

RSA-550-2020 (O&M)

- 1 -

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

114

**RSA-550-2020 (O&M)
Decided on : 21.09.2023**

Nirmal Singh

... Appellant(s)

Versus

Darshan Singh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Aditya Dassaur, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

1. The present appeal has been filed by the appellant (plaintiff) – Nirmal Singh, against the concurrent finding of dismissal of the suit.
2. Brief facts of the present case are that, land in question was originally allotted to one Natha Singh s/o Hazara Singh, father of defendant No.1 – Darshan Singh and defendant No.2 – Sumitra Devi, in equal shares. Defendant No.1 entered into an agreement to sell *qua* the land in question with the father of plaintiff i.e. Piara Singh s/o Gian Singh on 15.11.1989, for a total sale consideration of Rs.40,000/-, and an amount of Rs.10,000/-, was paid by Piara Singh to defendant No.1, vide agreement to sell dated 15.11.1989. As per the conditions mentioned in the said agreement to sell, sale-deed was required to be executed after sanctioning of the mutation of the land in favour of the legal heirs of Natha Singh (deceased). Said mutation was sanctioned on 08.01.2008, and immediately thereafter, on 11.04.2008, plaintiff – Nirmal Singh, claiming himself to be succeeding the rights of Piara Singh, by virtue of Will dated 12.07.1990, instituted the civil suit, for seeking a decree of specific performance, recovery and permanent

injunction.

It is further pleaded by the plaintiff that he reached to the defendants (respondents herein) along with an amount of Rs.30,000/-, and asked the defendants for execution of the sale-deed, but they refused to do so. In fact, thereafter, the suit has been instituted by the plaintiff.

3. In the written statement filed by defendant No.1, apart from preliminary objections, it has been categorically pleaded that defendants became the owners of the land in dispute, on the death of their father – Natha Singh. Mutation does not create any title, and it is merely an entry in the records of land revenue. Execution of any such agreement to sell has been denied by defendant No.1 with father of the plaintiff. It is also denied that defendant No.1 ever received an amount of Rs.10,000/-, as earnest money from Piara Singh. All the terms and conditions of the agreement to sell were also denied. Even, it is pleaded in the written statement that plaintiff is not the actual legal heir of Piara Singh, as Will dated 12.07.1990 never got executed.

4. After completion of the pleadings, vide order dated 04.10.2010, learned Trial Court framed the following eight issues:

- “1. Whether the defendant No.1 executed an agreement to sell with the father of plaintiff on 15.11.1989? OPP.
2. Whether the plaintiff always been ready and willing to perform his remaining part of the contract? OPP
3. If issue No.1 and 2 are proved, whether the plaintiff is entitled to a decree for specific performance of the agreement to sell as prayed for? OPP
4. Whether the suit is not maintainable? OPD
5. Whether the plaintiff is not entitled to the relief of specific performance? OPD

RSA-550-2020 (O&M)

- 3 -

6. *Whether the suit is time barred? OPD*
7. *Whether the plaintiff is estopped to file the suit by his act and conduct? OPD*
8. *Relief.”*

5. After examining the complete record, the learned Trial Court below has reached to the conclusion that plaintiff has failed in proving the pleadings raised by him in the suit. In fact, there was a marginal witness to the agreement to sell i.e. Advocate, Mr. S.S. Sahi, but for the reasons best known to the plaintiff, such an independent witness has not been produced by him in the witness-box.

6. Not only this, plaintiff himself has failed in appearing in his personal capacity, as a witness in the suit. Thus, the trial Court has drawn an adverse inference on the act of the plaintiff that he has withheld the best evidence by not allowing his cross-examination at the hands of the defendants.

There is a specific stand taken by the defendants in the written statement that the alleged agreement to sell dated 15.11.1989, is a forged document and never any amount is received by defendant No.1. To contradict this stand, plaintiff has not brought on record any evidence to prove that the agreement to sell dated 15.11.1989 is genuine. For proving the same to be genuine, plaintiff was required to lead an affirmative evidence to discharge his onus under issue No.1, which for convenience is reproduced hereunder:-

- “1. *Whether the defendant No.1 executed an agreement to sell with the father of plaintiff on 15.11.1989? OPP.”*

7. Thus, the Trial Court was of the view that as per agreement to

sell, an amount of Rs.10,000/- has not been received by defendant No.1, as earnest money. If the said amount is paid by Piara Singh to defendant No.1, then nobody else could depose before the Court except of Piara Singh or his successor in rights i.e. plaintiff himself. Thus, plaintiff has failed in proving the payment of an amount of Rs.10,000/- by Piara Singh to defendant No.1 – Darshan Singh s/o Natha Singh.

There is another angle to discard the plea taken by the plaintiff that although, agreement to sell is alleged to be executed on 15.11.1989, but till 2008, no step was ever taken by the plaintiff by asking the defendants to get the land mutated in their name. Even never any notice or reminder for the said purpose was sent. It is only in the year 2008, when the mutation was sanctioned in favour of the defendants, plaintiff suddenly woke up from his slumber, and started claiming his rights through the suit, first time by filing the same on 11.04.2008. In other words, agreement to sell-dated 15.11.1989, saw the light of the day first time on 11.04.2008 i.e. after about nine years.

8. Findings recorded by learned Trial Court in paragraphs No.17 & 18, are reproduced as under:-

“17. Hence, from the rulings of the Hon'ble Supreme Court of India and Hon'ble Punjab and Haryana High Court, it is clear that readiness and willingness to perform his part of the contract can only be proved by the plaintiff himself and no other person can give evidence on behalf of the plaintiff to prove his readiness and willingness. In the present case, the plaintiff has not stepped into witness box to prove his readiness and willingness and the evidence of PW-2

Rajwinder Singh attorney of plaintiff regarding readiness and willingness of the plaintiff cannot be accepted and it has no value. Moreover, no cogent explanation has been given by the plaintiff as to why he has not stepped into witness box to substantiate his plea regarding the readiness and willingness to perform his part of the contract. In view of the facts mentioned above, an adverse inference is required to be drawn against the plaintiff.

18. *Further, in the present suit, the agreement in question was allegedly executed on 15.11.1989, but the mutation regarding the suit land has been sanctioned in favour of defendants in the year 2008 and after sanctioning of mutation, the present suit has been filed by the plaintiff in the year 2008, but there is no explanation from the plaintiff that why he has kept mum for 19 years and why he has not approached the defendants for sanctioning of mutation in their favour as Natha Singh father of defendants was died in the year 1979. It shows that plaintiff himself was not ready and willing to perform his part of the agreement. Even, from 1989 to year 2008, no legal notice has been served by the plaintiff upon the defendants to get the mutation sanctioned in their favour and to execute the sale deed in favour of plaintiff. Moreover, the plaintiff has not examined marginal witness of the agreement Advocate S.S.Sahi and he has also failed to examine deed writer of the agreement to sell. Due to the non-examination of marginal witness and deed writer of the*

*agreement to sell, an adverse inference is to be drawn against the plaintiff. Moreover, on this point, the Hon'ble Punjab and Haryana High Court in case titled as **Richhpal Singh Vs. Sandhura Singh 2013(4) Latest Judicial Reports page 754** held that Agreement to sell-specific performance-scribe of agreement to sell was neither summoned nor examined as only the scribe could have deposed about the contents of the agreement having been read over and explained to the executant-best evidence was withheld despite it being available, the Courts below were justified in drawing the adverse inference-even otherwise the agreement in question was not written by a regular scribe-scribe ought to have been examined to rule out the possibility of agreement being ante dated-the agreement is also not written. In view of the ruling of the Hon'ble Punjab and Haryana High Court, an adverse inference is hereby drawn against the plaintiff for withholding the best evidence by not examining the deed writer of the agreement to sell.”*

9. Learned Appellate Court in its judgment dated 27.08.2019 took a similar view, and concurred with the findings rendered by the learned Trial Court. Findings recorded by the learned First Appellate Court in paragraphs No.16, 17, are also reproduced here-under:-

“16. The claim of the plaintiff also rests upon execution of will dated 12.07.1990 and execution of the agreement to sell is sought on behalf of Piara Singh father of plaintiff since deceased on the basis of said will vide which

RSA-550-2020 (O&M)

- 7 -

the estate of deceased Piara Singh is claimed to have been inherited by the plaintiff. But said claim of the plaintiff could be adjudicated in the presence of other legal heirs of deceased Piara Singh who found to be necessary parties in this regard. The plaintiff did file an application Under Order 1 Rule 10 read with Section 151 CPC for impleading Mohinder Kaur widow of Piara Singh, Narinder Singh, Kuldeep Singh, Rajwinder Singh, Balwinder Singh sons of Piara Singh and Harjinder Kaur and Daljit Kaur daughters of Piara Singh, in the present suit. But the said application was dismissed by the Ld.Lower Court finding the same to have been filed at belated stage vide order dated 04.08.2014.

17. *In view of discussion above, plaintiff is held not entitled for the relief of specific performance and alternative prayer of the plaintiff for recovery of amount Rs.20,000/- can also not be considered in absence of version of other legal heirs on record with regard to inheritance of estate of deceased Piara Singh. As such, issues Nos.1,2 and 3 are decided against the plaintiff and in favour of defendants and finding of Ld. Lower Court with regard to these issues are affirmed. Issue No.5 is also decided against the plaintiff. Issue Nos.4,6 and 7 decided against the defendants by Ld. Lower Court are again not pressed before this Court.”*

10. After hearing learned counsel the appellant (plaintiff) at length and perusing the findings recorded by the learned Courts below in the impugned judgments & decree, I do not find any substantial reason to

RSA-550-2020 (O&M)

- 8 -

deviate from the view point taken by the Courts below.

Even no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decree passed by the Courts below.

Thus, the instant appeal being devoid of merits, stands **dismissed**. The judgments & decree passed by both the Courts below are hereby affirmed.

Pending misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

September 21, 2023

J.Ram

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