

**RSA-183-1993****IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****144****RSA-183-1993****Date of Decision: 13.05.2024**

Jella Ram

.....Appellant

Versus

Abhay Singh and Others

.....Respondents

CORAM: HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate, for the appellant.

Mr. R. A. Yadav, Advocate, for the respondents.

ANIL KSHETARPAL. J.

(1) After hearing learned counsel representing the parties, the substantive part of the order recorded on 18.03.2024 reads as under:

“RSA-183-1993

4. This is plaintiff's regular second appeal to challenge the correctness of the judgment and decree passed by the First Appellate Court, which, in turn, has reversed the judgment and decree passed by the Trial Court.

5. In order to understand the controversy involved in the present case, the relevant facts, in brief, are required to be narrated. Hereinafter the parties shall be referred to by their status in the suit. Defendant No.1- Singh Ram was the owner of a parcel of land by virtue of a decree for permanent injunction passed in his favour. Respondent No.1-Singh Ram is stated to have entered into an agreement to sell on 14.06.1979 with respect to the land measuring 14 kanals and 18 marlas in favour of the plaintiff for total sale consideration of ₹4,500/- which was duly received and the possession of the property was delivered. As per the agreement to sell, the defendant No.1 was to inform the plaintiff after the mutation of the land was sanctioned in favour of Singh Ram on 26.09.1984. However, Singh Ram, in collusion with defendant No.2 and 3, suffered a consent decree based on the exchange of the land on 06.05.1981 and

**RSA-183-1993**

transferred the suit property in their favour. The plaintiff has filed a suit for specific performance of the agreement to sell on 05.03.1986. Singh Ram, while filing the written statement, admitted the execution of the agreement to sell, however, he disputed the date of possession. He also asserted that the plaintiff was not ready and willing to perform his part of the contract. Defendant No.2 and 3 denied the execution of agreement to sell and claimed that defendant No.1-Singh Ram, in fact, entered into an agreement on 23.10.1978. Pursuant to the aforesaid agreement, defendant No.2 and 3 paid ₹35,000/- in total to defendant No.1- Singh Ram. Subsequently, defendant No.1 suffered decree in favour of defendant No.2 and 3 on 06.05.1981.

6. The Trial Court decreed the suit while observing that defendant No.1- Singh Ram is the maternal uncle of defendant No.2 and 3. However, the judgment and decree passed by the Trial Court was reversed by the First Appellate Court on the following grounds:-

- i) The plaintiff has failed to prove the execution of agreement to sell dated 14.06.1979.*
- ii) The identity of the property agreed to be sold has not been disclosed in the agreement to sell.*
- iii) The plaintiff is not proved to be in possession of the property.*

7. Heard the learned counsel representing the appellant at length and with his able assistance, perused the paper-book.

8. The learned counsel representing the appellant contends as under:-

- I) The execution of the agreement to sell dated 14.06.1979 is admitted by defendant No.1-Singh Ram. Hence, it was not required to be proved.*
- II) The identity of the suit land is established because in the agreement to sell the suit property has been identified by giving description of the owners of parcels of the land located on all the four directions.*
- III) The plaintiff is in possession of the land which is incorporated by the revenue record reflecting him to be in possession.*

At this stage, the learned counsel representing the respondents prays for a accommodation.

List on 20.03.2024, in the urgent list.

No further request, written or oral, for grant of an adjournment, shall be entertained.”

**RSA-183-1993**

(2) There is a factual error in the order dated 18.03.2024. The agreement to sell is with respect to the land measuring 8 Kanals and not with respect to 14 Kanal 18 marlas. The correctness of this error is not disputed by learned counsel representing the respondent.

(3) Once again the matter has been heard at length.

(4) Learned counsel representing the respondents submits that the agreement to sell does not refer to *khasra* number of the agricultural land agreed to be sold and hence, the identity of the suit property is not established. He further submits that first appellate Court has recorded finding of fact which should not be interfered with.

(5) This Court has considered the submission made as above.

(6) Learned counsel representing the appellant has produced the photo copy of the agreement to sell. The suit property is identified by describing the property of owners of the land on all the four directions. It has been stated that suit property is bounded as under:

“East : Land of Kanshi Ram S/o Daula.

West: Thoroughfare which leads to Nimbhi and Paharwas.

North: Land of Rama Nand and Mangla in which there is an electric transformer.

South: Way reserved for the plot and land of the Dhanji Singh etc, which is comprised in Rect. No.10 Killa Nos.13 and 8.”

(7) The execution of the agreement to sell is admitted by the defendant No.1. In the written agreement, it is recited that the possession of the suit land was handed over to the plaintiff which is further corroborated by revenue records. Thus, the identity of the property is not in dispute.

**RSA-183-1993**

(8) The first appellate Court has erred in observing that the plaintiff has failed to prove the execution of the agreement to sell. The aforesaid finding is wrong particularly when the defendant No.1 who is the executant of the agreement to sell admits its execution. The second reason assigned by the first appellate Court is also erroneous because the identity of the property is disclosed in the agreement to sell by giving description of owners of the portion of land located on the all the four directions.

(9) Similarly, the first appellate Court has also erred in observing that the plaintiff is not proved to be in possession because there is specific recital to this effect in agreement to sell. Ex.D-4 *Jamabandi* for the year 1985-86 records that the plaintiff is in possession of the suit property. Moreover, a Court Commissioner appointed in some other case has been produced and prove this case which shows that plaintiff is in possession of the property.

(10) Keeping in view the aforesaid discussion, the present appeal is allowed and judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

13.05.2024
anil

(ANIL KSHETARPAL)
JUDGE

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