

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

RSA-113-2013(O&M)

Date of decision:-10.1.2023

Narinder Singh and others

...Appellants

Versus

Surjit Singh and others

...Respondents

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

Present: None for the appellants.

Mr.Anil Chawla, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Surjit Singh son of Swaran Singh had brought a suit against defendants Narinder Singh, Ajit Singh, Balwinder Singh sons of Gurdial Singh, Kashmir Singh, Raghbir Singh sons of Gopal Singh and Ajaib Kaur daughter of Gopal Singh, seeking possession to the extent of 1/18 share by specific performance of agreement to sell dated 18.3.1955 executed by Gurdial Singh, father of defendants No.1 to 3 and Gopal Singh, father of defendants No.4 to 6 in favour of Swaran Singh,

father of the plaintiff out of the land measuring 25 kanals 17 marlas situated at village Gehri, Tehsil and District Amritsar etc.

2. Notice of the suit was given to the defendants. Defendants No.1 to 3 put in appearance and contested the suit taking various legal objections including the suit being barred by limitation; suit being not maintainable; no cause of action having arisen in favour of the plaintiffs against defendants; the suit being bad for mis-joinder and non-joinder of necessary parties. On merits, such defendants denied that Gurdial Singh father of defendants had no sufficient means to pay the auction money at the time of auction or that he had taken Rs.240/- from Swaran Singh, father of the plaintiff executing an agreement to sell dated 18.3.1955 in favour of father of the plaintiff in respect of the land purchased in auction, rather the agreement dated 18.3.1955 set up by the plaintiff was labelled as a forged, fictitious and fabricated document created in connivance with scribe and the attesting witness, therefore not binding upon the rights of the answering defendants. Refuting the remaining assertions, such defendants prayed for dismissal of the suit.

3. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. *Whether agreement to sell dated 18.3.1955 was entered into between the parties? OPP*
2. *Whether plaintiff has been and is ready and willing to perform his part of contract? OPP.*
4. *Whether plaintiff is entitled to joint possession of suit property by way of specific performance of agreement to sell dated 18.3.1955? OPP.*
5. *Whether the suit is hopelessly barred by limitation? OPD.*
6. *Whether the suit is not legally maintainable? OPD.*
7. *Whether the plaintiff has no cause of action to file present suit? OPD.*
8. *Whether the suit is bad for misjoinder and non-joinder of necessary parties? OPD.*
9. *Relief.*

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

During the course of evidence the plaintiff had examined Varinder Singh, Clerk as PW1 and the plaintiff got his own statement recorded as PW2 and thereafter closed the evidence.

In rebuttal the defendants No.1 to 3 examined Ajit Singh as DW1 and thereafter closed the evidence after tendering certain

documents.

6. After hearing the learned counsel for the parties, the trial Court of Civil Judge (Jr.Divn.), Amritsar vide judgment and decree dated 28.1.2009 decreed the suit of the plaintiff with costs.

7. Feeling aggrieved by the said judgment and decree, the defendants No.1 to 3 had filed an appeal in the Court of District Judge, Amritsar, which was assigned to learned Additional District Judge, Amritsar, who vide judgment and decree dated 31.8.2012 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

8. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendants No.1 to 3 filed the present regular second appeal before this Court, notice of which was issued to respondent No.1 only, who had put in appearance through counsel.

9. Subsequently, the counsel for the appellants has not appeared in the Court. Keeping in view the fact that the appeal is of the year 2013 and counsel for the appellants has not been appearing for the last several dates of hearing, I proceed to decide the appeal after hearing learned counsel for respondent No.1 and going through the record.

10. As per the case of the plaintiff, one Malkiat Singh son of Ishar Singh was the owner of the land to the extent of 1/6 share measuring 25 kanals 17 marlas. He was having property in village

Dhire Kot, Tehsil and District Amritsar also. Malkiat Singh had taken a loan from Industrial Department but failed to return the same, as such his share in the property situated in two villages was auctioned by the Court and it was purchased by Gurdial Singh, father of defendants No.1 to 3 and Gopal Singh, father of defendants No.4 to 6. However, Sh.Gurdial Singh and Sh.Gopal Singh did not have sufficient funds to pay auction money of Rs.720/-. They got Rs.240/- from Swaran Singh, father of the plaintiff and executed an agreement to sell dated 18.3.1955 in favour of Swaran Singh, father of the plaintiff to the extent of 1/3 share of the land purchased in auction. Subsequently, Swaran Singh requested Gurdial Singh and Gopal Singh to get the mutation sanctioned in their favour and to execute the sale deed but they did not do so. Therefore, after death of Gurdial Singh and Gopal Singh, the plaintiff had filed suit against their progeny, the defendants. Though defendants No.1 to 3 had resisted the claim of the plaintiff offering denial to the assertions in the plaint labelling agreement to sell dated 18.3.1955 as a forged and fabricated document but that defence version was not found to be worthy of acceptance by the trial Court as well as First Appellate Court. The plaintiffs have been successful in proving their case by leading sufficient cogent and convincing oral as well as documentary evidence, whereas it is not so as regards the case of the defendants.

11. With such concurrent findings having been recorded by

the Courts below, which are based upon proper appraisal of evidence and correct interpretation of law, finding the plaintiff to be entitled to specific performance of agreement to sell and his claim being not barred by time, I do not find the appeal to be having any substantial of law or showing any reason for interference with the judgments and decrees passed by the Courts below. There is no illegality or infirmity therein. Those are upheld and the appeal is found to be without merit and is dismissed accordingly.

10.1.2023

Brij

(H.S.MADAAN)
JUDGE**Whether reasoned/speaking: Yes/No****Whether reportable : Yes/No**