

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

RSA-307-1993 (O&M)
Decided on:-02.04.2024

Vir Bhushan BehlAppellant..

vs.

Banarasi Lal and othersRespondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rajesh Girdhwar, Advocate,
for the petitioner.

Mr. Kuldeep Sanwal, Advocate,
for the respondents.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgment and decree dated 09.05.1992 passed by the Court of Additional District Judge, Gurdaspur, whereby the judgment and decree dated 05.10.1989 passed by the Court of Sub Judge Ist Class, Pathankot has been modified and instead of granting decree for possession by way of specific performance based on agreement to sell dated 23.05.1985, the alternate claim made by the appellant-plaintiff as regards refund/recovery of the earnest money of Rs.32,000/-, has been awarded in his favour.

2. Briefly stating, based on the aforementioned agreement to sell, the appellant-plaintiff filed a suit for possession by way of specific performance regarding 02 kanals 08 marlas of land forming part of Khata

No.9, Khatauni No.19, Khasra No.70 measuring 21 kanals and 14 marlas, situated in village Kotli Mughla, Tehsil Pathankot.

As per the pleadings, the total sale consideration was Rs.32,500/- against which, a sum of Rs.32,000/- was paid as earnest money in favour of respondents-defendants with 15.10.1986 being the target date for execution of the sale deed by them. In the alternate, prayer for recovery of earnest money was also made in the plaint.

3. In response, separate written statements were filed by all the defendants/respondents. In short, the stand taken therein was that the property in question was owned by respondent No.1/defendant No.2 in his individual capacity, however, no such agreement as alleged by the appellant-plaintiff was ever executed between the parties and the same was a result of misuse of certain documentation executed at the time of obtaining loan by defendant No.1-firm, of which, defendant No.2 was one of the partners.

It was also pleaded that the agreement was never executed with the appellant-plaintiff, as the purchaser/vendee as mentioned in the agreement to sell dated 23.05.1985 was the firm-M/s Gurdial Behl & Sons with the appellant-plaintiff being its proprietor, whereas, no suit was filed on behalf of the vendee/purchaser firm.

4. The trial Court vide judgment and decree dated 05.10.1989 decreed the suit in favour of appellant-plaintiff while granting a decree for possession by way of specific performance in his favour, in terms of agreement to sell dated 23.05.1985 as regards the suit property, while holding that the aforesaid agreement to sell was duly executed and proved on record, whereas, the respondents-defendants failed to prove and establish

their plea of forgery and fraud as regards the execution thereof.

5. Aggrieved thereof, respondent No.1-defendant No.2 filed appeal which came to be decided vide judgment and decree dated 09.05.1992 passed by the Court of Additional District Judge, Gurdaspur, whereby, the decree for possession by way of specific performance, granted by the trial Court, in favour of the appellant-plaintiff was modified to the extent of awarding recovery of Rs.32,000/- towards refund of the earnest money.

6. Impugning the aforesaid judgment and decree dated 09.05.1992 passed by the first Appellate Court, learned counsel for the appellant-plaintiff submits that the agreement in question regarding the suit property was entered into between the appellant-plaintiff and the firm M/s Banarasi Lal Parshotam Lal and was signed by Banarsi Lal and Darshan Lal on behalf of the firm. He further submits that once, Banarsi Lal, who was admittedly the owner of the land in his personal capacity had signed the agreement in question, there was no legal impediment for the first appellate Court to have granted decree for possession by way of specific performance based on the said agreement to sell in favour of the appellant-plaintiff. No other argument has been addressed on behalf of the appellant-plaintiff.

7. In response, learned counsel for the respondents/defendants submits that the first appellate Court was well within its jurisdiction and discretion while denying the decree for possession by way of specific performance and instead granting decree for recovery/refund of the earnest money in the facts and circumstances of the present case, wherein, the property was owned by respondent No.1/defendant No.2 Banarsi Lal in his

individual capacity and the same was proved on record vide jamabandi Ex.D-1.

8. I have heard learned counsel for the parties and gone through the paper book as well as records. I am unable to find substance in the submissions made on behalf of the appellant.

9. A perusal of the record shows that the agreement to sell dated 23.05.1985 was executed between the firm M/s Banarsi Lal Parshot Lal, being vendors and the Firm M/s Gurdial Behl & Sons through its owner/proprietor-Vir Bhushan Behl i.e. the appellant-plaintiff being the vendee-purchaser.

10. Undisputedly, as per the records, especially jamabandi Ex.P-1, the suit property was owned by respondent No.1-Banarsi Lal-defendant No.2 in his individual capacity, though he having signed the agreement to sell in question on behalf of the firm being one of its partners, in the facts and circumstances of the present case, no fault can be found with the judgment and decree passed by the first appellate Court declining the discretion of granting decree for possession by way of specific performance in favour of the appellant-plaintiff. The relevant discussion and findings recorded by the first appellate Court are reproduced hereunder for reference:-

“...From agreement Ex.P.3, it is proved that Darshan Lal and Banarasi Lal signed the agreement for selling the property in dispute on behalf of their firm in favour of the plaintiff-respondent. Banarasi Lal defendant-appellant has admitted the signing of the agreement and the receipt for payment of Rs. 2,000/- in cash. Therefore, from the evidence on the record, it is proved that Banarasi Lal defendant-appellant and Darshan Lal defendant-respondent No.3 executed agreement Ex.P.3 dated

23.5.1985 in favour of the plaintiff-respondent and also received Rs. 32,000/- as earnest money. Here the learned counsel for the defendant-appellant has argued that the firm defendant-respondent No.1 is not owner of the property in dispute and the property in dispute is the personal property of Banarasi Lal defendant-appellant. The defendant-appellant also produced copy of the jamabandi Ex.D.1 from which it is proved that land measuring 21 kanals 14 marlas comprising in Khasra No. 70 is owned and possessed by Banarasi Lal defendant-appellant and not by the firm defendant No.1. Therefore, the alleged agreement dated 23.5.1985 Ex.P.3 cannot be performed. After going through the jamabandi Ex.D.1., it is found that land measuring 21 kanals 14 marlas comprising in Khasra No.70, the property in dispute is part of which, is owned by Banarasi Lal and not firm defendant No.1 and Banarasi Lal defendant-appellant cannot be compelled to execute the sale deed in favour of the plaintiff-respondent No.1 as agreement Ex.P.3 is on behalf of firm-defendant No.3 and not by Banarsi Lal defendant-appellant or Darshan Lal Sharma defendant-respondent No.3 in their personal capacity. The case of the plaintiff-respondent is that the defendant- appellant and Darshan Sharma defendant-respondent sold land measuring 2 kanals 8 marls with one double storied house out of total land measuring 21 kanals 14 marlas But the plaintiff-respondent has not filed site plan specifying the land agreed to sold to the plaintiff-respondent out of the total land measuring 21 kanals 14 marlas. Vide agreement, Ex.P.3 also, it is not clear that which part of the total land measuring 21 kanals 14 marlas and on which side was agreed to be sold in favour of the plaintiff-respondent. Therefore, the property agreed to be sold in favour of the plaintiff-respondent cannot be identified as the specific property has not been mentioned in the agreement nor it is proved on the record. Therefore, due to this infirmity also, agreement dated 23.5.1985 cannot be performed”

11. In addition, it may also be pointed out here that a specific plea was raised in the separate written statement filed on behalf of respondent No.1-defendant No.2-Banarsi Lal that the agreement to sell in question was in fact a result of forgery committed by the appellant-plaintiff while extending some financial assistance/loan in favour of respondent No.2-firm. Though a finding was recorded by the trial Court that the forgery was not established on record by the respondents-defendants, however, the facts and circumstances of the present case itself speak volumes about the nature and intent of the transaction in hand, wherein the agreement to sell was executed on 23.05.1985 with target date of 15.10.1986, whereas, out of the total sale consideration of Rs.32,500/-, a sum of Rs.32,000/- i.e. less Rs.500/- was paid there and then on the date of execution of agreement to sell and that too, without delivery of possession to the appellant-plaintiff, as such, there was no justifiable reason for fixing the target date for performance of the same with a gap of almost 01 year & 05 months, especially, when only a minuscule part of sale consideration of Rs.500/- was to be paid by the alleged vendee/purchaser. Moreover, under the agreement to sell in question, the reason for sale was specifically mentioned as requirement of money for business by the vendor which in fact was one of the defences raised by the respondents-defendants.

12. In view of the discussion made herein above and upon analysis of the pleadings and the evidence available on record, no illegality or perversity can be found with the reasons recorded by the First Appellate Court while passing the judgment and decree dated 09.05.1992, declining the relief of possession by way of specific performance in favour of appellant-plaintiff.

Resultantly, finding no substance in the present appeal, the same is dismissed.

13. All pending applications stand disposed of.

02.04.2024

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(HARKESH MANUJA)

JUDGE

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