

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

326

RSA No.4437 of 2004 (O&M)
Date of Decision: 15.09.2023

Balwinder Singh

... Appellant

Versus

Balwant Kaur and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by: Mr. Naresh Prabhakar, Advocate,
for the appellant.

Mr. Tarun, Advocate,
for Mr. G.S. Gandhi, Advocate,
for respondents No.1 and 3 to 10.

Respondent No.2 proceeded ex parte
vide order dated 18.02.2015.

MANISHA BATRA, J.

1. The present appeal has been preferred by the plaintiff against the judgment and decree dated 06.08.2004 passed by the then learned Additional District Judge, Kapurthala in Civil Appeal No.401 of 2003 titled as *Karma and others v. Balwinder Singh* whereby the judgment and decree dated 24.11.2003 passed by the Court of then learned Additional Civil Judge (Senior Division), Kapurthala in Civil Suit No.118 of 27.07.1998 was set aside and the appeal was allowed.

2. For the sake of convenience, the parties shall be referred to as their original nomenclature as given in the suit.

3. The factual matrix of the case is that the plaintiff-Balwinder Singh filed the aforementioned suit on the averments that defendant

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Karma (now dead and represented by legal representatives) was owner of the agricultural land mentioned in detail in the head note of the plaint (hereinafter to be mentioned as the “disputed land”). He entered into an agreement to sell the disputed land to the plaintiff on 09.10.1991. As per the terms and conditions of the written agreement executed between them, the sale consideration amount was fixed @Rs.17000/-. The sale deed was to be executed on 15.07.1994. Earnest money of Rs.6000/- was paid and remaining sale consideration was to be paid by the plaintiff on or before the date of registration of the sale deed. The date of registration was subsequently extended to 27.07.1995. It was alleged that the plaintiff had always remained ready and willing to perform his part of the contract and to get the sale deed executed on payment of the remaining sale consideration amount. On 27.07.1995, he had even remained present in Tehsil premises, Kapurthala for performing his part of the contract but the defendant did not turn up to execute the sale deed. The plaintiff then served a notice on 22/27.05.1998 calling upon the defendant to execute the sale deed till 12.06.1998 but the defendant failed to do so. The plaintiff, therefore, prayed for passing a decree for possession by way of specific performance of agreement to sell dated 09.10.1991.

4. Notice of the suit was given to the defendant who appeared in response to the same and filed written statement raising preliminary objections as to the suit being time barred, the disputed land being Nazool land and the alienation of the same being not allowed and further that the agreement in question was infact executed by way of a loan transaction. On merits, it was asserted that he had never agreed to sell the disputed land to the plaintiff and had never executed any written agreement in his favour in

this regard. It was pleaded that infact he had taken a loan of Rs.4000/- from the plaintiff about seven years back and as a security for return of the said loan amount, the plaintiff had procured this thumb impressions on certain blank papers and blank entries of one register which was later on converted into the impugned agreement to sell. It was denied that he had agreed to sell the disputed land for a sale consideration of Rs.17,000/- or had received any earnest money. It was asserted that the disputed land was nazool land which had been allotted to him by the Punjab Government, he being a member of the Scheduled Caste and the same could not be alienated to any third person. Accordingly, dismissal of the suit had been prayed for.

5. The plaintiff filed replication controverting the pleas as taken in the written statement and re-asserting those of the plaint. On the pleadings of the parties, the following issues were settled by the learned trial Court vide order dated 01.09.1998:-

1. Whether the defendant entered into an agreement of sale dated 9.10.1991 and received a sum of Rs.6000/- out of the sale consideration? OPP
2. Whether the plaintiff had been ready and willing and is still ready and willing to perform his part of agreement? OPP
3. If issues no.1 & 2 are proved, whether the plaintiff is entitled to decree for specific performance or in the alternative for recovery? OPP
4. Whether the suit is within time? OPP
5. Whether the suit is not maintainable as the property in question is a Nazool Land and cannot be disposed of by the allottee, if so its effect? OPP.

6. Relief.

6. It will not be out of place to mention here that during the pendency of the suit, the defendant had expired. His legal representatives were brought on record.

7. The parties adduced evidence in support of their respective assertions. The plaintiff examined as many as three witnesses namely, PW-1 Lokesh Kumar Arora, Document Writer, PW-3 Jatinder Kumar, Deed Writer, PW-4 Jit Singh and himself stepped into the witness box as PW-2.

8. On the other hand, the legal representatives of the deceased defendant examined two witnesses. Mohan Singh, son of the defendant has appeared as DW-1 and examined DW-2 Dalip Singh.

9. On appraising the evidence produced on record and after hearing learned counsel for both the parties, the learned trial Court vide judgment and decree dated 24.11.2003 decreed the suit of the plaintiff with costs and directed the legal representatives of the deceased defendant to execute sale deed in respect of the disputed land in favour of the plaintiff on receiving remaining sale consideration amount of Rs.11,000/- within one month and also to deliver the possession of the disputed land to him.

10. Feeling aggrieved, the defendant preferred an appeal against the judgment passed by learned trial Court which was allowed as mentioned above.

11. Dissatisfied with the order passed by the learned First Appellate Court, the instant appeal has been filed by the plaintiff-appellant.

12. It is submitted in the grounds of appeal and it was argued by learned counsel for the appellant that the impugned judgment and decree dated 06.08.2004 as passed by learned First Appellate Court was liable to be

set aside, the same being not sustainable in the eyes of law. The learned First Appellate Court did not apply its judicious mind. The findings as given by it were based on conjectures and surmises. A perverse order had been passed. There was overwhelming evidence on record to prove that the defendant-Karma had executed an agreement to sell the disputed land in his favour on receipt of earnest money of Rs.6000/- had delivered actual physical vacant possession of the disputed land to him but had not honoured the agreement. The learned trial Court had rightly held that the plaintiff was entitled to a decree for specific performance of the agreement in question. However, the learned First Appellate Court had committed a grave error in declining the relief so granted to the appellant. With these broad arguments, it was submitted that the impugned judgment and decree of learned First Appellate Court were liable to be reversed, the appeal deserved to be accepted and the judgment and decree passed by learned trial Court deserved to be restored.

13. Per contra, it was argued by learned counsel for the respondents that the findings as given by learned First Appellate Court were well reasoned and no ground had been made out to interfere with the same. Hence, it was argued by him that the appeal was devoid of any merit and was liable to be dismissed.

14. On giving due deliberations to the contentions as raised by both the sides and on a careful scrutiny of the evidence available on record, it emerges that there are concurrent findings of fact by the Courts below that the defendant-Karma had executed agreement Ex.P-1 in favour of the plaintiff-Balwinder Singh thereby agreeing to execute sale deed in respect of the disputed land in his favour. These concurrent findings of fact had not

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been challenged by the present respondents who are legal representatives of the deceased defendant Sh. Karma. It is also not in dispute between the parties that the disputed land was owned by defendant-Karma and the same had been allotted to him by the Collector, District Kapurthala for and on behalf of Government of Punjab vide sale certificate Ex.DA. It was also not in dispute between the parties and it is also revealed from a perusal of Ex.DA that the disputed land was Nazool land which had been transferred in favour of the defendant-Karma subject to the condition that he will not alienate the same permanently or temporarily except with the express permission in writing of the State Government, for a period of ten years from the date of issue of the sale certificate which was issued on 16.04.1980 and further subject to the condition that its alienation thereafter shall be restricted only to the members of the Scheduled Caste community. The plaintiff produced on record Ex.P-4 to show that he was a member of Scheduled Caste community and this fact has not been controverted by the respondents also. Before the learned trial Court, a plea had been taken that the defendant Karma could not alienate the disputed land in view of the notification Ex.DX. Rejecting the said plea, the learned trial Court had held that the defendant could alienate the same to the plaintiff who was a member of the Scheduled Caste and that the agreement to sell Ex.P1 was not against the public policy. These findings were reversed by learned First Appellate Court by observing that after publication of notification Ex.DX on 18.03.1991, the defendant Karma could not alienate the disputed land and, therefore, the contract which was executed between the plaintiff and defendant by way of Ex.P1 was unenforceable being against public policy and being in contravention with the provisions of law. It is this finding

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which has been challenged by the appellant-plaintiff by way of this appeal.

15. A perusal of the contents of the notification Ex.DX which is shown to be published on 18.03.1991 reveals that the Government of Punjab had made amendment in the rules pertaining to transfer of Nazool lands i.e. Nazool Lands (Transfer) Rules, 1956 and the words in Rule 7 (1) and (2) of these rules to the effect that “the allottee shall not alienate the land permanently or temporarily except with the express permission in writing of the State Government for a period of ten years from the date of issue of sale certificate” were substituted with the following words:-

“shall not alienate or sell or mortgage the land, permanently or temporarily to anyone and the land shall go down only in inheritance.”

In view of this amendment, it is clear that w.e.f. 18.03.1991, the transferee of Nazool land had become disentitled from alienating, selling or mortgaging such land in any manner whatsoever. The agreement between the parties qua sale of the disputed land had been executed on 09.10.1991 i.e. about seven months after the notification Ex.DX had come into existence. Both the parties to the agreement were presumed to be having knowledge about coming into force of this notification and the learned First Appellate Court rightly observed that the plea to the effect that the appellant had no knowledge about this notification could not be accepted as ignorance of law was not an excuse. The agreement Ex.P1 which was executed after coming into being of the notification Ex.PX, was certainly in contravention of the mandate of this notification and being against public policy too, the same could certainly not be held to be executable. The learned First Appellate Court after taking all these factors into consideration, therefore,

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had rightly held that the appellant-plaintiff could not seek specific performance of agreement Ex.P1 and in the opinion of this Court had rightly declined the relief as claimed by the appellant-plaintiff for passing a decree for specific possession by way of specific performance of agreement and had also rightly declined to pass any order in refund of earnest money as advance by the plaintiff to the defendant. For the foregoing reasons, this Court finds that no substantial question of law has arisen in this case which warrants interference of this Court and deserves to be answered in favour of the appellant-plaintiff. Finding no merits, the appeal is accordingly dismissed.

16. Miscellaneous application(s), if any, also stand disposed of.

15.09.2023
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(MANISHA BATRA)
JUDGE

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