

RSA-1720-2015(O&M) &
RSA-1742-2015(O&M)

-1-

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

(1) **RSA-1720-2015(O&M)**

Ranjit Singh

...Appellant

Versus

Major Singh and others

...Respondents

(2) **RSA-1742-2015(O&M)**

Ranjit Singh

...Appellant

Versus

Major Singh and others

...Respondents

Date of Decision:-19.1.2023

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

Present: Mr.Puneet Kumar Bansal, Advocate
for the appellant.

Mr.Saurabh Singh, Advocate for
Mr.Pardeep Bajaj, Advocate
for respondent No.3.

H.S. MADAAN, J.

1. By this order, I shall dispose of **RSA-1720-2015(O&M)** and **RSA-1742-2015(O&M)** filed on behalf of appellant – Ranjit Singh.
2. Briefly stated, facts of the case are that plaintiffs Major Singh and Jarnail Singh both sons of Amar Singh, residents of village Makhu, Tehsil Zira had filed a suit bearing Case No.68-1 of 28.2.2006 against

Surjit Singh, Ranjit Singh sons of Gurnam Singh, residents of village Joge Wala, Tehsil Zira, District Ferozepur seeking specific performance of agreement to sell dated 24.5.2005 directing defendants No.1 and 2 to execute and get registered the sale deed in favour of plaintiffs in respect of the suit land measuring 31 kanals 3 marlas situated at village Joge Wala, Tehsil Zira, free from all encumbrances at the rate of Rs.3,50,000/- per acre, total consideration Rs.13,62,812.50 by adjusting Rs.10 lakhs paid as earnest money at the time of entering into agreement to sell besides seeking a consequential relief of permanent injunction restraining defendants No.1 and 2 from dispossessing the plaintiffs from the suit land forcibly and from alienating such land in any manner. In the suit, the plaintiffs had arrayed Zira Primary Cooperative Land Mortgage Bank, Branch Zira through its Branch Manager as defendant No.3.

3. As per version of the plaintiffs, defendants No.1 and 2 being owners of the suit land had agreed to sell the same with the plaintiffs on 24.5.2005 @ Rs.3,50,000/- per acre receiving Rs.10 lakhs as earnest money and agreeing to execute and get registered the sale deed in favour of the plaintiffs on or before 27.10.2005; the agreement was duly scribed by Sh.Rajiv Kapoor, document writer, Makhu at the instance of defendants No.1 and 2 and witnessed by Bahadur Singh son of Mohinder Singh and Mohan Singh son of Naranjan Singh and as a part performance of the agreement, defendants No.1 and 2 had delivered the possession of the suit land to the plaintiffs and since then they are in cultivating possession thereof as prospective vendees; out of the suit land an area measuring 3 kanals bearing khasra No.51M Rectangle 4(3-0) is under

mortgage with defendant No.3 bank as a security for repayment of loan borrowed by Surjit Singh – defendant No.1; the defendants had undertaken to repay the loan amount before the stipulated date of execution and to get the land redeemed; on 27.10.2005, the date fixed for execution of sale deed, the plaintiffs along with balance sale consideration amount and requisite expenses for the stamp and registration went to the office of Sub-Registrar, Makhu and waited for defendants No.1 and 2 for the whole day but they did not turn up, therefore in the evening the plaintiffs moved an application before Sub Registrar for marking their presence. According to the plaintiffs they have always been ready and willing and are still ready and willing to perform their part of the contract of the agreement, which could not mature on account of defendants No.1 and 2 having backed out of the agreement; the defendants No.1 and 2 have not yet cleared the loan payable to defendant No.3 bank.

4. On notice, the defendants put in appearance. Defendants No.1 and 2 filed a joint written statement contesting the suit raising various legal objections, to wit that no cause of action arose to the plaintiffs to bring the suit; the plaintiffs lacked locus standi to file the suit; suit was not maintainable; the plaintiffs had not come to the Court with clean hands. The answering defendants denied all the assertions in the plaint, rather came up with a version that they had been selling their crop at the Commission Agent's shop of M/s Shiv Trading Company, Makhu of which Darshan Lal is proprietor; the commission agent used to obtain the signatures of the customers on blank papers/stamp papers at the time of advancement of the money as security in routine; on 13.10.2005, the

defendants sold 321 bags of 35 kgs. each of paddy with such Commission Agent, who had obtained their signatures on some blank papers/stamp papers; later on due to some dispute with the firm, the defendants snapped their links with the shop after clearing accounts; to take revenge the commission agent in connivance with the plaintiffs and Bahadur Singh and Mohan Singh has got prepared a false and frivolous agreement to sell; the defendants denied having executed any agreement to sell in favour of the plaintiffs or having received any amount as earnest money. According to the defendants, they have already filed a suit for declaration against plaintiffs, M/s Shiv Trading Company, Bahadur Singh and Mohan Singh, which is pending in the Court where the plaintiffs of this case and M/s Shiv Trading Company have not put in appearance knowingly and they had been proceeded against ex-parte; the answering defendants have moved applications to SSP Ferozepur and Anti Fraud Staff, where an inquiry is pending with the police. On merits, the defendants refuted the assertions as made in the preliminary objections submitting that agreement in question is result of fraud committed by the plaintiffs in connivance Darshan Lal, Proprietor of M/s Shiv Trading Company and the witnesses of the agreement; the possession of the land was never delivered to the plaintiffs, rather defendants No.1 and 2 are in possession of the land in dispute. Refuting the remaining assertions, the defendants No.1 and 2 prayed for dismissal of the suit.

In the separate written statement filed on behalf of defendant No.3, it has also raked up various legal objections contending that before execution of the alleged agreement, the plaintiffs had knowledge that the

defendant No.3 has a lien on the suit land but even then they agreed to purchase the land. On merits, such defendant contended that defendant No.1 had taken Rs.40,000/- as loan for the tubewell in the year 1998 from the defendant bank and mortgaged 3 kanals of the suit land with the bank, therefore, defendant No.1 was not competent to enter into any agreement with the plaintiffs, which was under mortgage with the bank.

5. The plaintiff had filed replication controverting the allegations in the written statements whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues, including additional issue were framed:

1. Whether defendants No.1 and 2 executed agreement of sale dated 24.5.2005 agreeing to sell suit land in favour of the plaintiff and received Rs.Ten Lac as earnest money as alleged? OPP.
2. Whether defendants No.1 and 2 delivered the possession of suit land to the plaintiff in part performance of agreement and plaintiff is in possession of the suit land as alleged? OPP.
3. Whether alleged agreement is forged and fabricated as alleged by defendants NO.1 & 2 in para no.3 of their written statement? OPD.
4. Whether plaintiffs always remained ready and willing and is still ready and willing to perform their part of the contract? OPP.
5. Whether the suit is not maintainable in the present form? OPD.
6. Whether the plaintiffs have no cause of action and locus standi to file the present suit?OPD.
7. Whether the plaintiffs are estopped by their own act and conduct

from filing the suit? OPD.

8. Whether the plaintiffs are entitled to relief of specific performance of agreement and permanent injunction as prayed for? OPP.

9. If issue no.8 not proved whether plaintiffs are entitled to alternative relief of recovery if so to what extent? OPP.

10.Relief.

6. In order to prove their case, plaintiff No.1 Major Singh got his statement recorded as PW1. The plaintiffs further examined Bahadar Singh as PW2 and Rajiv Kapoor, Document Writer as PW3. After tendering some documents, counsel for the plaintiffs had closed the evidence of the plaintiffs.

7. In rebuttal, the defendant No.2 Ranjit Singh got his statement recorded as DW1. The defendants further examined Bakhshish Singh as DW2, Darshan Lal as DW3, Dharminder Kumar, Assistant Office of Income Tax as DW4 and Raj Kumar, Auction Clerk as DW5. Thereafter, after tendering certain documents, counsel for the defendants closed their evidence.

8. After hearing the learned counsel for the parties, the trial Court of Additional Civil Judge(Sr.Divn.), Zira decided issues No.1, 3 and 4 in favour of the plaintiffs, issue No.2 was decided against the plaintiffs, issues No.5 to 7 were decided against the defendants, issue No.8 was decided in favour of the plaintiffs, issue No.9 was disposed of observing that no finding is required to be given. As a collective result of findings on issues, the suit of the plaintiffs was decreed with costs for specific performance of agreement to sell dated 24.5.2005 executed by the

defendants No.1 and 2 in favour of the plaintiffs and defendants No.1 and 2 were directed to execute the sale deed in favour of the plaintiffs regarding the suit land after removing encumbrance over the same with regard to the mortgage in favour of defendant No.3 within three months from that date of judgment on receipt of balance sale consideration within said period and also directed to deliver the possession of that property. This was so done vide judgment and decree dated 6.1.2012.

9. Feeling aggrieved by the said judgment and decree, the defendant No.2, Ranjit Singh had an filed appeal in the Court of District Judge, Ferozepur, which was assigned to Additional District Judge, Ferozepur, who vide judgment and decree dated 18.11.2014 dismissed the appeal with costs upholding the judgment and decree passed by the trial Court.

10. Similarly with regard to the suit bearing Case No.650-1/05-08 filed by plaintiffs Surjit Singh and Ranjit Singh (defendants in Case No.68-1 of 28.2.2006), the trial Court did not find any merit in the case that they had not executed any agreement for sale in favour of Major Singh and Jarnail Singh and had not received Rs.10 lakhs as earnest money and had not agreed to execute the sale deed in favour of the plaintiffs (in that case defendants) on 27.10.2005. The trial Court of Civil Judge (Jr.Divn.), Zira while dismissing the suit had observed that it was incumbent upon the plaintiffs in that suit to prove that fault had been committed with them and they cannot rely upon weakness in the statements of witnesses to the effect that there are variations with regard to the denomination of currency given as earnest money, place of scribing,

the person who sold the stamp paper whether there was motor installed with electric connection in the land in dispute or not. The entire version set up by the Surjit Singh and Ranjit Singh was rejected and the view taken by the trial Court of Civil Judge (Jr.Divn.), Zira vide judgment dated 28.11.2011 was affirmed by Additional District Judge, Ferozepur in appeal vide judgment and decree dated 18.11.2014.

11. Being dissatisfied with the judgments and decrees passed the Courts below, appellant Ranjit Singh has approached this Court by way of filing separate appeals, notice of which was issued and respondent No.3 appeared through counsel.

12. I have heard learned counsel for the parties besides going through the records.

13. Both the Courts below in light of the pleadings of the parties and proper analysis of the evidence have come to the conclusion that defendants No.1 and 2 had entered into agreement to sell dated 24.5.2005 with the plaintiffs receiving a sum of Rs.10,00,000/- as earnest money and that plaintiffs have always been ready and willing to perform their part of the contract, which could not mature on account of defendants No.1 and 2 having backed out of the same. Though defendants had taken up a plea that agreement set up by the plaintiffs is a forged and fabricated document but that plea was found to be devoid of any merit and was rejected. With defendants having taken such stand, they could not have come up with a plea that plaintiffs have not been ready and willing to perform their part of the contract. Although in the agreement to sell, it is mentioned that the possession of the suit land had been given by defendants No.1 and 2 to the

plaintiffs as part performance of agreement to sell but then it was found that actually it remained with defendants No.1 and 2 but fact by itself does not affect the legality and validity of the agreement to sell.

14. With such concurrent findings having been recorded by the Courts below vide impugned judgments and decrees in which I do not find any illegality or infirmity and with no substantial question of law arisen in this case, the appeals are bound to fail and are dismissed accordingly.

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

19.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No