

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

RSA-4431-2013 (O&M)

Reserved on: 07.02.2023

Date of pronouncement: 16.02.2023

Mukand Singh

...Appellant

Versus

Gurnam Singh and another

...Respondents

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

Present: Ms. Dhivya, Advocate for the appellant.

Mr. P.S. Dhaliwal, Advocate for the respondents.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiffs Gurnam Singh, aged about 80 years and his son Sukhdev Singh, aged about 26 years, both residents of Sandhu Patti, Barnala had brought a suit against defendant Mukand Singh on the averments that the plaintiffs had entered into an agreement with the defendant to purchase land measuring 9K-11M for Rs.4,10,000/- on 11.12.2004 and had paid a sum of Rs.50,000/- as earnest money. The sale deed was agreed to be executed on 30.04.2005. Although, the plaintiffs had been ready and willing to get the sale deed executed and on 22.02.2005, when the defendant demanded amount from the plaintiffs to get the sale deed executed, then plaintiffs gave a sum of Rs.1,91,000/, the remaining

consideration amount and Rs.14,500/- for purchase of stamp paper. Accordingly, the sale deed was got typed from Hardial Singh, Deed Writer and it was witnessed by Mohinder Singh, Numberdar and Baldev Singh. The document was then presented before Sub Registrar, Barnala, however, at that very time, an application was moved by one Harmander Singh son of Boota Singh as power of attorney of Baldev Singh, raising an objection that a civil suit was pending in respect of the suit property in which alienation had been stayed, as such, Sub Registrar, Barnala refused to register the sale deed. Thereafter, the defendant kept assuring the plaintiffs that civil suit would be decided in his favour and he would get the sale deed registered but subsequently, it came to the notice of the plaintiffs, that the said suit was dismissed on 11.05.2017. Then the plaintiffs demanded the amount back but defendant refused to do so, giving rise to a cause of action to the plaintiffs to bring the suit in question.

2. On notice, the defendant appeared and offered a contest by filing a written statement, raising various legal objections, contending that the suit was not maintainable; the plaintiffs had not approached the Court with clean hands; that sale deed was got executed by the plaintiffs of his own. As a matter of fact, when plaintiffs asked the defendant to get the sale deed executed, then the defendant demanded the remaining amount from the plaintiffs but they stated that they would hand over the same at home but the defendant found it to be

false excuse, as such the plaintiffs got annoyed and stated that they had got it incorporated in the document that defendant had received the entire amount. Then a dispute had arisen between the parties in which one Jagan nath intervened but the plaintiffs left the spot taking the deed and played fraud with the defendant in not presenting the document before Sub Registrar. Denying the remaining allegations, the defendant prayed for dismissal of the suit.

3. The plaintiffs filed replication, controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether defendant entered into an agreement to sell the land on 11.12.2004 with the plaintiffs at the rate of Rs.4,10,000/- per acre? OPP.
2. Whether the plaintiffs are entitled for recovery of suit amount as prayed for? OPP.
3. Whether the plaintiffs are entitled for interest? If so at what rate? OPP.
4. Whether suit of the plaintiffs is not maintainable? OPD.
5. Whether plaintiffs have not come to the Court with clean hands? OPD.
6. Whether plaintiffs have no locus standi or cause of action to file present suit? OPD.
7. Whether defendant is entitled for special cost? OPD.
8. Relief

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

6. After hearing arguments, the trial Court of Civil Judge (Jr.

Divn.) Barnala decided issues No.1 to 3 in favour of the plaintiffs and against the defendant. As a collective effect of the findings on the issues, vide judgment dated 16.04.2011, the suit of the plaintiffs was decreed with costs for a sum of Rs.2,55,000/- with interest @ 9% p.a., from the date of execution of agreement to sell in question dated 11.12.2004 till date of decree with future interest @ 6% p.a., from the date of passing of decree till realization.

7. Feeling aggrieved, the defendant had preferred an appeal before District Judge, Barnala, which was assigned to Addl. District Judge, Barnala, who vide judgment and decree dated 03.02.2012 dismissed the same.

8. Still feeling dissatisfied, the defendant has approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the plaintiff/respondents who have put in appearance through counsel.

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

10. In this case, the defendant does not dispute his having entered into an agreement to sell with the plaintiffs on 11.12.2004, receiving Rs.50,00/- as earnest money and with final date for execution of the sale deed being fixed as 30.04.2005. Although, he does not admit that he had received further sum of Rs.1,91,000/- from the plaintiffs, however, the plaintiffs have proved the same by bringing enough cogent and convincing evidence in that regard. It has to be

taken into consideration that the sale deed was got typed, however, when it was presented to the Sub Registrar, Sub Registrar had refused to register the same since an application had been filed by one Harmander Singh stating that the property intended to be transferred was subject matter of litigation and the civil Court had granted a stay order in that regard. In the recital of the sale deed, the passing of the total consideration amount from the plaintiffs to the defendant is mentioned. The sale deed having been signed by both the parties including the defendant, now it is not open to the defendant to go against the recital in the sale deed, that the entire consideration amount had been paid. Furthermore, the fact remains that the sale deed could not be got registered by the defendant with Sub Registrar, Barnala. It comes out that since the sale transaction could not be completed and the plaintiffs were not at fault for non-completion of the transaction, rather the reason was the property in question being involved in a litigation where defendant was the party, the defendant ought to have disclosed the litigation to the plaintiffs and it comes out that he did not do so.

11. Learned Addl. District Judge, Barnala in para No.22 of the judgment passed by him has noticed the argument of learned counsel for the defendant/appellant that plaintiffs should have filed a suit for specific performance on the basis of agreement to sell but that was found to be devoid of merit for the reason at the time when suit was filed by plaintiff/respondents on 14.05.2007, there was an injunction

order passed by the civil Court restraining the alienation of the suit property. The suit for specific performance had been decided on 05.04.2007. Appeal filed against that judgment and decree was disposed of on 06.04.2010 which goes to show that at the time of filing of suit by plaintiffs, the matter was pending in the civil Court regarding specific performance of agreement to sell executed by defendant/appellant in favour of Harmander Singh, which fact was concealed by him at the time of execution of agreement to sell Ex.P3 in favour of plaintiff/respondents. It has further been noticed that agreement to sell executed by defendant/appellant in favour of Harmander Singh was of 17.02.2004, whereas, that in favour of plaintiffs was on 11.12.2004, therefore, the defendant could not be allowed to take benefit of his wrong by taking plea that the suit of the plaintiffs was not maintainable.

12. The judgments passed by the trial Court as well as Ist Appellate Court are quite detailed, well reasoned, based upon proper appraisal, appreciation of evidence and correct interpretation of law. They do not suffer from any illegality or infirmity which might have called for interference by this Court while exercising jurisdiction in Regular Second Appeal. No substantial question of law arises in this appeal. The appeal stands dismissed accordingly.

16.02.2023

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(H.S. MADAAN)
JUDGE

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