

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

138

RSA-673-1992
Date of decision: 15.03.2024

KASHMIR SINGH AND ANR. ..Appellants

Versus

SOHAN SINGH AND ANR. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Singh, Advocate
for the appellants.

Mr. Gitesh Sharma, Advocate
Mr. Harsh Jain, Advocate
and Mr. Ram Krishan Rana, Advocate
for respondent No.1 and 2.

ANIL KSHETARPAL, J(Oral)

1. This is defendants' regular second appeal to assail the correctness of the judgment and decree passed by the First Appellate Court, which in turn has modified the judgment and decree passed by the trial Court.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. The plaintiff Sh. Sohan Singh (respondent herein) filed a suit for possession by way of specific performance of the agreement to sell. He claimed that Sh. Darshan Singh (respondent No.1) executed an agreement to sell in his favour on 07.11.1984, with respect to the land measuring 11 kanal and 2 marlas on receipt of Rs.6,000/- as earnest money while agreeing to execute sale deed at the rate of Rs.10,000/- per acre. As per the agreement to sell, the possession of the land agreed to be sold was delivered to him and

the sale deed was to be executed on 31.01.1985, which was subsequently extended upto 22.05.1985, by way of separate endorsement on the backside of the agreement. The suit was filed on 16.05.1985. The plaintiff also claimed that the sale deed executed in favour of the defendants No.2 and 3 (appellants herein) by Sh. Darshan Singh on 22.03.1985, is not binding on his rights. Defendant No.1 while entering appearance in the suit, filed a written statement denying execution of any agreement to sell in favour of the plaintiff. Defendant No.2 and 3 also denied execution of the agreement to sell dated 07.11.1984 and claimed that the aforesaid agreement to sell is a fabricated document. It was also pleaded that they had no knowledge of the agreement to sell in favour of the plaintiff and therefore, they are bonafide purchasers without notice and with consideration.

4. The trial Court upon appreciation of evidence came to conclusion that though, the agreement to sell dated 07.11.1984, has been proved, however, the plaintiff is not entitled to specific performance of the agreement to sell. The Court granted alternative relief of refund of Rs.12,000/-.

5. The First Appellate Court in plaintiff's appeal has modified the decree and granted relief of possession by way of specific performance of the agreement to sell. The sale deed dated 22.03.1985, has been set aside.

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

7. The learned counsel representing the appellants while drawing the attention of the Court to the agreement to sell dated 07.11.1984 (Ex.P-1)

submits that there is no evidence to prove that the aforesaid agreement to sell was in fact executed on 07.11.1984. He submits that a plain paper has been converted into a stamp paper by affixing revenue stamps. He further submits that the agreement to sell is full of cuttings and interpolations. While referring to the agreement to sell, he submits that on 07.11.1984, in the last sentence, 'delivery of possession' has been inserted. He submits that once again, while extending the period for execution of sale deed vide endorsement dated 29.01.1985, again, the same sentence has been added.

8. He further submits that the alleged agreement to sell was allegedly scribed from a scribe whose licence had lapsed. Hence, the execution of the agreement to sell is doubtful.

9. On the other hand, the learned counsel representing both the respondent submits that the agreement to sell has never been challenged and the First Appellate Court has recorded valid reasons to modify the judgment. He submits that the plaintiff was recorded in possession from the year 1981.

10. This Court has considered the submissions of the learned counsel representing the parties.

11. First of all, it is evident that the First Appellate Court has not critically analyzed the judgment passed by the trial Court. The trial Court by an elaborate judgment has recorded multiple reasons to deny the relief of specific performance to the plaintiff. However, the First Appellate Court has failed to examine the same before differing with the same by process of reasoning. The First Appellate Court before reversing the judgment of the trial Court is expected to not only analyse the reasons given by the trial Court but also give its own reasons for refusing to accept the reasons

recorded by the Courts below. In absence thereof, it is not appropriate for the First Appellate Court to reverse the judgment of the trial Court.

12. In the considered opinion of this Court, the plaintiff is not entitled to relief of specific performance of the agreement to sell on the following grounds:-

- i. The agreement to sell has been scribed on a plain paper with adhesive revenue stamps which has not been sold by any stamp vendor. There is no evidence to prove that the aforesaid agreement to sell was entered into on 07.11.1984 or it was ante-dated. Moreover, PW-1 Sh. Gurdial Singh is the scribe of the agreement to sell. He admits that he did not get his licence renewed after the year 1978. He was also unable to tell number of his licence for deed writing
- ii. No explanation has been furnished as to why the agreement to sell was not scribed on a stamp paper.
- iii. The agreement is full of cuttings and interpolations. The amount of earnest money of Rs.6,000/- has been recorded after scoring of the amount of Rs.5,000/-.
- iv. Still further, the total amount of sale consideration has also been changed. Significantly, in the last sentence, it has been added that the possession of the land agreed to be sold to Sh. Sohan Singh has been delivered. That is not in consonance with the stand taken by the plaintiff that he

has already in the possession. While filing the suit, the plaintiff has also sought relief of possession.

13. It has come on record that the evidence of the plaintiff that he informed the defendant No.2 and 3 about the prior agreement to sell in his favour is not reliable. At one stage, he states that he informed defendant No.2 and 3, however, subsequently, he states that he informed the father of defendant No.2 and 3.

14. Still further, the agreement to sell is full of contradictions. On 07.11.1984, there is a recital for delivery of possession. Again, the same statement is repeated in the endorsement dated 29.01.1985. It is also evident that the sentence with regard to the delivery of possession in the writing dated 07.11.1984 as well as 29.01.1985, has been added later on. In the endorsement dated 29.01.1985, the sentence with regard to the delivery of possession has been recorded in between the lines, with comparatively dark ink pen when compared with remaining recitals of the agreement.

15. It may be noted here that defendant No.1 after having filed the written statement, did not appear in the Court to give his testimony. That itself proves that defendant No.1 did not seriously contest the suit. Significantly, now defendant No.1 and plaintiff are represented by same counsel before this Court.

16. The First Appellate Court has erred while holding that plaintiff was recorded in possession of the property and defendant No.2 and 3 did not make due diligence before purchasing the land. It may be noted here that there is only one entry of plaintiff being in possession in '*khasra girdawari*' in the year 1981, however, the jamabandi for the year 1979-80, it is

defendant No.1, who is recorded in possession. The First Appellate Court has also erred while observing that in '*khasra girdawari*' (Ex.DZ), the possession of the plaintiff is recorded. It has been brought to the notice of the Court that the aforesaid order was passed after the filing of the suit.

17. Still further, the plaintiff has tried to play hide and seek with the Court. On the one hand, he filed the present suit on 16.05.1985 by impleading defendant No.2 and 3 as party defendants, however, he filed the application for correction of '*khasra girdawari*' on 22.05.1985 but he did not implead defendant No.2 and 3 as party although, he knew that the sale deed in favour of defendant No.2 and 3 has already been executed on 22.07.1985. Since, defendant No.1 had already sold the property therefore, he did not contest the application for correction of '*khasra girdawari*'.

18. The First Appellate Court has also erred in relying upon the jamabandi for the year 1985-86, which came into being after 22.03.1985. There was no occasion for defendant No.2 and 3 to look at the revenue record, which was not prepared on the day, the sale deed was executed in their favour.

19. Keeping in view the aforesaid reasons, the appeal is allowed.

20. The judgment passed by the First Appellate Court is set aside and that of the trial Court is restored.

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

March 15th, 2024

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(ANIL KSHETARPAL)
JUDGE

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