

132

2023:PHHC:115115

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1400-2023 (O&M)

Date of decision: 01.09.2023

BACHITTAR SINGH

.....APPELLANT

VERSUS

SUKHDEV SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Paras Jagga, Advocate
for the appellant.

HARKESH MANUJA, J. (ORAL)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 16.03.2018 and 03.01.2023 passed by the Courts below; whereby a suit for possession by way of specific performance, filed at the instance of respondent / plaintiff has been decreed.

2. Briefly stating, based on an agreement to sell dated 08.11.2010, the respondent / plaintiff filed a suit for possession by way of specific performance against appellant-defendant. It was pleaded therein that the total sale consideration was Rs. 8,00,000/-; out of which Rs.2 lacs was paid as earnest money; 08.11.2011 being the target date, though later extended upto 10.05.2012. However, the appellant/ defendant failed to get the sale deed executed thereby compelling the respondent/ plaintiff to file the suit for possession by way of specific performance.

3. Upon notice, the appellant/ defendant appeared and disputed the factum of execution of agreement to sell by pleading it to be forged and fabricated document.

4. The trial Court vide judgment and decree dated 16.03.2018 decreed

the suit in favour of respondent/ plaintiff. Aggrieved thereof, the appellant/ defendant filed first appeal, however, the same was dismissed vide judgment and decree dated 03.01.2023 passed by the Court of Additional District Judge, Patiala.

5. Impugning the aforementioned judgments and decrees, learned counsel for the appellant/ defendant submits that the execution of the agreement to sell was never proved on record and the same was a forged and fabricated document as the signatures of the appellant were obtained on blank papers. He also submits that 04 kanals of land was sold by the appellant-defendant alongwith his brother in favour of one Gurvinder Singh vide sale deed dated 11.05.2015, thus, the specific performance for the remaining land under the agreement to sell could not have been ordered.

6. I have heard learned counsel for the appellant/ plaintiff and gone through the paper-book. I am unable to find substance in the submissions made on behalf of the appellant/ plaintiff.

7. In the present case, once a specific plea was raised on behalf of the appellant/ defendant that his signatures were obtained on blank papers and the agreement to sell was created and executed by performing a forgery, the burden always was upon him to prove the same having admitted his signatures over the document in question. The appellant/ defendant failed to establish on record the factum of alleged forgery as pleaded in the written statement as no substantive evidence was lead in this regard. On the other hand, the execution of the agreement to sell Ex.P1 has been duly proved on record by the respondent/ plaintiff having produced PW2 & PW4 being the marginal witnesses. Besides this, mere sale of 4 kanals of property by the appellant/ defendant alongwith his brother in favour of one Gurvinder Singh out of 10 Kanals 15 marlas of land

subject matter of agreement in question cannot be treated as a bar while decreeing the suit for possession by way of specific performance qua the remaining land i.e. 6 kanals 15 marlas in favour of respondent/ plaintiff especially in terms of Section 12 of the Specific Relief Act, 1963.

8. In view of the discussion made hereinabove, thus finding no illegality or perversity with the concurrent findings recorded in the judgments and decrees passed by the Courts, below, this appeal is dismissed.

01.09.2023
manoj

(HARKESH MANUJA)
JUDGE

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