

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.434 of 1993 (O&M)

Reserved on: 14.03.2024

Date of Order:18.04.2024

Mohinder Singh and another

.Appellants

Versus

Kewal Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Tara Chand Dhanwal, Advocate, for the appellants.

Mr. P.S.Jammu, Advocate, for the respondents.

ANIL KSHETARPAL, J

1. BRIEF FACTS OF THE CASE

1.1 In this regular second appeal the plaintiffs assail 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 while deciding the plaintiffs' suit for specific performance of the agreement to sell. The trial court granted decree for possession by way of specific performance of the agreement to sell in favour of the plaintiffs which has been modified by the First Appellate Court and they have been granted an alternative relief.

1.2 The basic issue which requires adjudication is whether the agreement to sell dated 15.01.1988, propounded by defendants no.3 and 4 has been ante dated or not?

1.3 In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

1.4 Two defendants, namely, Sh. Kewal Singh and Sh. Hakam Singh sons of Sh. Ram Singh were owners of land measuring 14 kanals and

4 marlas situated in village Ottu. They, on 23.03.1988, entered into an agreement to sell in favour of the plaintiffs, namely Sh. Mohinder Singh and Sh. Joginder Singh sons of Sh. Gurbax Singh, on receipt of Rs.10,000/- out of total sale consideration of Rs.44,375/-. As per the agreement to sell, the sale deed was to be executed and registered on or before 07.06.1988. It is the case of the plaintiffs that defendants no.3 and 4 are owners in possession of adjoining land to the suit land and they have placed pump set to lift water from Ghaggar seasonal rivulet. After the agreement to sell, defendants no.3 and 4 convened Panchayat while impressing upon defendants no.1 and 2 to either sell the land to them or give an undertaking that they will permit defendants no.3 and 4 to continue irrigating the land in the same manner to which the plaintiffs did not agree. Ultimately, defendants no.3 and 4 got sale deed dated 03.06.1988 from defendants no.1 and 2 at the rate of Rs.32000/- per acre which is Rs.7000/- per acre more than what was offered by the plaintiffs. On 14.06.1988, the suit was filed after visiting the office of sub-registrar on 07.06.1988.

1.5 Defendants no.1 and 2 claimed that the agreement to sell dated 23.03.1988 is forged and is a result of misrepresentation and that no panchayat was ever held. Defendants no.3 and 4 filed separate written statements claiming that they had no knowledge of the agreement to sell by defendants no.1 and 2 in favour of the plaintiffs and in fact defendants no.3 and 4 executed an agreement to sell dated 15.01.1988, in their favour.

1.6 The trial court as well as the First Appellate Court have found that the agreement to sell was executed by defendants no.1 and 2 in favour of the plaintiffs and they were always ready and willing to perform their part of the contract. It was also held that the agreement to sell dated 15.01.1988

has been ante date. The First Appellate Court has modified the judgment of the trial court on the ground that the agreement to sell was executed on 15.01.1988. Thus, the plaintiffs have been granted alternative relief of refund of earnest money along with interest.

2. ARGUMENTS ADDRESSED AND DISCUSSION

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record.

2.2 It may be noted here that the learned counsel representing the parties have not challenged the correctness of the concurrent findings of fact with respect to agreement to sell dated 23.03.1988, executed by defendants no.1 and 2, namely, Sh. Sulakhan Ram and Sh. Sat Pal sons of Sh. Sona Ram, in favour of the plaintiffs, namely Mohinder Singh and Sh. Joginder Singh sons of Sh. Gurbax Singh and these plaintiffs were always ready and willing to perform their part of contract. Hence, the limited point which this court is called upon to decide is whether the agreement to sell dated 15.01.1988 is ante date or not?

2.3 Ex.D1 is the copy of the agreement to sell dated 15.01.1988. It has been scribed on stamp paper worth Rs.5/- which was allegedly purchased by Hakam Singh son of Ram Singh. The stamp paper was purchased from Sh. Janak Raj. He is a licenced stamp vendor who has permission to sell the stamp papers at Sirsa. However, it has come on record that he has sold the stamp paper at Rania. The official of D.C. Office has testified that the application submitted by Sh. Janak Raj for permitting him to sell the stamp papers at Ratia was rejected by the Deputy Commissioner.

A show cause notice has already been issued against Sh. Janak Raj as to why

his licence should not be cancelled because there are various irregularities including allegations that Sh. Janak Raj is also scribing the agreement to sell and he does not maintain proper record. It has also come on record that the agreement to sell is required to be scribed on a stamp paper of Rs.2.25/-. Sh. Janak Raj, stamp vendor, has admitted that he sold stamp of Rs.3/- denomination to as may as 11 persons on 15.01.1988. However, he has failed to explain why he issued stamp paper of Rs.5/- to Sh. Hakam Singh on 15.01.1988. The agreement to sell is scribed by Sh. R.C.Goel, Advocate who is not a professional scribe. He is not maintaining any register while working as a scribe. It has also been signed by two marginal witnesses, namely, Sh. Ganga Ram Dhaka, Advocate, Sirsa and another Advocate. Sh. Janak Raj has been examined in rebuttal evidence as PW9. It is proved from his statement that he has not been working in accordance with the rules as he was not making entry of the unsold stamp papers which were available with him while closing his notebook every day.

2.4 On careful reading of the statement of Sh. Hakam Chand, who has appeared as DW1, it is evident that he is not a reliable witness. He has admitted that the suit land falls in the jurisdiction of Sub Registrar, Ratia, where the sale deeds are executed and registered. The sale deed in favour of defendants no.3 and 4 has also been executed and registered at Ratia. However, no reason has been given why the the agreement to sell Ex.D1, dated 15.01.1988, was executed at Sirsa. It may be noted here that the stamp paper for execution of the agreement to sell was purchased at Ratia and then it was got scribed at Sirsa, although, Sh. Hakam Singh admits that a significantly large number of professional scribes are available at Ratia.

2.5 Moreover, after stating that the agreement to sell dated

23.01.1988, is forged and result of misrepresentation, however, he admits that his thumb impression on the agreement to sell dated 23.03.1988 while appearing in evidence. He has also incorrectly stated in his deposition that defendants no.3 and 4 are not owners of adjoining land. He further states that when the agreement to sell Ex.D1 dated 15.01.1988, was scribed, none of the witness had put his signatures in his presence.

2.6 Sh. Ganga Ram Dhaka, Advocate, one of the marginal witness, while appearing as DW5 has stated that he appended the agreement to sell in his office. He states that he does not know who is the other marginal witness. He states that he appended his signatures on the agreement to sell on the request of Sh. Brahma Nand, Advocate. He again stated that he signed on the request of Sh. Brij Mohan Bansal, Advocate. He has stated that he does not remember whether the parties signed or thumb marked in his presence or not. The second marginal witness has not been examined by the defendants. There is no documentary evidence to prove that the agreement to sell was scribed on 15.01.1988.

2.7 The following reasons have been recorded by the First Appellate Court to reverse the judgment passed by the trial Court:-

- (1) The plaintiffs have failed to refer to any rules which require that the agreement to sell was to be scribed by a regular scribe.
- (2) The members of the Bar are respectables and they follow a noble tradition. Moreover, young lawyers often work as scribe and even though they do not know the parties.
- (3) The parties cannot suffer because antecedents of stamp vendors are not found upto the mark.

2.8 The first reason noted by the First Appellate Court is not appropriate. Though, there is no rule which compels the parties to get the agreement to sell scribed from a regular scribe, however, at this stage the court is only required to examine whether agreement to sell dated 15.01.1988 is pre-dated or not? In that context the court is required to analyze the evidence. The antecedents of Sh. Janak Ran, stamp vendor are doubtful. On the same day, he sells stamp papers worth Rs.3/- to as many as 11 persons, however, he issued stamp papers worth Rs.5/- to Sh. Hakam Chand, one of the vendor. He has sold it at Rania, where he is not entitled to practice and issue stamp papers. The agreement to sell is scribed at Sirsa, though, in normal course it should have been scribed at Rania. Moreover, defendant no.1 Hakam admits that he did not know the two marginal witnesses. Mr. Ganga Ram Dhaka, Advocate, has stated that he has signed on the request of Mr. Bansal, advocate, while sitting in his office. In these circumstances, the First Appellate Court has erred in reversing the judgment of the trial court.

2.9 On the request of the court, the learned counsel representing the parties have filed their respective synopsis. The learned counsel representing the respondents has submitted the following arguments:-

“The land, in question, was already under cultivation of the respondent no.3 and 4 and their other land is surrounded with this land and was being irrigated through the tubewell of the respondents no.3 and 4. The respondents no.3 and 4 are bonafide purchasers and are first vendees and their agreement is proved by Scribe and attesting witness. Vendor Hakam Singh DW-1 admitted the execution of agreement to sell dated 15.01.1988 (Ex.D-1) and execution of sale deed (Ex.D-2) in

pursuance to agreement to sell.

Oral evidence of the plaintiffs about the Panchayat in the village having knowledge of agreement to sell dated 23.03.1988 (Ex. P-1) is not believable.

The plaintiffs have also sought alternative relief for recovery of Rs.10,000/- being earnest money and Rs.30,000/- as .compensation and the first appellate court has ordered to return the earnest money along with interest.

First Appellate Court has given well reasoned and lawful findings in para no.19 to 23.

Witness DW-4 Ramesh Chander Goyal Advocate Scribe of Exhb. D-1 Agreement to Sell dated 15.01.1988 is more reliable than a regular scribe. DW-5 Ganga Ram Dhaka Advocate, attesting witness is also more reliable than a common man being practicing Advocate and Member of the Bar Association who have taken the Oath of Professional Ethics and are governed by the Advocates Act, 1961 and Bar Council Rules.

PW-9 Janak Raj Stamp Vendor appeared in rebuttal and has deposed that he has sold the stamp paper of Agreement to Sell dated 15.01.1988.

Plaintiffs have failed to prove any fraud and thus, are only entitled for the return of earnest money and are not entitled for specific performance of Agreement to Sell dated 23.03.1988 as the land was already sold to the respondents no.3 and 4 vide Sale Deed Ex. D-2 dated 03.06.1988 i.e. before the date of execution of sale deed

(07.06.1988).

The plaintiffs have never sought the relief to set aside the Sale Deed dated 03.06.1988 Ex. D-2 and thus, the civil suit was not maintainable.”

2.10 The argument no.1 of respondent no.3 and 4, is without any basis because it is not the case of the defendants no.3 and 4 that they were previously cultivating the land before 15.01.1988.

2.11 The second argument of the learned counsel is also without substance because PW5 Sh. Fouja Singh and PW6-Sh. Inder Pal have stated that a panchayat in the village took place as alleged by the plaintiffs.

2.12 With respect to the next argument, it may be noted that the plaintiffs are entitled to file comprehensive suit while seeking alternative relief along with the relief of specific performance, however, the specific performance cannot be denied on the ground that the alternative relief has also been sought.

2.13 With regard to the next argument, this court has already analyzed the reasons recorded by the First Appellate Court.

2.14 The next argument of the learned counsel representing the respondents also lacks substance because the statements of DW5-Sh. Ramesh Chand Goel and DW6-G.R.Dhaka, are not worth reliance particularly in view of the crucial issue which requires adjudication.

2.15 The next argument of the learned counsel with regard to the deposition of Sh. Janak Raj, it may be noted that Sh. Janak Raj has admitted that inquiry is pending and he sold the stamp papers for Rs.5/- at Ratia, though, he has been permitted to sell the stamp papers only from Sirsa.

2.16 The next argument of the learned counsel is also without substance because the plaintiffs have successfully proved that the agreement to sell dated 15.01.1988 was in fact, pre-dated in order to defeat their right.

2.17 With respect to the least argument of the learned counsel, it may be noted that the plaintiffs are not required to seek relief of setting aside the sale deed. They are required to file suit for specific performance which was filed by the plaintiffs. Any sale of the property after the agreement to sell was entered into would be subservient to the plaintiffs' right to seek relief of specific performance. Hence, the sale deed dated 03.06.1988 is not required to be specifically set aside.

3. **CONCLUSION**

3.1 In this case, defendants no.3 and 4 have tried to frustrate the plaintiffs' rights to seek possession by way of specific performance by ante dating the agreement to sell. Hence, this court does not find it appropriate to exercise discretion in their favour.

3.2 Keeping in view the aforesaid facts and discussion, the judgment and decree passed by the First Appellate Court is set aside and that of the trial court is restored.

3.3 The regular second appeal is allowed.

3.4 All the pending miscellaneous applications, if any, are also disposed of.

18th April, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO