

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

RSA-3811-2016 (O&M)

Reserved on: 09.05.2023

Date of pronouncement: 17.05.2023

Karnail Singh through LRs

...Appellants

Versus

Paramjeet Singh and others

...Respondents

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

Present: Mr. S.D. Sharma, Sr. Advocate with
Mr. Anupam Sharma, Advocate and
Ms. Sakshi Verma, Advocate for the appellants.

Mr. S.S. Slar, Advocate for the respondents.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Karnail Singh and Anokh Singh, both sons of Ujjagar Singh had brought a suit against defendant Paramjit Singh son of Hazura Singh seeking joint possession by way of specific performance of agreement to sell dated 23.06.2003 or in the alternative decree for recovery of Rs.5.12,000/- along with interest @ 18% p.a., from the date of agreement till realization; in addition, seeking decree for permanent injunction.

2. As per case of the plaintiffs, originally one Labh Singh son of Ganda Singh, grandfather of defendant was owner in exclusive possession of 31 bighas 8 biswas of land and after his death, mutation regarding his inheritance was sanctioned in favour of his four sons

namely Sampuran Singh, Hazura Singh, Tehal Singh and Jarnail Singh in equal shares, however, said sons of Labh Singh without getting the land partitioned sold their shares; defendant is son of Hazura Singh who was co-sharer to the extent of $\frac{1}{4}$ th share i.e. 7 bighas 17 biswas in land measuring 31 bighas 8 biswas; during his life time, he had sold 3 bighas 6 biswas pukhta out of his share to different persons, vide different sale deeds; he was left with 4 bighas 11 biswas of land, however, the revenue authorities separated the remaining land of other co-sharers namely Sampuran Singh, Hazura Singh, Tehal Singh and Jarnail Singh whereas khewat of vendees was made separate; Hazura Singh during his life time had suffered a decree dated 04.05.1981 regarding his remaining share in favour of his four sons and defendant as well as four brothers namely Lakhwinder Singh, Dilbagh Singh and Gurcharan Singh who became owners in joint possession to the extent of $\frac{1}{4}$ th share; Hazura Singh and his brothers were khewatdars in village Khurani, in which land Hazura Singh had also a share and after his death, in a family exchange arrived at between the family with respect to the land situated at Village Kammo Majra Khurd and Village Khurani 292/449 share fell to the share of legal representatives of Hazura Singh including the defendant, in addition to earlier share in land situated at village Kammo Majra Khurd; the defendant and his brothers had received 14 bighas 12 biswas pukhta land more in equal shares; in that manner, they became owners in possession to the extent of 19 bighas 03 biswas pukhta land in equal shares situated at Village Kammo Majra Khurd out of total land measuring 27 bighas 2

biswas however, no partition was effected and the land is still joint; the defendant had sold 1025/10840 share out of 1920/10840 share through different sale deeds and he was left with 895/10840 share i.e. 2 bighas 4 biswas 15 biswasis and out of that land, the defendant had agreed to sell 800/10840 share measuring 2 bighas pukhta with the plaintiffs @ Rs.1,02,000/- per bigha kham; on receipt of Rs.5,12,000/- as earnest money in the presence of Ram Lubhaya and Balwinder Singh, the defendant had executed an agreement to sell dated 23.06.2003 signing that agreement and wrote a note regarding receipt of earnest money by him; the agreement to sell was signed by plaintiff Karnail Singh and it was got attested from Sh. D.P. Singla, Notary Public, Sangrur; signatures of the parties were obtained by Notary Public in his register; possession of the land was also delivered to the plaintiffs on the same day; date for execution and registration of sale deed was fixed as 20.06.2004 and balance consideration amount was also agreed to be paid on that date.

3. According to the plaintiffs, they have been ready and willing to perform their part of agreement and are still ready and willing to do so; the plaintiffs had requested the defendant to come present in the office of Sub Registrar, Sangrur on 21.06.2004 for getting the sale deed executed as 19.06.2004 and 20.06.2004 were holidays and they had even appeared before Sub Registrar on 21.06.2004 with the balance sale consideration but the defendant did not turn up; the plaintiffs got their presence marked there by way of getting attested an affidavit; subsequently also, they had requested the defendant many times to execute the sale deed and get it

registered but he put off the matter on one pretext or the other, giving rise to a cause of action to the plaintiffs to bring the suit in question.

4. On notice, the defendant appeared and filed written statement, contesting the suit. He denied the execution of agreement in question stating that in fact he used to obtain loan from the plaintiffs who were giving advance to him after getting executed agreements to sell with respect to his land as a security. In the year 1998, he had taken a loan from the plaintiffs after executing such like agreement as a security which was however torn off after the return of money by him to the plaintiffs. Again in the year 2000, he had raised a loan from the plaintiffs and a similar agreement was executed by him as a security. He had returned the loan in the year 2000 itself. Again in the year 2003, he had taken a loan from the plaintiffs after executing an agreement to sell and amount of loan and interest was shown as earnest money. The agreement was executed in a routine manner as had been done earlier but the plaintiffs have misused that agreement and filed the suit in question. The amount of loan has already been returned by the defendant to the plaintiffs. The defendant denied that he had handed over possession of the land in question to the plaintiffs. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

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

1. Whether defendant executed a legal and valid agreement dated 23.06.2003 for valid consideration? OPP.
2. Whether plaintiffs are ready and willing to perform his part of contract? OPP.
3. Whether plaintiffs are entitled to relief of joint possession

- of by way of specific performance? OPP.
4. Whether the plaintiffs are entitled to the relief of recovery or in the alternative the plaintiffs are entitled to specific performance of agreement? OPP.
 5. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP.
 6. Whether suit is not maintainable in the present form? OPD.
 7. Whether plaintiffs have not come to the Court with clean hands? OPD.
 8. Whether plaintiffs have no locus standi to file the present suit? OPD.
 9. Relief

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

7. After hearing arguments, the trial Court of Addl. Civil Judge (Sr. Divn.) Sangrur, vide judgment and decree dated 14.12.2011 decreed the suit of the plaintiffs for alternative relief of recovery of Rs.5,12,000/- with interest @ 9% p.a., from the date of execution of agreement Ex.P1 till date of decree with future interest @ 6% p.a., from the date of decree till realization. However, suit of the plaintiffs for permanent injunction was dismissed with costs.

8. Feeling aggrieved by the judgment and decree passed by the trial Court, the plaintiffs had preferred an appeal before District Judge, Sangrur, that appeal was assigned to Addl. District Judge, Sangrur, who vide judgment and decree dated 21.07.2015 had dismissed the same.

9. Still feeling aggrieved, the plaintiffs have knocked at the door of this Court by way of filing the present Regular Second Appeal praying that the impugned judgments and decrees passed by the Courts

below be modified and relief of specific performance of agreement to sell be granted. Notice of the appeal was given to the respondents, who have put in appearance through counsel.

10. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the appeal. When the defendant had put in appearance in the trial Court on getting notice of the suit, he had taken a consistent stand that he had been raising loans from the plaintiffs executing agreement to sell qua his land only as a security. He has given different instances when it was so done. When the defendant appeared as DW1 and tendered in evidence his affidavit Ex.DW1/A, he had enclosed therewith photocopy of agreements dated 20.06.2001 Ex.D2, another agreement dated 23.06.2003 Ex.D3, one more agreement dated 16.03.1985 Ex.D4, copy of pronote and receipt dated 16.03.1985 Ex.D5, another photocopy of agreement dated 08.05.1984 Ex.P6. The trial Court has taken this aspect into consideration and found merit in the stand taken by the defendant that basically it was a loan transaction and agreement to sell was executed as a security. Such agreements entered into between the parties earlier pronote and receipt also executed by the defendant in favour of the plaintiffs fortify this fact. Learned trial Court in para No.19 has observed that language of previous agreements is exactly the same as that of agreement in question and a clear finding had been given that agreement was executed only as a security in lieu of loan taken by the defendant from the plaintiffs. However, plea taken by the defendant that he has already repaid the loan

amount taken by him was not found to be proved due to lack of evidence adduced by the defendant in that regard. The observation made by the trial Court that there was no intention to sell the suit property and agreement to sell was only a security for repayment of loan is found to be correct.

11. The Ist Appellate Court of Addl. District Judge, Sangrur by giving detailed reasons had found itself in agreement with the trial Court with regard to conclusion drawn by it.

12. I do not see any reason to disagree with the Courts below with regard to such conclusion drawn. The judgments passed by the Courts below are based upon proper appraisal and appreciation of evidence and correct interpretation of law. I do not find any illegality or infirmity therewith and no reason is found to be there to interfere with such judgments and to grant relief of specific performance to the appellants/plaintiffs. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

17.05.2023

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(H.S. MADAAN)
JUDGE

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