

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA-1086-2013 (O&M)
Date of Decision:17.8.2023

Mangal Dass

....Appellant

VERSUS

Dharam Pal Gupta

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Ajay Pal Singh, Advocate,
for the appellant.

Mr. Sumeet Mahajan, Sr. Advocate, with
Mr. Saksham Mahajan, Advocate and
Ms. Rabani Attri, Advocate,
for the respondent.

KARAMJIT SINGH, J.

1. The appellant/defendant has filed this appeal against the judgment and decree dated 10.1.2013 passed by the Court of Additional District Judge, Fast Track Court, Patiala whereby the appeal filed by the appellant/defendant against the judgment and decree passed by the Court of Additional Civil Judge, Senior Division, Nabha dated 26.2.2009 whereby the suit of the respondent/plaintiff for possession by way of specific performance of agreement to sell dated 18.1.2003 was decreed, has been dismissed.
2. Brief facts of the case of the respondent-plaintiff are that on 18.1.2003, the defendant/appellant agreed to sell the suit property with the plaintiff @ ₹285/- per square yard and received ₹1 lakh as earnest money and the sale deed was agreed to be executed and got registered in favour of the plaintiff by 31.3.2003 subject to payment of balance

sale consideration of ₹ 7.5 lakh by the plaintiff to the defendant at the time of registration of sale deed; that on the date fixed, the plaintiff remained present in the office of Sub Registrar, Nabha along with balance sale consideration and ancillary expenses for the purpose of execution and registration of the sale deed but the defendant did not turn up throughout the day and the plaintiff got marked his presence in the office of Sub-Registrar, Nabha by way of affidavit which was attested by the Executive Magistrate concerned. The plaintiff has always been ready and willing to perform his part of the contract. So, the suit was filed seeking possession by way of specific performance of agreement dated 18.1.2003 and in the alternative, for recovery of ₹8.5 lakh i.e. refund of earnest money worth ₹1 lakh and damages worth ₹7.5 lakh.

3. The suit was contested by the defendant who filed written statement taking preliminary objections that the plaintiff has not come to the Court with clean hands and that the Civil Court at Nabha is having no jurisdiction to entertain the suit. On merits, the execution of agreement to sell dated 18.1.2003 was specifically denied by the defendant and resultantly, other averments of the plaint were also denied being wrong. The defendant took specific plea that he owns only 2 Bigha – 19 Biswas of land and that the area of the suit land is 3 Bigha and the question of executing agreement to sell regarding the land measuring 3 Bigha – 0 Biswas by the defendant does not arise at all. Further, the site plan produced by the plaintiff is wrong and incorrect and that the same was fabricated by the plaintiff after execution of the alleged agreement to sell dated 18.1.2003.

4. The plaintiff filed replication controverting the pleadings made by the defendant in his written statement. On the pleadings of the parties, following issues were framed : -

1. Whether the defendant entered into an agreement to sell dated 18.1.2003 with plaintiff regarding suit land @ ₹285/- per square yard and received ₹1 lakh as earnest money? OPP
2. Whether the plaintiff remained ready and willing to perform his part of the contract/agreement? OPP
3. Whether the plaintiff is entitled for specific performance of the agreement? OPP
4. Whether the plaintiff is entitled for alternative relief for recovery of ₹8,50,000/- from the defendant? OPP
5. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
6. Whether this Court has no jurisdiction to try and decide this suit? OPD
7. Whether the plaintiff has no cause of action and locus standi to file the suit? OPD
8. Whether the suit property is not properly described in the plaint, if so its effect? OPD
9. Whether the defendant is not owner of 3 bighas of land in the revenue record, if so its effect? OPD
10. Relief.

5. Counsel for the plaintiff examined plaintiff-Dharam Pal Gupta as PW1 who proved agreement to sell dated 18.1.2003 (Ex.P1) and documents Ex.P2 and P3 and copies of the concerned sale deed Mark 'A' to Mark 'C'. PW2-Khem Chand proved execution of the agreement to sell Ex.P1 being its attesting witness. PW3 Pavittar Singh Stamp Vendor proved stamp papers of agreement to sell in question which

were purchased from him by the vendor. PW4 H.S.Anand, Advocate proved presence of the plaintiff before the office of Sub-Registrar on the date fixed for execution of the sale deed.

6. On the other hand, counsel for the defendant examined DW1-Mangal Dass (defendant) and closed his evidence.
7. After hearing counsel for both the parties and considering the evidence led on behalf of the parties, the learned trial Court held that the execution of agreement to sell dated 18.1.2003 Ex.P1 stands fully proved and the learned trial Court further concluded that the plaintiff is entitled to decree for specific performance of agreement to sell dated 18.1.2003 and consequently, the suit of the plaintiff was decreed for specific performance of agreement to sell dated 18.1.2003.
8. The appeal preferred by defendant-Mangal Dass was dismissed by the Court of Additional District Judge, Fast Track Court, Patiala vide judgment and decree dated 10.1.2013 whereby the findings of the learned trial Court with regard to all the issues were affirmed. Now being aggrieved by the aforesaid judgment and decree passed by the Courts below, the appellant-defendant had filed the present appeal.
9. I have heard counsel for the parties.
10. Counsel for the appellant, while assailing the findings returned by both the Courts below, has submitted that map Ex.P2 was later on prepared by the respondents and the same is not bearing signatures of the appellant and thus, cannot be taken into consideration. It has been further contended that the alleged map Ex.P2 was prepared on 1.2.2003 and it does not match with the area mentioned in the sale deeds Mark A to C which have been relied upon by the respondent in order to prove ownership of the appellant with regard to property in

question. He has further submitted that even otherwise, sale deeds Mark A to C are not proved on record as per provisions of law and as such, they could not be taken into consideration.

11. Counsel for the appellant has further submitted that agreement to sell Ex.P1 is a fake document and admittedly, the land in question was agricultural land but the same was not described by its *khasra*, *khatauni* numbers and rather was described by boundaries only. It has been further contended that the appellant owned only 2 Bighas – 09 Biswas of land at the spot and as such, there was no occasion for the appellant to enter into agreement to sell 3 Bigha – 0 Biswas of land with the respondent. Counsel for the appellant has further contended that the appellant was recorded as a co-sharer in the joint land and as such, having no right to sell any specific portion out of the same to any one else.
12. Counsel for the appellant, while referring to the impugned judgment passed by the learned trial Court, has submitted that while passing the said judgment, the learned trial Court placed reliance upon map Ex.P2 which was not prepared at the time of execution of the alleged agreement to sell Ex.P1 and even cannot be considered as document of title. It has been further contended that on the contrary, the first appellate Court disbelieved map Ex.P2 but still gave findings in favour of the respondent.
13. Counsel for the appellant has further contended that as per recitals made in Ex.P1, the entire deal was struck for ₹8.5 lakh, out of which, ₹1 lakh was paid as earnest money to the proposed vendor and the sale deed was agreed to be executed on 31.3.2003. Counsel for the

appellant has further argued that there is nothing on record to prove that any such earnest money was ever handed over to the proposed vendor by the respondent and further, the respondent failed to prove that he was ready with the balance sale consideration and other ancillary expenses on the date fixed for execution and registration of the sale deed; that thus in this case, the respondent failed to prove that he has been always ready and willing to perform his part of the alleged contract.

14. Counsel for the appellant has further argued that the identity of the property to be sold is not properly described in the agreement to sell Ex.P1, which is a vague document and even the dimensions of the said property are not given in the said agreement Ex.P1; that thus, the suit filed by the respondent seeking decree for specific performance of agreement to sell Ex.P1 deserves to be dismissed and consequently, both the impugned judgments are not sustainable and deserve to be set aside.
15. On the other hand, counsel for the respondent, while supporting the judgments passed by the Courts below, submits that execution of agreement to sell Ex.P1 stands fully proved on record and as per said agreement, the sale deed was to be executed on 31.3.2003 and on that day, the respondent marked his presence in the office of concerned Sub Registrar vide affidavit Annexure P-3 and at that time, the respondent was ready with the balance sale amount and other sundry expenses but the appellant did not turn up to execute the sale deed; that immediately thereafter, the suit for specific performance based on agreement Ex.P1 was filed on 5.4.2003. Counsel for the respondent has further argued that in his written statement, the appellant has

nowhere denied his ownership with regard to land measuring 2 Bighas – 19 Biswas and even did not deny his signatures on agreement to sell Ex.P1. It is further contended that there is no ambiguity in the agreement to sell Ex.P1 which is a very specific and boundaries of the suit property are recorded in the said agreement. Counsel for the respondent while referring to law laid down in **Subhaga and others v. Shobha and others** (2006) 5 SCC 466, has submitted that the property can be identified either by boundaries or by any other specific description.

16. Counsel for the respondent has further contended that it is evident that specific plot having proper boundaries measuring 3 Bighas – 0 Biswas was agreed to be sold by the appellant to the respondent; that, however, if the Court is of the view that the property sold is part of joint land, then also, there is no illegality in the impugned judgments as the suit has to be decreed to the extent of share of the appellant in the joint land and the agreement is binding on the proposed vendor. In support of his arguments, counsel for the respondent has placed reliance upon the decision of Hon'ble Supreme Court in **Kammana Sambamurthy (dead) by LRs v. Kalipatnapu Atchutamma (dead) and others** (2011) 11 SCC 153 wherein Hon'ble Apex Court has observed as follows : -

“22. Is Section 12 attracted in the facts and circumstances of the present case? We do not think so. The present case is not a case of the performance of a part of the contract but the whole of the contract insofar as the vendor is concerned since he had agreed to sell the property in its entirety but it later turned out that vendor had only half share in the property and his wife held the remaining half.

The agreement is binding on the vendor as it is without being fractured. As regards him, there is neither segregation or separation of contract nor creation of a new contract.”

17. Counsel for the appellant has also placed reliance upon **Kartar Singh v. Harjinder Singh and others** (1990) 3 SCC 517 wherein Hon'ble Apex Court held as under : -

“6. As regards the difficulty pointed out by the High Court, namely, that the decree of specific performance cannot be granted since the property will have to be partitioned, we are of the view that this is not a legal difficulty. Whenever a share in the property is sold the vendee has a right to apply for the partition of the property and get the share demarcated. We also do not see any difficulty in granting specific performance merely because the properties are scattered at different places. There is no law that the properties to be sold must be situated at one place. As regards the apportionment of consideration, since admittedly the appellant and respondent's sister each have half share in the properties, the consideration can easily be reduced by 50% which is what the First Appellate Court has rightly done.”

18. Counsel for the respondent has further contended that there is no illegality in the concurrent findings given by the Courts below with regard to all the issues. So, prayer is made that the appeal be dismissed being devoid of merits.

19. I have considered the submissions made by counsel for the parties.

20. In the instant case respondent has set up agreement to sell dated 18.1.2003 Ex.P1 stated to be executed by the appellant with regard to sale of his property with the respondent for consideration of ₹8.5 lakhs and the sale deed was agreed to be executed by 31.03.2003.

PW-2 Khem Chand Sharma proved the execution of agreement to sell

Ex.P1 being its attesting witness. There is nothing on record to show that the said marginal witness of agreement Ex.P1 was having any previous enmity with the appellant. From the perusal of agreement Ex.P1 it is evident that it was executed on two stamp papers of ₹50/- each having adhesive stamps of ₹200/- affixed on them. PW3 Pavitar Singh Stamp Vendor while appearing in the witness box proved that the said stamp papers were purchased by the appellant from him on 18.01.2003 and the same bears signatures of the appellant. PW3 also proved relevant entry of his register dated 18.01.2003 Ex.P4 regarding sale of stamp papers worth ₹300/- to the appellant and the said entry also bears signatures of the appellant. Even respondent while appearing in the witness box as PW1, specifically deposed regarding execution of agreement to sell Ex.P1 dated 18.1.2003 which bears his signatures and that of appellant and was attested by two marginal witnesses namely Khem Chand Sharma and Kuldeep Singh.

21. It is significant to note that the appellant, who is a Law graduate, has set up the case of total denial. It was pleaded that the agreement for sale is a fictitious document, which was never executed by the appellant. However, except the bald statement of appellant, who appeared in the witness-box as DW-1, there is no other corroborating evidence in support of the defence set up by the appellant. A heavy onus was upon the appellant to prove the pleas taken by him in his written statement having total denial to execution of any such agreement to sell. However, the appellant has miserably failed to discharge said onus by leading cogent and reliable evidence.
22. The another issue raised by the counsel for the appellant is that the

agreement to sell Ex.P1 is vague and is not specific with regard to identity of the property in question which is in shape of agricultural land and is bearing Khasra, Khewat and Khatauni numbers. As per the law laid down by the Hon'ble Supreme Court in *Subhaga's case (supra)* the identity of the site in dispute could also be established on the basis of its boundaries. Admittedly, in the instant case the property agreed to be sold is described by its boundaries in agreement to sell Ex.P1. The boundaries are very specifically described in the agreement Ex.P1 and there is no ambiguity with regard to the same. The scaled site plan Ex.P2 dated 01.02.2003 which was drawn by Jitender Shah Singh, Draftsman, Nabha is not bearing the signatures of the appellant and was not prepared at the time of execution of agreement, Ex.P1, was rightly discarded by the 1st Appellate Court while passing impugned judgment dated 10.01.2013. However, even in the absence of any such site plan the identity of the property in question stands fully established on the basis of the boundaries by which it has been described in the agreement to sell Ex.P1, itself, despite the fact that it's Khasra, Khewat and Khatauni numbers and dimensions are not mentioned in the agreement Ex.P1.

23. Another issue raised by the counsel for the appellant is that there was no occasion for the appellant to enter into an agreement to sell land measuring 3B-0B with respondent, as the appellant is owner of only 2B-9B of land at the spot. From the perusal of Ex.P1 it is evident that as per recitals of agreement, the proposed vendor agreed to sell approximately 3 Bighas of land described by its boundaries to the proposed vendee. In his written statement, appellant has impliedly admitted that he owned 2B-19B of land at the spot in the village. The

said area of land comes out to be approximately 3 Bighas. It being so it is immaterial if the respondent failed to prove sale deeds mark A to mark C with regard to ownership of the appellant pertaining to suit land, as per the provisions of Evidence Act. In the given circumstances, the learned trial Court as well as the 1st Appellate Court rightly observed that there is no dispute with regard to identity and boundaries of the suit property.

24. From the perusal of agreement to sell Ex.P1 it is evident that at the time of its execution, earnest money worth of ₹1 lakh was paid by the respondent to the appellant and the balance sale consideration worth ₹7.5 lakhs was to be paid to the appellant by the respondent at the time of execution of sale deed and the last date fixed for the same was 31.03.2003. The respondent while appearing in the witness box as PW1 has deposed that on 31.03.2003 he appeared before the Sub-Registrar concerned along with balance sale consideration and ancillary expenses for the purpose of execution and registration of the sale deed and got marked his presence and to this effect he executed affidavit Ex.P3 which was duly 'attested as identified' by the concerned Magistrate, Nabha on the same day i.e. 31.03.2003 and at that time the respondent was identified by HS Anand Advocate. The said Advocate corroborated the statement of respondent, while appearing in the witness box as PW4 and he proved the concerned affidavit Ex.P3/Ex.P4/1, which bears his signatures as an identifier. It is also evident that the appellant did not turn up on 31.03.2003 to execute the sale deed in favour of the respondent on the basis of agreement to sell Ex.P1. Admittedly, the suit for specific performance

of agreement Ex.P1 was filed by the respondent against the appellant on 7.4.2003. The filing of suit promptly itself was a manifestation of the readiness and willingness of respondent to perform his part of contract. Thus, there is enough evidence to prove that the respondent has been always ready and willing to perform his part of the contract.

25. In the light of the ratio laid down in **Kartar Singh’s** case (supra), the respondent cannot be non-suited just on the ground that the suit property is part of joint property, which has not been partitioned so far.
26. In view of the discussion made here-in-above, I do not find any illegality, infirmity or perversity so as to interfere in the findings recorded by the Courts below (except for the findings given by the learned trial Court with regard to site plan Ex.P2), which are purely factual in nature and based on proper evaluation of evidence available on record. No question of law much less any substantial question of law arises for determination in the present appeal warranting interference by this Court.
27. Accordingly the present appeal is dismissed, being devoid of any merit.

(**KARAMJIT SINGH**)
JUDGE

August 17, 2023
Paritosh Kumar/Puneet Chawla/Gaurav Sorot

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