

2023:PHHC:086347

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-10032-C-2022
CM-10033-C-2022
RSA-2934-2022 (O&M)
Date of Decision :06.02.2023

DARSHAN SINGH AND ANOTHER

...Appellants

Versus

SWARAN SINGH AND OTHERS

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Prateek Pandit, Advocate for the appellants.

B.S. Walia, J. (Oral)

CM-10032-C-2022

Allowed as prayed for.

CM-10033-C-2022

For the reasons as are mentioned in the application, namely of the appellants having engaged a counsel for filing the appeal but said learned counsel having died during the Covid pandemic and the appellants not coming to know about the demise of the learned counsel who had been engaged to file the appeal, delay of 278 days in late filing of the appeal is condoned.

C.M. stands disposed of.

RSA No.2934 of 2022

[1] Instant Regular Second Appeal has been filed by the appellants/defendant Nos.1 and 2 i.e. owners of 29 kanals 4 marlas of land as per details given in the head note of the plaint challenging the judgment

and decree dated 16.12.2019 passed by the learned District Judge,

Hoshiarpur upholding the judgment and decree passed by the learned Civil Judge (Jr. Div.), Dasuya in Civil Suit No.88 of 2014 in case titled as Swaran Singh and others vs. Sh. Darshan Singh and others decreeing the suit of the plaintiffs as joint owners of land mentioned in the plaint by granting the alternative relief of recovery of Rs.15,00,000/- along with interest.

[2] Civil Suit was filed by respondent Nos.1 to 3/plaintiffs praying for joint possession as joint owners of land measuring 29 K 4 Mls situated in village Baghiari, H.B. No.7, Tehsil Dasuya, as per jamabandi for the year 2007-08 detailed as:

i) Land measuring 9 K – 3 ½ Mls being 1194/1729 share out of 13 K – 6 Mls comprised in Khata No.68/84 khasra No. 21//1/1(6-13), 2/1 (6-13) ;

(ii) Land measuring 3 K – 13 Mls comprised in Khata No.69/85, Khasra No.11//23 (1-1), 24/2 (2-12) ;

(iii) Land measuring 3 K – 18 Mls being 79/288 share out of 14 K – 8 Mls comprised in Khata No.70/86, Khasra No.21//12/1 (7-0), 9/2 (7-8) ;

(iv) Land measuring 12 K – 13 Mls being 351/1031 share out of 37 K – 3 Mls comprised in Khasra No.21//1/2 (1-7), 2/2 (1-7), 10 (8-0), 22//3/2 (1-0), 4/2 (1-7), 5/2 (1-7), 6 (8-0), 7 (8-0), 8 (6-15) by way of specific performance on the basis of agreement to sell dated 04.04.2012 after payment of balance sale consideration of Rs.74,42,500/- or any other sum ordered by Hon'ble Court.

AND

Suit for issue of permanent injunction restraining the defendants

from alienating the suit property or any other portion thereof by way of sale, gift, exchange, mortgage, lease, transfer or in any other manner whatsoever in favour of anybody else except the plaintiffs as per the terms of agreement to sell dated 04.04.2012 OR in the alternative suit for recovery of Rs.30,00,000/- (i.e. Rs.15,00,000/- on account of refund of earnest money plus Rs.15,00,000/- as damages thereon).

[3] On the basis of pleadings of the parties, the following issues were framed:-

1. *Whether the plaintiffs are entitled to the relief of joint possession of suit property by way of specific performance of agreement to sell dated 04.04.2012 ? OPP*
2. *Whether plaintiffs are entitled for the relief of permanent injunction as prayed for ? OPP*
3. *If issue No.1 is decided against plaintiffs, whether plaintiffs are entitled for the relief of recovery as prayed for? OPP*
4. *Whether plaintiffs have not come to the Court with clean hands? OPD*
5. *Whether plaintiffs have no cause of action to file the present suit? OPD*
6. *Whether suit is barred under law ? OPD*
7. *Whether suit is not maintainable? OPD*
8. *Whether plaintiffs are stopped from filing the suit by their own act and conduct? OPD*
9. *Whether the suit has been filed on the basis of forged and fabricated agreement to sell? OPD*
10. *Whether defendant No.3 is bona fide purchaser of suit property? OPD*
11. *Whether suit of the plaintiffs is liable to be dismissed under Section 35-A and 35-B of CPC? OPD*
12. *Relief.*

[4] Thereafter, on the basis of pleadings, issues and evidence led by the parties, the learned Civil Judge (Jr. Div.), Dasuya dismissed the suit of the respondents/plaintiffs qua claim for specific performance on the basis of agreement to sell dated 04.04.2012 but partly decreed the alternative prayer of the respondents/plaintiffs for recovery of an amount of Rs.15 lakhs along with interest @ 6% per annum from 04.04.2012 i.e. the date of execution of agreement to sell till the date of filing of the suit and further interest @ 6% w.e.f. the date of filing of the suit till actual realization along with costs.

[5] Civil Appeal No.52/2.5.2019 Appeal filed by defendant Nos.1 and 2 (appellants herein) was dismissed vide judgment and decree dated 16.12.2019 passed by the learned District Judge, Hoshiarpur in case titled as Darshan Singh and another vs. Swaran Singh and others.

[6] Sole argument of learned counsel is that despite it being the stand of respondent Nos.1 to 3/plaintiffs in the plaint itself of their having knowledge that the suit land had already been sold by the appellants/defendant Nos.1 and 2 to defendant No.3 (respondent No.4 herein) on 22.05.2013, civil suit out of which this appeal arises was filed only on 25.03.2014 therefore, it is apparent that the agreement is a forged and fabricated one.

[7] I have considered the submission of learned counsel.

[8] Agreement to sell between the appellants/defendant Nos.1 and 2 and the respondents/plaintiff Nos.1 to 3 is dated 04.04.2012 but still the appellants herein sold the land in question vide two sale deeds dated 22.05.2013 to defendant No.3 (respondent No.4 herein) and in the mutation proceedings initiated by said defendant No.3 (respondent No.4 herein),

appellant/defendant No.1 made a statement Ex.DC dated 14.06.2014

admitting the existence of agreement to sell dated 04.04.2012.

[9] The learned Civil Judge (Jr. Div.), Dasuya at page No. 36 of the paper book and the learned District Judge, Hoshiarpur at page No.61 of the paperbook returned a finding that the land in question was sold by the appellants to defendant No.3 (respondent No.4 herein) vide two sale deeds dated 22.05.2013 and during mutation proceedings initiated by the said purchaser i.e. respondent No.4 herein, appellant / defendant No.1 – Darshan Singh vide statement, Ex. DC dated 14.06.2013 admitted the existence of agreement to sell dated 04.04.2012 between the appellants and respondent Nos.1 to 3 / plaintiffs. In spite of the aforementioned admission, the appellants, took up contradictory and self destructive stand in the written statement on the one hand of agreement to sell being forged and fabricated and their signatures having been obtained on blank papers while on the other hand they took up the stand of respondent Nos. 1 to 3 / plaintiffs not being ready and willing to get sale deed executed by the target date i.e. 04.04.2013. Further, appellant / defendant No.1 who appeared as DW-1 was not able to explain as to how and under what circumstances, the signatures / thumb marks of defendant Nos.1 and 2 (appellants herein) were obtained on blank papers. On the said basis, the learned Courts below held that the plea taken in the written statement duly proved that the appellants had not disputed their signatures and thumb marks on the agreement to sell Ex.P/1 dated 04.04.2012 and they had in fact taken earnest money of Rs.15 lakhs where they had again made specific endorsement which was duly signed and thumb marked by them. In the light of the position noted above, the stand of the appellants / defendant Nos.1 and 2 of the agreement to sell being forged and fabricated cannot be accepted.

[10] Learned counsel concedes the aforementioned factual position as also that once, appellant/defendant No.1 made a statement on 14.06.2013 Ex. DC admitting the existence of agreement to sell dated 04.04.2012, it was not open to the appellants/defendant Nos.1 and 2 to contend that agreement to sell was a forged or fabricated document. Learned counsel also concedes that despite the appellants taking up the stand in the written statement that the agreement to sell dated 04.04.2012 was forged and fabricated and their signatures were obtained on blank papers, appellant/defendant No.1 who had appeared in the witness box as DW-1 had not led any evidence to show as to how and under what circumstances the signatures of the appellants/defendant Nos.1 and 2 were obtained on blank papers. Learned counsel further concedes that the appellants/defendants Nos.1 and 2 also took up the stand in the written statement that respondent Nos.1 to 3/plaintiffs herein were not ready and willing to get sale deed executed by the target date i.e. 04.04.2013. In the circumstances, once it was the stand of the appellants/defendants Nos.1 and 2 that the agreement to sell was forged and fabricated and their signatures were obtained on blank papers, admission by way of statement dated 14.06.2013 Ex. DC by appellant/defendant No.1, admitting the existence of agreement to sell dated 04.04.2012, in the mutation proceedings initiated by defendant No.3 (respondent No.4 herein) (on the basis of subsequent sale deeds dated 22.05.2013 executed by the appellants in favour of respondent No. 4 herein) the stand of the appellants is not believable that the agreement to sell is a forged and fabricated document, more so, in view of the alternative stand of the appellants/defendants that the plaintiffs/respondent Nos.1 to 3 were not ready and willing to get the sale deed executed on the target date as also their failure to substantiate the stand

of their signatures and thumb marks having been obtained on blank papers. Learned counsel has also not been able to controvert that earnest money of Rs.15 lakhs was admittedly taken by the appellants/defendant Nos.1 and 2 from respondent Nos.1 to 3/plaintiffs and that they had made specific endorsement on the receipt which was duly signed and thumb marked by them.

[11] No other point has been argued.

[12] In the light of position noted above, no question of law much less substantial question of law arises for consideration by this Court.

[13] Dismissed. Consequently, all pending applications also stand dismissed.

06.02.2023
'Amit'

(B.S. Walia)
Judge

Whether speaking/ reasoned	:	Yes/No
Whether reportable	:	Yes/No