

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.122

Case No. : RSA-4289-2019 (O&M)

Date of Decision : October 10, 2023

Rai Singh

.... Appellant

vs.

Ram Karan and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. G.C. Shahpuri, Advocate
for the appellant.

* * *

GURBIR SINGH, J. :

1. This Regular Second Appeal has been filed against the concurrent finding of the Courts below.

2. Vide judgment and decree dated 16.05.2019, learned Additional District Judge, Yamuna Nagar at Jagadhri dismissed the appeal filed against the judgment and decree dated 18.03.2016 passed by learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri, whereby suit filed by the appellant/plaintiff (hereinafter called as – the plaintiff) has been dismissed.

3. The plaintiff filed a suit for symbolic possession by way of specific performance of agreement to sell dated 18.03.2010, in respect of the land as mentioned in the plaint, with consequential relief of permanent injunction restraining respondent no.2 (hereinafter referred to as – defendant no.2) from alienating the suit property and from changing the existing nature of the suit property and for declaration that sale deed No.6576 dated 05.09.2011 in favour of defendant no.2 is illegal, null and void and result of fraud and that the subsequent mutations in favour of defendant no.2, on the

basis of the said sale deed, are also null and void and not binding upon the rights of the plaintiff. A further declaration was also sought that any other sale deed and alienation of the suit property in any manner whatsoever be also considered as null and void and nonest.

4. The case of plaintiff in brief is that respondent no.1 (hereinafter referred to as – defendant no.1), being owner of the suit property, entered into an agreement to sell dated 18.03.2010 with the plaintiff, for selling the suit property for a price of Rs.9,00,000/-, out of which Rs.8,50,000/- was paid as earnest money and possession of the suit land was handed over to the plaintiff at the time of agreement to sell. The sale deed was to be executed and registered in favour of the plaintiff on or before 09.04.2012 on payment of balance sale consideration of Rs.50,000/-. The plaintiff was always ready and willing to get the sale deed executed and registered but defendant no.1 instead sold the suit property to defendant no.2 vide sale deed dated 05.09.2011.

5. Defendants contested the suit and filed separate written statement.

6. Case of defendant no.1 is that he neither agreed to sell his land to the plaintiff nor entered into any agreement to sell dated 18.03.2010 with the plaintiff and did not receive any earnest money from him. He also denied his signatures on the said agreement by submitting that if his signatures were found on the alleged agreement to sell, the same be considered as a result of fraud.

7. Defendant no.2 has pleaded that she is a bona fide purchaser of the suit property on the basis of sale deed dated 05.09.2011 and she is owner

in possession of the same and being owner, she has every right to deal with it in any manner.

8. The learned Trial Court held that the plaintiff failed to prove his possession over the suit property. Neither there is any khasra girdawari in his name nor evidence to show his possession. In the cross-examination, plaintiff stated that he did not know what was the khasra number of the suit property. The agreement to sell was also not proved. The plaintiff was not held to be entitled for relief of specific performance. The relief regarding setting aside sale deed dated 05.09.2011 was also held to be time barred. In all these eventualities, the suit of the plaintiff was dismissed by learned Trial Court and appeal filed by him before the Lower Appellate Court was also dismissed.

9. Learned counsel for the plaintiff has argued that attesting witness Rajbir Singh was examined as PW-1, who proved the execution of agreement in question. Plaintiff himself stepped into the witness box as PW-6 and stated he remained present in the office of Sub Registrar on the stipulated date and waited for defendant no.1 in order to get the sale deed registered. Notary Public namely Davinder Negi was also examined by the plaintiff as PW-5, who proved the execution of affidavit Ex.P-4 in this regard. It is further argued that application for amendment was moved in the year 2016. The said application was never challenged by the defendants. The amendment of plaint relates to the year 2016 i.e. two years after the filing of the suit, which was allowed by learned Trial Court. So, denying relief of declaration as time barred is also erroneous. Moreover, the police report dated 17.06.2016 also proved possession of the plaintiff over the suit

property. In addition to that, the plaintiff has already paid more than 90% of the amount of consideration. So, there can be no question of plaintiff being not ready and willing to perform his part of the agreement.

10. I have heard the submissions of learned counsel for the plaintiff/appellant and perused the record.

11. The agreement to sell in question was executed on 18.03.2010. Date for execution and registration of sale deed was stipulated as 09.04.2012. Plaintiff himself admitted before the Court below that he came to know about the execution of sale deed dated 05.09.2011 of the suit property by defendant no.1 in favour of defendant no.2 after 10-12 days, but in spite of that, chose to file the suit only on 04.12.2013 i.e. after more than two years thereof. Moreover, since the said sale deed was a registered document, notice of the same is presumed to be in the knowledge of the public. Thus, plaintiff got knowledge of execution of sale deed in the month of April 2012 itself.

12. In the year 2016, the plaintiff filed application for amendment thereby impleading defendant no.2 and also sought declaration that the sale deed dated 05.09.2011 is a result of fraud. The suit for declaration can only be filed within three years. So, the learned Courts below has rightly held that part of the suit, whereby declaration has been sought for setting aside the sale deed dated 05.09.2011, is barred by limitation. The plaintiff has failed to prove his possession over the suit property. Neither any document has been proved nor there is any entry in khasra girdawari regarding his possession over the suit property and no reliance can be placed on the police report showing that the plaintiff is in possession of the suit property. The

plaintiff even failed to tell the dimensions of the suit property and its exact location. A party is required to prove by way of cogent evidence in the Civil Suit the fact of possession. Any proceedings conducted by the police to ascertain possession is beyond the scope of powers of police. Police cannot conduct trial to prove the fact which is to be proved in the civil case by leading evidence in accordance with the Indian Evidence Act. The suit property is situated in Tehsil Jagadhri, whereas stamp papers are shown to have been purchased from District Kurukshetra. Since there was gap of two years between the execution of agreement to sell and stipulated date for registration of sale deed, though major portion of the consideration amount had already been paid as earnest money, the learned Courts below have rightly held that the agreement to sell seems to be suspicious and fraudulent document.

13. In view of the aforesaid, this Court is of the considered opinion that there is no misreading or misappreciation of evidence on record by the Courts below. The concurrent finding recorded by both the courts below is based on proper appreciation of evidence and does not suffer from any perversity or illegality. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is without any merit and is accordingly dismissed in limine.

14. Pending applications, if any, shall stand disposed of along with this judgment.

October 10, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes/No.

