

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

RSA-907-2017(O&M)

Reserved on:-4.5.2023

Date of Pronouncement:-11.5.2023

Kuldeep Singh and another

...Appellants

Versus

Harbans Kaur

...Respondent

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

Present: Mr.APS Shergill, Advocate
for the appellants.

Mr.G.S. Punia, Senior Advocate with
Mr.Amitoj Singh, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Smt.Harbans Kaur wife of Col.Trilochan Singh, resident of House No.1532, Sector 69, SAS Nagar(Mohali) had brought a suit against defendants Kuldeep Singh son of Sh.Sulakhan Singh and Kamaljit Singh son of Bhupinder Singh, both residents of village Gujjarheri, Tehsil Nabha, District Patiala, seeking possession of 53 bigha and 6 biswas i.e. 1069/1309 share of 65 bigha 9 biswa as well as land measuring 7 bigha 18 biswas, fully described in the head-note of the plaint by way of specific performance of

agreement to sell dated 9.2.2011; in the alternative seeking recovery of Rs.2,30,00,000/- by way of refund of earnest money/damages/compensation.

2. As per the version of the plaintiff, the defendants being owners in possession of the suit land, had entered into an agreement to sell with her on 9.2.2011 for sale of land @ Rs.21 lakhs per standard acre, equivalent to 4 bighas 16 biswas and the total sale consideration amount was settled as Rs.2,30,00,000/-; the defendants had received a sum of Rs.60 lakhs from the plaintiff as earnest money; the balance sale consideration was to be paid at the time of registration of the sale deed, for which the last date was fixed as on or before 30.9.2011; at the asking of the defendants, the plaintiff paid them a further sum of Rs.30 lakhs on 17.5.2011 vide a cheque drawn on Punjab and National Bank, Sector 70 SAS Nagar(Mohali) and Rs.19,80,000/- in cash against the receipt/writing duly executed by the defendants at the back of the agreement to sell, in that way, the defendants had received a total sum of Rs.90 lakhs from the plaintiff; the defendants insisted for early execution and registration of sale deed and asked for further payment of Rs.50 lakhs; accordingly on 22.8.2011, the defendants had received another sum of Rs.50 lakhs from the plaintiff, preponing the date of registration of sale deed to 31.8.2011; they had sworn an affidavit in that manner; though in the affidavit, it was mentioned that possession of suit land had been given to the plaintiff but as a matter of fact, it was not so done at the spot. According to the plaintiff on 31.8.2011 and 1.9.2011 were declared to be public holidays by Central Government and Punjab Government, therefore the sale deed

could not be executed on those days. The plaintiff approached the defendant on 2.9.2011 having requisite funds and requested them to execute the sale deed and get it registered in light of the agreement between the parties but the defendants did not do so. The plaintiff had reached the office of Sub Registrar, Nabha on 2.9.2011 and remained present there throughout the day but defendants did not turn up to execute the sale deed and to get it registered; the plaintiff moved an application for marking her presence there and executed an affidavit in that regard. According to the plaintiff, she has always been ready and willing to perform her part of contract and is even now ready and willing to do so but the defendants had violated the terms and conditions of the agreement to sell willfully and intentionally.

3. On notice, the defendants appeared and filed a written statement contesting the suit. As per their version though they are owners in possession of the suit land, they had borrowed from the plaintiff Rs.15,20,000/- only on payment of interest @ 10% per month since father of the defendant No.2 and elder brother of defendant Kuldeep Singh, namely Bhupinder Singh had met with an accident and remained bedridden for 4-5 years; thereafter he had expired; furthermore Smt.Beant Kaur wife of defendant Kuldeep Singh is suffering from cancer since 14.5.2010 and her treatment is very costly; the defendants had come under debt; the plaintiff and her husband had executed an agreement for sale of agricultural land of defendants as security; the plaintiff used to get receipt for an amount which was ten times of the borrowed money, from the defendants as security, which is evident from the receipt dated 4.2.2011;

the plaintiff had given Rs.5 lakhs to the defendants but the plaintiff got executed a receipt for Rs.50 lakhs; the rate of agricultural land in village Gujjarheri is more than Rs.50 lakhs per acre; the defendants had borrowed a sum of Rs.5 lakhs from the plaintiff after executing a simple receipt in her favour and after the repayment of the five lakhs; the plaintiff returned the said receipt to the defendants, however when condition of Smt.Beant Kaur deteriorated, then the defendants approached the plaintiff at her residence at Mohali for some more money for her treatment; the plaintiff and her husband were adamant for getting an agreement executed as security for the money borrowed by them. The defendants admitted receipt of amount of Rs.15 lakhs though denied receipt of RS.60 lakhs as claimed by the plaintiff in the plaint. According to the defendants, no witness was present at the time of execution of receipt except Darshan Singh. The affidavit was got executed from defendants by the husband of plaintiff taking advantage of their illiteracy. As a matter of fact no agreement of sale of land was there between the plaintiff and defendants. Therefore, there was no question of defendants backing out to execute the sale deed. According to the defendants, they had borrowed a sum of Rs.15,20,000/- only from the plaintiff, which they are ready to repay with interest.

The plaintiff had got registered an FIR No.10 dated 11.2.2012 for offences under Sections 420/406 IPC against them at Police Station Bhadson, however after inquiry, the FIR was cancelled.

The defendants had raised various legal objections while praying for dismissal of the suit.

4. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the plaintiff is entitled for possession of suit land by way of specific performance of agreement to sell dated 9.2.11 as prayed for? OPP.
2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP.
3. Whether the plaintiff is entitled for alternative relief of recovery of Rs.2 Crores 30 lacs as prayed for? OPP.
4. Whether plaintiff is entitled for interest, if so at what rate?
5. Whether the plaintiff always remained and is still ready and willing to perform her part of the agreements? OPP.
6. Whether the suit is not maintainable in the present form? OPD.
7. Whether the plaintiff has got no cause of action and locus standi to file the suit? OPD.
8. Whether the suit is false, frivolous and vexatious to the knowledge of the plaintiff? OPD.
9. Whether the plaintiff has not come to the court with clean hands? OPD.
10. Relief.

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

7. After hearing the learned counsel for the parties, the trial Court of Addl.Civil Judge (Sr.Divn.), Nabha gave issue-wise findings and vide judgment and decree dated 16.10.2015 suit of the plaintiff was decreed with costs directing the defendants to get the sale deed executed in favour of the plaintiff and to deliver the possession as per agreement, on receipt of balance sale consideration within three months from the date of judgment, failing which the plaintiff would be entitled to get the sale deed executed and registered and to take the possession of the suit land on payment of balance sale consideration through process of the Court. Furthermore, the defendants were permanently restrained from selling, transferring, alienating, creating any encumbrance or charge on the suit land in favour of anyone except the plaintiff and from changing the nature of the suit property by way of construction or excavating earth therefrom for brick kiln purposes etc. otherwise than through due process of law.

8. Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Patiala, which was assigned to Additional District Judge, Patiala, who vide judgment and decree dated 1.11.2016 dismissed the appeal upholding the judgment and decree passed by the trial Court.

9. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendants have filed the present regular second appeal before this Court.

10. Notice of the appeal was given to the respondent, who put in appearance through counsel.

11. I have heard learned counsel for the parties besides going

through the record.

12. In this case the trial Court considering the pleadings of the parties, the evidence brought on record by the contestants, in light of the legal position on the subject had returned a categorical finding that the defendants had entered into an agreement to sell dated 9.2.2011 as claimed by the plaintiff and further the version of the plaintiff that the defendants had received substantial money from her at the time of entering into agreement to sell and on later occasions also swearing an affidavit in that regard was found to be correct, whereas the case of the defendants that it was a loan transaction only and they did not intend to sell the suit land to the plaintiff, rather agreement to sell and affidavit had been obtained by husband of the plaintiff from them as security and agreement to sell was never meant to be acted upon, was found to be without any merit and as such rejected. It was found that the plaintiff has always been ready and willing to perform his part of contract and still ready and willing to do so, therefore she was entitled to possession of suit land by way of specific performance of agreement to sell.

13. Learned Additional District Judge, Patiala has affirmed the judgment and decree passed by the trial Court by thorough and deep analysis of the facts and legal position.

14. With the concurrent findings having been recorded by the Courts below against the appellants/defendants, which are based on proper appraisal of evidence and correct interpretation of law and there is no illegality or infirmity with the impugned judgments and decrees passed by the Courts below, there is no ground to interfere with such impugned

judgments and decrees in regular second appeal.

15. No substantial question of law arises in this appeal.

16. Finding no merit in the appeal, the same stands dismissed.

The interim order dated 25.9.2018 passed by this Court staying the execution proceedings, thus comes to an end.

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

11.5.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No