

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

**RSA No.1790 of 2011 (O&M)
Date of Decision:06.01.2023**

Sube Singh (deceased)

.....Appellants

Vs.

Rishi Pal and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Keshav Pratap Singh, and
Mr. Namish Sodhi, Advocates for the appellant.

Mr. Pritam Saini and Mr. Dinesh Saini,
Advocates for respondent No.1.

DEEPAK GUPTA, J.

Defendant No.2 of the suit is in this appeal against the concurrent findings of the Court below. In order to avoid confusion, the parties shall be referred as per their status before the learned trial Court.

2. Plaintiff – Rishi Pal (now respondent No.1) filed suit [Civil Suit N: 254 of 2006] for possession by way of specific performance of agreement to sell dated 05.01.2004 in respect of suit land measuring 7 kanal 16 marlas situated in Village Urlana Kalan, Tehsil and District Panipat, detailed and described in head note of the plaint. It was pleaded that defendant No.1 Mukhtiar Singh (now respondent No.2) had agreed to sell the said land vide agreement dated 05.01.2004 for consideration of ₹2,50,000/-. An amount of ₹40,000/- was received by defendant No.1 as earnest money. Balance amount was to be paid on or before 15.06.2004, which was agreed to be the last date for execution and registration of the sale deed. However, on

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14.06.2004, defendant No.1 received ₹1,60,000/- more from the plaintiff towards balance sale consideration and executed a written note in the presence of witnesses on the back of the original agreement and with the mutual consent of the parties, last date for registration of sale deed was extended to 15.06.2006. The remaining terms and conditions of the agreement remained the same. It was pleaded further that the plaintiff has always been ready and willing to perform his part of contract but defendant No.1 avoided the same. Plaintiff went to the Office of Sub-Registrar, Madlauda on 15.06.2006 for getting the sale deed executed and registered in his favour on payment of the balance sale consideration but defendant No.1 did not turn up despite his wait for whole of the day. Plaintiff approached defendant No.1 but in vain. On inquiries, plaintiff came to know that defendant No.1 had fraudulently and illegally sold the suit land along with other land in favour of defendant No.2 – Sube Singh (now appellant) vide sale deed dated 16.03.2006, which is alleged by the plaintiff to be null and void.

With these averments, decree for specific performance of the agreement to sell dated 05.01.2004 was sought along with declaration that sale deed dated 16.03.2006 executed by defendant No.1 in favour of defendant No.2 is null and void being the result of fraud and collusion. Consequential relief of permanent injunction was also sought to restrain the defendant No.2 from alienating the suit land or creating any charge over the same.

3. Defendant No.1 in his written statement denied the execution of any agreement. According to him, he had taken loan of ₹40,000/- from the plaintiff and that a number of papers were got thumb marked from him by the plaintiff for the purpose of executing the receipt and those blank papers might have been used

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by the plaintiff for preparing the alleged agreement. Defendant No.1 also denied receipt of ₹1,60,000/- on 14.06.2004 for extension of any date for execution of the sale deed. However, defendant No.1 admitted to have executed sale deed dated 16.03.2006 in favour of defendant No.2. Defendant No.1 also submitted that amount of loan advanced to him by the plaintiff, was refunded to him after getting money from defendant No.2 vide receipt dated 10.03.2006 in the presence of one Hoshiar Singh. He (defendant No.1) repeatedly approached the plaintiff to return the writing got inscribed on the papers thumb marked by him in respect of loan of ₹40,000/- and that on 09.06.2006, plaintiff returned to him a writing on stamp papers, which later on was found to be an agreement to sell and receipt executed by him in favour of the plaintiff in respect of another land sold in the year 2005 in pursuance of an agreement to sell executed in 2003. Defendant No.1 alleged that taking undue advantage of the confidence reposed by him, plaintiff had taken benefit of his illiteracy and fabricated the alleged agreement to sell by converting the blank papers. With this stand, defendant No.1 prayed for dismissal of the suit.

4. Defendant No.2 – Sube Singh denied for want of knowledge any agreement to sell between plaintiff and defendant No.1. He claimed to be bonafide purchaser of the suit land for valuable consideration vide sale deed dated 16.03.2006 and prayed for dismissal of the suit.

5. Following issues were framed for adjudication by the learned trial Court:-

- “1. Whether the plaintiff is entitled to the specific performance of the agreement to sell of the suit property, dated 5.1.2004?OPP

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2. Whether the plaintiff is entitled to the possession of the suit property?OPP
 3. Whether the sale deed no.2267 dated 16.3.2006 is liable to be set aside?OPP
 4. Whether the plaintiff's suit is not maintainable?OPD\
 5. Relief.”
6. After taking evidence led by the parties in support of their respective stand, matter was heard by learned Additional Civil Judge (Senior Division), Panipat. Issues No.1 to 3 were taken up together for discussion and all of them were decided in favour of the plaintiff. Under Issue No.4, suit was held to be maintainable and so, the issue was decided against the defendants. Consequent to these findings, suit was decreed for possession of the suit land by way of specific performance of agreement to sell dated 05.01.2004 on payment of balance sale consideration. Sale deed dated 16.03.2006 executed by defendant No.1 in favour of defendant No.2 was held to be null and void and not binding upon the rights of the plaintiff to the extent of suit land. Defendant No.1 was directed to execute the sale deed in respect of the suit property in favour of a plaintiff within two months. Judgment dated 28.04.2010 to this effect was followed by decree of the even date.
7. Against the aforesaid judgment and decree, defendant No.2- Sube Singh filed the appeal but the same was dismissed by learned Additional District Judge, Panipat vide judgment dated 29.11.2010. However, modification was made to the effect that sale deed dated 16.03.2006 executed by defendant No.1 in favour of defendant No.2 was null and void only to the extent of suit land measuring 7 kanal 16 marlas; and that said sale deed would remain valid to the

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extent of the land, which was not subject matter of the present suit.

8. Aggrieved by the above said findings of the Courts below, defendant No.2 is in this second appeal. It is contended by learned counsel for the appellant-defendant No.2 that readiness and willingness on the part of plaintiff is not proved but learned Courts below fell in error in ignoring this aspect. The issue in respect of plea taken by defendant No.2 – appellant to the effect that he was bonafide purchaser of the suit land for valuable consideration was not framed at all. Learned Trial Court failed to appreciate the evidence to the effect that it was a loan transaction between plaintiff & defendant No.1 and that in fact, plaintiff had played fraud upon defendant No.1.

With these submissions, prayer is made for setting aside the impugned judgments and decrees passed by the Courts below and to dismiss the suit of the plaintiff- respondent No.1 by allowing this appeal.

9. Refuting the aforesaid contentions, it is argued by learned counsel for respondent No.1 - plaintiff that there is no reason to disturb the well-reasoned concurrent findings recorded by the Courts below. He further urged that appellant being the subsequent purchaser cannot be allowed to take the plea of readiness and willingness of the plaintiff. He prayed for dismissal of the appeal.

10. Replying to the aforesaid contention, it is submitted by learned counsel for the appellant that there is no bar for subsequent vendee to plead the readiness and willingness of the plaintiff, in a suit for specific performance. He relied upon ***B. Vijaya Bharathi Vs. P. Savitri and others, 2017 AIR (Supreme Court) 3934***, to support this contention.

11. I have considered the submissions of both the sides at depth and have

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appraised the entire record.

12. Ex.P1 is the agreement to sell dated 05.01.2004 between the plaintiff and defendant No.1. It is witnessed by two persons, namely, Rakesh son of Balmat, resident of Village Kurar, Tehsil Safidon, District Jind; and Krishan son of Kitab Singh, resident of Village Kalawati, District Jind. Execution of this agreement is proved not only by the plaintiff- Rishi Pal, who appeared in the witness box as PW1 but his statement find further support from the testimony of both the attesting witnesses Krishan son of Kitab Singh, and Rakesh son of Balmat, who appeared in the witness box as PW2 and PW3 respectively. They were subjected to lengthy cross-examination but nothing could be elicited so as to disbelieve them. Plaintiff- Rishi Pal also disclosed during cross-examination that defendant No.1 – Mukhtiar Singh is his neighbour for the last 15 years, as his fields are adjoining to him. He admits that prior to the present agreement to sell, another agreement dated 09.06.2003 was executed but stated that it was in respect of other land of defendant No.1 and after giving the money, defendant No.1 had taken away that agreement. Plaintiff specifically denied that he obtained thumb impression of defendant No.1 on a blank paper by stating that he had to sign as a witness. PW2 Krishan son of Kitab Singh was given suggestion with regard to agreement Ex.P1 and he admitted the same to be correct. By giving this suggestion, defendant No.1 also thus admits the execution of the agreement, which was prepared on the asking of Ram Sham, document writer as stated by PW2.

13. Defendant No.1 – Mukhtiar Singh in his testimony denied the execution of the agreement and reiterated his version that he had borrowed ₹

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40,000/- from the plaintiff on interest. According to him, he returned the said amount to the plaintiff on 10.03.2006. Although in the written statement, defendant No.1 had alleged that he had returned the said amount vide receipt dated 10.03.2006 in presence of one Hoshiar Singh but in his testimony as DW1, Mukhtiar Singh says that he returned the money in presence of one Sukhwinder Singh. No such Sukhwinder Singh has been examined by defendant. Nor any alleged receipt is produced showing the refund of alleged loan amount.

14. In view of the above said evidence, there is no reason to interfere in the concurrent findings of fact recorded by learned Courts below to the effect that defendant No.1 had executed the agreement to sell Ex.P1 in favour of the plaintiff to sell the suit land for consideration of ₹2,50,000/- and had received ₹40,000/- as earnest money. Evidence on record also establishes that an amount of ₹1,60,000/- more was paid by the plaintiff on 14.06.2004 vide receipt Ex.P2 written on the rear of Ex.P1. Said receipt is also proved not only by the statement of plaintiff Rishi Pal PW1 but also by attesting witness Rakesh son of Balmat.

15. Here itself, it may be noted that these findings of facts regarding execution of agreement Ex.P1 and receipt Ex.P2, have not been challenged by defendant No.1 – Mukhtiar Singh by filing any appeal. It is only defendant No.2, who filed the first appeal and then the present appeal and who had pleaded ignorance of any agreement between plaintiff and defendant No.1.

16. Coming to the plea of appellant- defendant No.2 that readiness and willingness of the plaintiff to perform his part of contract is not proved, it has no merit. As per Ex.P2, time for execution of the sale deed was extended to 15.06.2006. Plaintiff proved on record his affidavit Ex.P3, which reveals that he

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appeared in the Office of Sub-Registrar, Madlauda on that day, i.e. 15.06.2006 along with balance sale consideration for getting the sale deed executed & registered in his favour. As the testimony of plaintiff reveals that on inquiries, he came to know that prior to this target date, defendant No.1 had already sold the suit land in favour of defendant No.1 vide sale deed dated 16.03.2006 Ex.P4. Plaintiff filed the suit for specific performance on 07.08.2006 i.e. within two months from the last date i.e. 15.06.2006. This promptness on the part of the plaintiff to file the suit for specific performance clearly demonstrates his readiness and willingness to perform his part of contract.

17. Another contention raised by Ld. counsel for the appellant that issue regarding bonafide purchaser has not been framed, prejudicing his defence has also no merit. Para No.13 of the judgment of learned trial Court reveals that plea of defendant No.2 to the effect that he was bonafide purchaser for value without notice, was duly considered. It was also noticed that parties had led evidence on this core issue also and so, non-framing of the issues pales into insignificance. The said observations could not be refuted by learned counsel for the appellant-respondent No.2, who admits that evidence regarding bonafide purchaser was produced before the trial Court.

18. The contention of the appellant- defendant No.2 to be a bonafide purchaser has been rightly rejected by both the Courts below. Suit land is adjoining to the land of defendant No.1. As per the statement of defendant No.2 – Sube Singh – DW2, he had purchased the suit property through property dealer and that had also made inquiries from plaintiff – Rishi Pal before purchasing the suit land on 16.03.2006. It is not believable that he could not come to know of the

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prior agreement to sell in favour of the plaintiff. Defendant No.2 – appellant neither examined any other neighbour of the suit land nor the Halqa Patwari from whom he had allegedly made inquiries. He did not even name any such neighbour from whom he had made inquiries.

19. In view of the aforesaid reasons, there is no ground to interfere in the concurrent findings of the Courts below that appellant- defendant No.2 failed to prove to be the bonafide purchaser of the suit land.

20. In view of the aforesaid entire discussion, it is held that there is no merit in the appeal. As such, the same is hereby dismissed with costs.

January 6, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No