

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

RSA-4466-2013 (O&M)
Date of Decision:-09.10.2023

BALJINDER KAUR & ORS

... Appellants

Versus

MAJOR SINGH & ANR

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. C.M. Munjal, Advocate
for the appellant.

Mr. Prashant Bansal, Advocate,
for respondent No.1.

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KARAMJIT SINGH, J. (Oral)

1. The present appeal has been filed by appellants/defendants No.1 to 3 against the concurrent findings recorded by both the Courts below vide judgments dated 8.8.2012 passed by the Court of Civil Judge (Junior Division) Rajpura whereby the suit filed by respondent No.1 was decreed for possession by way of specific performance of agreement to sell dated 4.11.2004 with regard to land measuring 28 kanals 2 marlas as fully detailed in the head-note of the plaint and judgment dated 24.4.2013 passed by the Court of District Judge, Patiala whereby the appeal filed by defendants No.1 to 3 against the judgment passed

by the learned trial Court has been dismissed except for khasra No.21//4/2 (1-8).

2. The brief facts of the case of plaintiff/respondents No.1 are that defendants No.1 to 3 executed an agreement to sell dated 4.11.2004 with regard to land measuring 28 kanal 2 marlas out of total land measuring 45 kanal 9 marlas and 1 kanal 8 marlas as per their share in Khewat / Khatanuni No.108/122 Khasra No.12//25(8-0), Khewat / Khatauni No.683/757, Khasra Nos. 12//16(8-0), 24(8-0), 21//5/2(6-9) 22 kanal 9 marla, Khewat / Khatoni No.1057/1177, Khasra Nos. 11/20(7-18), 21(7-12) and Khewat / Khatoni No.1416/1573, khasra No.21//4/2(1-8) situated within revenue estate of village Manakpur Tehsil Rajpura for valuable consideration of ₹4,08,000/- and the proposed vendor received ₹3,00,000/- as earnest money and agreed to get registered the sale deed on 15.6.2005. However, on the date fixed i.e. 15.6.2005, respondent No.1 appeared in the office of sub-Registrar office, Rajpura along with balance sale consideration but defendant No.1 to 3 did not turn up for execution and registration of the sale deed. Thereafter a legal notice was served to them to which they sent reply whereby they refused to execute the sale deed on the ground that earnest money was not paid to them. Finally the plaintiff filed suit for possession by way of specific performance of agreement to sell dated 4.11.2004.
3. The suit was contested by the defendants. Defendants No.1 to 3 filed written statement whereby they admitted the execution of agreement to sell dated 4.11.2004. However, defendants No.1 to 3 denied the fact

regarding receipt of ₹3,00,000/- as earnest money from the plaintiff and pleaded that the agreement to sell was executed with assurance on the part of the plaintiff that the earnest money would be paid on the very next day i.e. 5.11.2004, but even on that day, plaintiff failed to make any payment to defendants No.1 to 3. The other averments of the plaint were denied being wrong. Defendant No.4 land mortgage bank filed separate written statement contesting the claim of the petitioners.

4. On the basis of rival pleading of the parties, following issues were framed by the learned trial Court:-

- i. Whether the plaintiff is entitled for possession by way of specific performance of agreement to sell dated 4.11.2004? OPP
- ii. Whether the plaintiff was ready and willing and still ready and will to perform his part of agreement to sell? OPP
- iii. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
- iv. Whether the suit of the plaintiff is not maintainable? OPD
- v. Relief.

5. In order to prove his case, plaintiff appeared in the witness box as PW-2 and proved execution of agreement to sell dated 4.11.2004 (Annexure P-1) and copy of legal notice Ex.P4 dated 16.6.2005 and reply to said notice Ex.P5 dated 28.6.2005 and Jamabandi Ex.P6 of the suit land for year 2003-04. He also examined PW-1 Surinder Singh attesting witness of the agreement to sell Ex.P1; PW-3 Surinder Kumar Stamp Vendor, who sold the stamp papers which were used for

execution of agreement to sell Ex.P1; PW-4 G.S. Balagan, Advocate Fatehgarh Sahib, who deposed that he dictated the contents of the agreement to sell Ex.P1 on the instructions of defendants No.1 to 3. PW-5 Rehmal Dass employee of State Bank of Patiala produced the summoned record as per which amount of ₹2,45,000/- was lying deposited in the bank account of defendant No.1 as on 4.11.2004 and he proved the relevant document as Ex.PW5/X.

6. On the other hand, defendants No.1 and 2 appeared in the witness-box as DW-1 and DW-2. Girish Mittal, Manager Land Mortgage Bank Rajpura deposed that defendant No.3 took loan of ₹1.5 lac from their bank against land bearing khasra No.21//5/2 min. (4-10) 11//21 min (3-0) and he proved copy of mortgage deed Ex.D1 and copy of statement of account Ex.D2.
7. After hearing the counsel for the parties, the learned trial Court decided all the issues in favour of the plaintiff and decreed the suit for possession by way of specific performance of agreement to sell dated 4.11.2004 Ex.P1. The defendants No.1 to 3 were directed to execute and get registered the sale deed in favour of the plaintiff on receiving the balance sale consideration of ₹1,08,000/- within next 2 months.
8. Being aggrieved, defendants No.1 to 3 preferred an appeal against the judgment and decree dated 8.8.2012 passed by the learned trial Court.
9. The Court of learned District Judge Patiala after hearing both the parties and going through the record of the case affirmed the findings recorded by the learned trial Court except regarding khasra No.21//4/2

(1-8). Consequently, appeal was partly accepted qua khasra No.21//4/2 (1-8) and suit to that extent was dismissed vide judgment dated 24.4.2013.

10. The appellants/defendants No.1 to 3 being still not satisfied have filed the present appeal.
11. I have heard the counsel for the parties.
12. The counsel for the appellants while restricting his arguments submits that he is challenging the impugned judgments only with regard to part of the suit land bearing khasra No.12//25(8-0), as the same was not owned by the appellants and rather was exclusively owned and possessed by Mahan Singh son of Jagga Singh as is evident from Jamabandi Ex.P6. The counsel for the appellants further contends that admittedly aforesaid Mahan Singh is son of appellant No1 and brother of appellants No.2 and 3. The counsel for the appellants has further argued that from the perusal of agreement to sell Ex.P1, it could be easily made out that the said document is not bearing signatures/thumb impressions of Mahan Singh. So there is nothing on the record to prove that Mahan Singh ever entered into an agreement to sell his land bearing khasra No.12//25(8-0) to the respondent. The counsel for the appellant further submits that thus the impugned judgments passed by the Courts below are liable to be set aside with regard to land bearing khasra No.12//25(8-0) and further made prayer that to this extent, the appeal filed by the appellants be allowed.

13. On the other hand, the counsel for the respondents while supporting the impugned judgments *inter alia* submits that both the Courts below recorded concurrent findings regarding execution of agreement to sell Ex.P1 and rightly held that the execution of the said agreement stands fully proved and consequently the trial Court decreed the suit of the respondent and the appellate Court also reaffirmed the said findings after making proper appreciation of the evidence available on the record, with regard to entire suit land except khasra No.21//4/2 (1-8).
14. I have considered the submissions made by counsel for the parties.
15. Respondent/plaintiff filed suit for possession by way of specific performance of agreement to sell Ex.P1 dated 4.11.2004. The execution the of the said agreement Ex.P1 was proved by its attesting witness namely PW-1 Surinder Singh. Even PW-4 G.S. Balagan, Advocate stated that the said agreement Ex.P1 was dictated by him on the instructions of defendants No.1 to 3. Respondent/plaintiff also proved the execution of agreement Ex.P1, which bears his signatures and he also examined PW-3, Surinder Kumar, stamp vendor from whom the concerned stamp papers were purchased for execution of the aforesaid agreement. Even DW-1 and DW-2 while appearing in the witness box admitted the execution of agreement to sell Ex.P1.
16. After going through the Jamabandi Ex.P6, it is evident that Mahan Singh was recorded as exclusive owner in possession of khasra No.12//25(8-0), which is also part of the suit property. From the perusal of agreement to sell Ex.P1, it is evident that though the name of Mahan Singh is appearing in the body of agreement Ex.P1, but the

same is not bearing signatures/thumb impressions of Mahan Singh. It is not the case of the parties that appellants/defendants No.1 to 3 executed agreement Ex.P1 on behalf of Mahan Singh being his attorney. So there was no occasion for the appellants/defendants No.1 to 3 to enter into an agreement to sell land bearing khasra No.12//25(8-0) which was exclusively owned and possessed by Mahan Singh. Thus the impugned judgments passed by the Courts below are not sustainable with regard to land bearing khasra No.12//25(8-0). Thus the execution of the agreement to sell Ex.P1 by appellants in favour of respondent No.1 with regard to suit land except for khasra Nos.21//4/2(1-8) and khasra No.12//25(8-0) stands fully proved and to this effect the findings of both the Courts below are affirmed.

17. In the light of the above discussion, the present appeal is partly allowed qua khasra No.12//25 (8-0) and the judgment dated 8.8.2012 passed by the Court of Civil Judge (Junior Division) Rajpura and the judgment dated 24.4.2013 passed by the Court of District Judge, Patiala are set aside qua land bearing Khewat / Khatauni No.112/125 Khasra No.12//25(8-0) as per Jambandi for the year 2003-04 of revenue estate of village Manakpur Tehsil Rajpura District Patiala.
18. The appeal stands disposed of in the aforesaid terms.

09.10.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No