that respondent was always ready and willing to perform his part of the contract and consequently decreed the suit for specific performance of agreement to sell dated 03.02.2016.

9. While the suit filed by the appellants was dismissed as they failed to prove their defence.

10. The appeals filed by appellants against the judgment and decree dated 08.08.2018 were also dismissed by common judgment dated

10.01.2023 passed by the Court of Additional District Judge, Jind.

11. Being aggrieved, the present appeal has been filed by the appellants.

12. I have heard the counsel for the parties.

13. The counsel appearing on behalf of the appellants *inter alia* submits that agreement to sell Ex.P-1 was never executed by Jagdish husband of appellant No.1 and father of appellant No.2, during his life time and the same is not bearing the signatures of Jagdish as is evident from testimony of DW-1 to DW-3. It is further contended that agreement to sell Ex.P-1 is a fake and factitious document and deserves to set aside. So prayer is made that the present appeal be allowed and the suit filed by respondent for specific performance of contract based on Ex.P-1 should be dismissed while the suit filed by the appellants seeking setting aside of agreement to sell Ex.P-1 be decreed.

14. On the other hand, the counsel appearing on behalf of respondent/caveator, while supporting the impugned judgments *inter alia* contends that the execution of agreement to sell Ex.P-1 dated 03.02.2016 has been fully proved on the record by its attesting witness namely PW-2 Ram Mehar. It is further contended that document Ex.P-1 is a registered document and its registration is fully proved by PW-3 registration clerk. That stamp vendor Suresh Kumar while appearing in witness box as PW-6 proved the concerned the stamp paper purchased by Jagdish for the purpose of execution of agreement to sell Ex.P-1. It is further submitted that at the time of execution of the said agreement Jagdish received earnest money worth Rs.9,60,000/- out of total sale consideration of Rs.13,50,000/ and the

target date fixed for execution of sale deed was 08.06.2016 and respondent appeared in the office of Sub Registrar concerned along with balance sale consideration on that date. It is further contended that there is nothing on the record to prove that agreement to sell Ex.P-1 is a fake document. The counsel for the respondent has further contended that the decree in question has already been fully satisfied. That trial Court rightly decreed the suit filed by the respondent and dismissed the suit filed by appellants. It is further contended that there is no illegality even in the judgment dated 10.01.2023 passed by the Court of Additional District Judge, Jind.

15. I have considered the submissions made by counsel for the parties.

16. From the perusal of the evidence led by the respondent in affirmative to prove its case, the execution of agreement to sell Ex.P-1 stands fully proved. PW-2 Ram Mehar proved its execution being one of its attesting witness. Undoubtedly, agreement to sell Ex.P-1 is a registered document and the factum with regard to its registration has been proved by PW-3 Naresh Kumar Registry Clerk in the office Sub Registrar concerned. PW-5 Fateh Singh, Document Writer also deposed regarding Ex.P-1 which was typed by him at the instance of Jagdish. The document writer also produced register containing relevant entry Ex.PW-5/A regarding execution of said agreement to sell. The said agreement to sell was executed on stamp papers which were purchased from stamp vendor Suresh Kumar who appeared in the witness box as PW-6 and he proved relevant entry of his register Ex.PW-6/B. Even, respondent Suresh Kumar while appearing in the witness box deposed with regard to execution of agreement to sell Ex.P-1

which bears his signatures. He further deposed that Jagdish died on 27.02.2016 and that respondent remained present in the office of Sub Registrar on 08.06.2016 along with balance sale consideration for the purpose of execution and registration of sale deed on the basis of agreement to sell dated 03.02.2016 and he also produced copy of registered legal notice Ex.P-2 dated 19.05.2016 issued by him to the appellants showing readiness and willingness to perform his part of the contract.

17. To rebut the aforesaid evidence, Suresh Bala appeared in the witness box as DW-1 and simply stated that her husband Jagdish never disclosed about the alleged agreement to sell to her. DW-2 Surender deposed that the suit land was owned and possessed by Jagdish who has since died. DW-3 Subhash deposed that he took suit land on batai from Jagdish in the year 2015 and is still cultivating the said land.

18. The plea of the appellants is that agreement to sell dated 03.02.2016 Ex.P-1 is not bearing signatures of Jagdish and that the said document is fake and fictitious. However, in order to establish their defence appellants failed to examine any hand writing expert in order to show that Ex.P-1 is not bearing signatures of Jagdish. It also appears that no complaint was ever lodged by Jagdish or appellants being his legal heirs with regard to the alleged forgery committed by the respondent. Further, no reliable evidence has been led by the appellants to prove that the agreement to sell Ex.P-1 is not a genuine document.

19. In the light of the above discussion, I do not find any illegality and infirmity in the judgments and decrees passed by both the Courts below.

No question of law, muchless any substantial question of law arises in the

present case. Both the Courts below have recorded concurrent findings of facts warranting no interference by this Court.

20. Consequently, the present appeal is hereby dismissed being devoid of merits. Pending applications, if any, also stand disposed of.

12.12.2023
Yogesh

(KARAMJIT SINGH)
JUDGE

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