

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

RSA-4368-2011(O&M)

Reserved on:-11.4.2023

Date of Pronouncement:-17.4.2023

Sukhwinder Kaur and others

...Appellants

Versus

Bhura Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.D.D. Bansal, Advocate
for the appellants.

Mr.R.M.Sharma, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Bhura Singh had brought a suit against defendant Mohinder Singh, seeking possession of the suit property by way of specific performance of agreement to sell dated 30.4.2005 besides seeking permanent injunction restraining the defendant from alienating the suit property in any manner to some other person except the plaintiff.

As per the case of the plaintiff, defendant being owner in possession of the suit property had agreed to sell the same with the plaintiff on 30.4.2005 for a sum of Rs.1,55,000/- receiving Rs.1,00,000/- as earnest money and the stipulated date to execute the regular sale deed

was fixed as on or before 1.12.2005 on payment of remaining consideration amount. According to the plaintiff, he has always been ready and willing to perform his part of contract and on 1.12.2005, he along with Harnek Singh, Lumberdar remained present in the office of Sub Registrar, Dhuri to get the sale deed executed but the defendant did not turn up, therefore the transaction could not be completed; thereafter the plaintiff requested the defendant several times to come forward to execute the sale deed in favour of the plaintiff as per the terms and conditions of the agreement but he put off the matter, giving rise to a cause of action to the plaintiff to bring the suit in question.

2. On notice, the defendant appeared and filed written statement contesting the suit contending that the agreement set up by the plaintiff is result of fraud and misrepresentation as well as without consideration; the rate of the property in the village is more than Rs.1,85,000/- per bigha, therefore question of entering into agreement for selling the land for a sum of Rs.1,55,000/- did not arise. The defendant prayed for dismissal of the suit.

3. On the pleadings of the parties, following issues were framed:

1. Whether the defendant being owner in possession of the suit property entered into an agreement to sell the same with the plaintiff on 30.4.2005 for Rs.1,55,000/- and also received Rs.One lac as earnest money and sale deed was agreed to be executed on or before 1.12.05? OPP.
2. Whether the plaintiff is ready and willing to perform his part of the

agreement to sell? OPP.

3. Whether the plaintiff is entitled for the specific performance of the agreement to sell in question? OPP.
4. Whether the plaintiff is entitled for decree of possession of the property under agreement? OPP.
5. Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP.
6. Whether the agreement to sell is result of fraud and misrepresentation and the same is without consideration? OPD.
7. Whether the agreement being unregistered does not create any right, title or interest in favour of the plaintiff? OPD.
8. Whether the defendant has been dragged into unnecessary litigation? OPD.
9. Relief.

4. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

5. After hearing learned counsel for the parties, the trial Court of Civil Judge(Jr.Divn.), Dhuri vide judgment and decree dated 18.8.2009 decreed the suit of the plaintiff by giving issue-wise findings.

6. Feeling aggrieved by the said judgment and decree, the defendants being legal heirs of Mohinder Singh had filed an appeal in the Court of District Judge, Sangrur, which was assigned to Addl.District Sangrur, who vide judgment and decree dated 23.7.2011 dismissed the same.

7. Still feeling dissatisfied, the defendants have knocked at the

door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and the suit be dismissed.

8. Notice of the appeal was issued to the respondent/plaintiff, who has put in appearance through counsel.

9. I have heard learned counsel for the parties besides going through the record.

10. During the course of arguments learned counsel for the respondent has contended that the decree has since been implemented and sale deed in favour of respondent/plaintiff has been executed and he has come in possession of the suit property. Whereas learned counsel for the appellants states that for want of necessary instructions from his clients, he is unable to affirm or refute these contentions.

11. In this case both the Courts below taking into view the pleadings of the parties and considering the evidence adduced by them in light of the settled legal position have come to the conclusion that defendant Mohinder Singh had entered into a legal and valid agreement to sell dated 30.4.2005 Ex.P1 with the plaintiff for a sum of Rs.1,55,000/- receiving Rs.1,00,000/- as earnest money and stipulated date for execution of sale deed was fixed as on or before 1.12.2005. It has also been concluded that plaintiff has all alone been ready and willing to perform his part of contract but defendant dragged his feet in the matter and did not come forward to execute the sale deed in favour of the plaintiff in terms of the agreement to sell Ex.P1. Therefore, the suit of the plaintiff for possession of the suit property by way of specific performance of

agreement to sell dated 30.4.2005 on payment of balance consideration amount of Rs.55,000/- was decreed issuing a direction to defendant to execute the sale deed within a period of two months from the date of decree after receiving the remaining sale consideration. The plaintiff had been directed to deposit the remaining sale consideration within a period of two months. The defendant was further restrained from alienating the suit property to anybody else except the plaintiff. The version set up by the defendant that he had not entered into any agreement to sell with the plaintiff and the same was result of fraud, misrepresentation and without consideration was considered and rejected. The First Appellate Court by a detailed and minute analysis of the factual and legal position found itself in agreement with the trial Court.

12. I find that the findings returned by the Courts below are based upon proper appreciation of facts and evidence as well as correct interpretation of law. I do not see any reason to disagree with the Courts below and take a different view and further to interfere with the impugned judgments and decrees. Those judgments and decrees are upheld.

13. No substantial question of law or fact arises in this appeal.

14. The appeal stands dismissed with costs accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

17.4.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**