

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

RSA-2345-2023(O&M)

Date of Decision: July 21, 2023

DILBAG SINGH AND ANR

.....Appellants

Versus

RANA SATPAL SINGH and Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Tarun Jhatta, Advocate for appellants.

HARKESH MANUJA, J. (ORAL)

1. By way of present appeal, challenge has been laid to judgments and decrees dated 29.02.2016 and 23.01.2023 passed by the Courts below; whereby suit for declaration claiming ownership over the property in question besides seeking permanent injunction, filed at the instance of appellants-plaintiffs has been dismissed.

2. Briefly stated, in the present case, the appellants-plaintiffs filed a suit for declaration claiming themselves to be owner in possession of suit property based on sale deed dated 02.05.2007 having purchased it from respondent/defendant No.2 against total sale consideration of Rs.10,16,000/-. It was pleaded that the sale deed dated 07.05.2007 executed by defendant No.2 in favour of defendant No.1 qua the suit land be declared illegal, null and void and respondent-defendants be restrained from interfering in the peaceful possession of appellants-plaintiffs.

3. On notice, defendant No.1 appeared and filed written statement while submitting that the sale deed dated 07.05.2007 executed in his favour by Gurmit Singh was based on a previous agreement to sell dated 19.03.2007. He further stated that defendant

RSA-2345-2023(O&M)**-2-**

No.2 who happened to be the father of appellants-plaintiffs, got the sale deed dated 07.05.2007 executed in their favour merely to defeat the rights of defendant No.1. It was also stated that the sale deed dated 02.05.2007 being wholly without consideration was thus having no effect on the rights of defendant No.1 over the property in question.

4. Learned Trial Court vide its judgment and decree dated 29.02.2016 dismissed the suit filed by the appellants-plaintiffs while holding that the sale deed dated 07.05.2007 executed by defendant No.2 in favour of defendant No.1 was a valid document, the same being based on prior agreement to sell dated 19.03.2007. Simultaneously, the plaintiffs were also non-suited on the ground of concealment of material fact regarding the agreement to sell dated 19.03.2007 as the execution of that agreement was never denied by their father defendant No.2.

5. Aggrieved thereof, the appellants-plaintiffs filed first appeal, however, the same was dismissed by First Appellate Court vide judgment and decree dated 23.01.2023.

6. By way of present appeal, the aforesaid judgments and decrees have been impugned by the appellants.

7. Learned counsel for the appellants submits that the Courts below went wrong while holding the sale deed dated 02.05.2007 executed by defendant No.2 in their favour to be a forged document whereas there were no such pleadings in written statement by defendant No.1. Learned counsel further submits that the Courts below also went wrong while holding the suit to be barred by limitation as in

the entire plaint, the appellants never impugned the sale deed dated 07.05.2007 executed in favour of defendant No.2. He also submits that issues No.5, 6 and 7 were adjudicated upon by the Courts below without reasoned findings. In support thereof, learned counsel relies upon judgments passed by Hon'ble the Supreme Court in "**Bachhaj Nahar Vs. Nilima Mandala and Anr. 2009(1) RCR (Civil) 855**" and "**State of Uttarakhand and Anr. Vs. Mandir Sri Laxman Sidh Maharaj 2017(4) RCR (Civil) 801**" as well as passed by this Court in "**Ved Parkash Vs. Surender Singh and Anr. 2009(3) RCR (Civil) 46**", "**Gurcharan Singh Vs. District/Chief Agricultural Officer, Jalandhar 1997(1) RCR (Civil) 1**" and "**Ajmer Singh (Dead) through LRs. Vs. Chanan Singh and Ors. 2005(1) RCR (Civil) 33**".

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

9. In the present appeal, a perusal of record shows that an agreement to sell dated 19.03.2007 was executed in favour of defendant No.1 by defendant No.2 regarding the suit property and the same was duly proved on record as Ex.D1. The execution of the aforementioned agreement was neither disputed or denied by defendant No.2 nor even he denied his signatures over the same. Moreover, the said agreement to sell was duly proved on record through marginal witnesses as well who appeared in support of pleadings set up by defendant No.1 in his written statement.

11. Once the prior agreement to sell dated 19.03.2007 was proved on record and no evidence to the contrary produced by the plaintiffs, defendant No.1 was having a prior right of enforcement of that agreement and the sale deed dated 02.05.2007 thus, executed by defendant No.2 in favour of appellants in its ignorance was rightly ignored over the sale deed dated 07.05.2007 executed by defendant No.2 in favour of defendant No.1. Vide prior agreement to sell dated 19.303.2007, defendant No.2 assigned his rights qua the suit property in favour of defendant No.1 and thus the plaintiffs who by virtue of sale deed dated 02.05.2007 merely stepped into the shoes of defendant No.2 could not have sought any better title and thus were governed by the rights of defendant No.1 under the prior agreement. My aforesaid view is also derived from the judgments passed by this Court in case of “**Gurmit Singh Vs. Inderjit Singh 2018(2) PLR-685**” as well as “**Smt. Madhu Sharma Vs. N.K Mair (2018(4) RCR-881**”. Relevant para from Gurmit Singh’s case (Supra) is reproduced hereunder for reference:-

“14. Any transaction carried out by the prospective vendor after execution of the agreement to sell would not defeat the rights of the prior agreement holder. In such circumstances, since the plaintiff is not a party to the aforesaid transaction, the plaintiff is not required to challenge the aforesaid sale deeds separately. The plaintiff has already pleaded that defendant No.2 as General Power of Attorney of defendant No.1, have executed two sale deeds in respect of the suit land in favour of defendant Nos.3 and 4 which is collusive and without consideration. It is admitted fact on the record that defendant Nos.3 to 5 are sons of the sister of Hardayal Singh. The sale deeds executed in favour of subsequent purchasers are found to be collusive. Hence, liable to be ignored. Sale deeds executed by the owner after entering into the agreement to sell are not required to be challenged while filing a suit for specific performance of the agreement. The plaintiff entitled to ignore the same and it is sufficient to plead and prove that such sale deeds do not affect his rights. Reliance in this regard can be made to AIR 2002 Bombay 279 titled

as Dilip Bastimal Jain v. Baban Bhanudas Kamble and 2007 (5) RCR (Civil) 298 titled as Rajinder Singh v. Sushil Kumar and others”

10. Equally important, the appellants did not even disclose the factum of agreement to sell dated 02.05.2007 in their plaint though they acknowledged its execution in their evidence, thus they did not approach the Court with clean hands and were rightly non-suited by the Courts below. As regards the plea raised by the appellants regarding the relief to be granted only as per the pleadings, the same is not made out from the facts and circumstances of the present case as they sought declaration qua ownership of property in question based on sale deed dated 02.05.2007 which was rightly ignored by the Courts below in the wake of prior agreement to sell dated 19.03.2007 in favour of defendant No.1 by defendant No.2 regarding the same property and the sale deed dated 07.05.2007 being based thereupon. Moreover, the judgments cited at bar are not applicable to the facts and circumstances of the present case and are clearly distinguishable as it were the appellants who were to stand on their own legs and prove their case and could not have been granted the benefit of deficiency in the pleadings of defendant-respondent No.1

12. Thus, finding no illegality or perversity in the judgments and decrees passed by Courts below, the present appeal being devoid of merits is dismissed.

21.07.2023
tejwinder

(HARKESH MANUJA)
JUDGE

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