

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

RSA-1654-2018 (O&M)

Decided on:-18.08.2023

Chandru and others

....appellants..

VS.

Sampat and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Amit Jain, Advocate,
for the appellants.

Mr. Aman Priye Jain, Advocate,
for respondent No.1.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 18.11.2015 and 24.07.2017 passed by the Courts below, whereby, a suit for possession by way of specific performance, filed at the instance of respondent No.1-plaintiff, has been decreed.

2. Briefly stating, based on an agreement to sell dated 21.07.2005 executed between respondent No.1-plaintiff and respondent No.2/defendant No.1, a suit for possession by way of specific performance came to be filed.

It was further stated in the plaint that the total sale consideration was of Rs.1,56,250/- with 10.06.2006 being the target date and a sum of Rs.50,000/- was paid as earnest money to respondent No.2/defendant No.1.

It was also pleaded that in order to defeat the rights of respondent No.1/plaintiff, respondent No.2-defendant No.1 created an antedated

agreement to sell dated 06.06.2005, in favour of appellants and based thereupon, got the sale deed executed on 02.08.2005 in their favour.

2. In response, defendants No.2 to 5 appeared and filed their written statement claiming themselves to be the bonafide purchasers on the basis of sale deed dated 02.08.2005, executed in their favour in pursuance to an agreement to sell dated 06.06.2005 against sale consideration of Rs.1,20,000/-.

3. The trial Court vide its judgment and decree dated 18.11.2015, decreed the suit filed at the instance of respondent No.1/plaintiff.

4. Aggrieved thereof, appellants filed first appeal, however, the same was dismissed by the learned Additional District Judge, Mewat, vide judgment and decree dated 24.07.2017.

5. Assailing the aforementioned judgments and decrees, learned counsel for the appellants submits that though the Courts below framed a specific point for consideration to the effect that as to whether the agreement to sell dated 06.06.2005 was antedated or not, however, instead of answering the same, went on to record finding qua the genuineness & veracity of the sale deed dated 02.08.2005. He further submits that admittedly agreement to sell dated 06.06.2005 was executed at Ferozepur Jhirka, whereas, the land in question was situated in Sub-Tehsil Nagina, but this fact could not have been taken against him as it was more than clear from the evidence available on record that no deed-writer was available at Sub-Tehsil Nagina. Learned counsel also submits that in pursuance to the sale deed dated 02.08.2005, even the possession of land in question was delivered in favour of the appellants.

6. On the other hand, learned counsel for respondent No.1 submits that the sale deed dated 02.08.2005, was without consideration as no proof thereof was ever produced or proved on record. He further points out that defendant No.6 to 8 are brothers of respondent No.2-defendant No.1/vendor and thus, the sale deed was a result of collusion between them just to defeat the rights of respondent No.1-plaintiff.

7. I have heard learned counsel for the parties and gone through the record, I am unable to find substance in the submissions made on behalf of the appellants.

8. On a cumulative analysis of the material on record, it becomes more than evident that the sale deed dated 02.08.2005, executed in favour of present appellants at the instance of respondent No.2 herein/defendant No.1(vendor) was a result of collusion between them, apparently, to defeat the rights of respondent No.1/plaintiff. Admittedly, defendants No.6 to 8 happened to be brothers of defendant No.1/respondent No.2-vendor, besides it, even the non-appearance of defendant No.1 as well as defendants No.6 to 8 in the trial Court proceedings was just to avoid any kind of explanation to the contents stated in the plaint at the instance of respondent No.1/plaintiff. Additionally, no proof of payment against the sale consideration having been proved on record from the side of defendant No.2 besides even the lesser amount of sale consideration depicted in the agreement to sell dated 06.06.2005 as well as sale deed dated 02.08.2005 as compared to the agreement to sell dated 21.07.2005, executed in favour of respondent No.1/plaintiff also strengthens the malafide intent of the appellants and respondent No.2/vendor.

9. Mere fact that the Courts below tended to opine on the issue of agreement to sell dated 06.06.2005, being antedated but failed to conclude the same, would not help the appellants as the learned Court conclusively held the collusiveness of the defendants and held that the sale deed dated 02.08.2005 has been executed just to defeat the rights of respondent No.1-plaintiff.

10. Accordingly, in view of the discussion made hereinabove, finding no illegality and perversity in the impugned judgments and decrees passed by the Courts below, the present appeal is hereby dismissed.

11. Pending application(s), if any, shall stand(s) disposed of.

18.08.2023

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No