

**RSA No.993 of 1992****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****RSA No.993 of 1992 (O&M)
Reserved on : 16.05.2024
Date of Decision : 20.05.2024**

Jangsher @ Jang Bahadur (deceased) through LRs and Ors.

....Appellants

Versus

Molu Ram (deceased) through LRs

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ankit Yadav, Advocate for the appellants.

Mr. R.S. Mamli, Advocate for the respondent.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellants against the judgment and decree dated 09.03.1989 passed by the Trial Court and the judgment and decree dated 09.03.1992 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that initially the suit was filed by the plaintiff-respondent against defendant Faiz Talab Khan for specific performance of the agreement to sell dated 14.05.1978. It was averred that the agreement to sell was executed for a total sale consideration of Rs.55,000/- and out of that Rs.27,800/- was paid as earnest money. Target date was fixed as 14.05.1980. It was further averred that the plaintiff-respondent had sent a telegram to Faiz Talab Khan prior to the date of the target date. However, on 13.05.1980 and 14.05.1980 the defendant Faiz



Talab Khan failed to appear before the Sub-Registrar. The plaintiff-respondent got his presence marked before the Sub-Registrar where he had appeared alongwith the balance amount. It was further averred that the plaintiff-respondent remained ready and willing to perform his part of the contract. Faiz Talab Khan was stated to have died and subsequently his legal heirs were impleaded. During the pendency of the suit, his wife Mst. Asgari was also impleaded as it came to the knowledge of the plaintiff-respondent that the suit property had been transferred by way of a consent decree in favour of Mst. Asgari. It was the stand taken by Faiz Talab Khan as well as Mst. Asgari vide the separate written statements filed by them that no agreement to sell was executed. It was further the case set up that the land in dispute was owned by Mst. Asgari and that since Faiz Talab Khan started asserting his own right over the said land, hence, the suit was filed which was decreed.

3. On the basis of the pleadings of the parties the following issues were framed by the Trial Court :

- 1) Whether the defendant has executed an agreement to sell dated 14.5.1979 after taking Rs. 27,800/- as earnest money in respect of the suit land as alleged in the plaint ? OPP
- 2) Whether the plaintiff was ready and willing to perform his part of the contract as alleged ? OPP
- 3) Whether the agreement dated 14.5.1979 is based upon fraud and misrepresentation and the same is



forged as alleged in para No.2 of the additional pleas of the written statement ? OPD

4) Whether the decree dated 31.5.1980 in favour of defendant No.2 in respect of the suit property is collusive, fraudulent, null and void and not binding upon the rights of the plaintiff ? OPP

5) Whether the plaint is liable to be rejected on the grounds mentioned in the preliminary objection No.1 taken in the amended written statement ? OPD

6) Whether amount of Rs. 27,800/- paid by the plaintiff to the defendant Faiz Talab Khan has been adjusted as alleged in written statement ? OPD

7) Whether the plaintiff is entitled to special costs as alleged in para No.2 of additional plea ? OPP

8. Relief.

4. The Trial Court decreed the suit filed by the plaintiff-respondent vide judgment and decree dated 09.03.1989. Aggrieved by the same, an appeal was preferred by the defendants-appellants which was also dismissed vide judgment and decree dated 09.03.1992. Hence, the present regular second appeal.

5. Learned counsel for the defendants-appellants would contend that Faiz Talab Khan was never the owner of the property and hence the suit property could not have been agreed to have been sold by way of agreement to sell dated 14.05.1978. Learned counsel would further contend that the



said property was transferred in the name of his wife Mst. Asgari by way of a consent decree dated 31.05.1980.

6. *Per contra*, learned counsel for the plaintiff-respondent would contend that in the present case both the Courts concurrently found that the agreement to sell stood proved in view of the evidence produced on the record. Learned counsel would further contend that as per the revenue record the land stood in the name of Faiz Talab Khan. Even till the date of filing of the suit there was not an *iota* of evidence that the property ever belonged to Mst. Asgari.

7. I have heard the learned counsel for the parties.

8. In the present case the only argument raised by the learned counsel for the defendant-appellants was that the disputed land belonged to Mst. Asgari and that since Faiz Talab Khan had started asserting his own title over the said property, a consent decree was passed on 31.05.1980 transferring the land in favour of Mst. Asgari, to whom the said land had been given in view of prompt dower. Both the Courts concurrently held that the revenue record produced as evidence clearly revealed that the recorded owner was Faiz Talab Khan. Even till the filing of the suit, the property stood in favour of Faiz Talab Khan. It was further held by the First Appellate Court there was no plea set up by Mst. Asgari that she was living separately from her husband or that they had strained relations and thus held that the consent decree was conceded by Faiz Talab Khan in favour of Mst. Asgari only to avoid the liability under the agreement to sell. There is no evidence to show that the said property was ever in the name of Mst. Asgari. It is apt

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to notice that though a plea was raised that the property was transferred as prompt dower however the learned counsel for the defendant-appellants has not been able to show any evidence that the said property was transferred as prompt dower. Though no argument has been raised by the learned counsel for the defendants-appellants regarding the validity of the agreement to sell, however, it is to be noticed that the agreement to sell stood proved by the scribe Rajinder Nath Sharma and the attesting witnesses PW4 Amar Nath and PW5 Jumna Ram, all of whom categorically stated qua the execution of the agreement to sell by Faiz Talab Khan. The readiness and willingness on the part of the plaintiff-respondent was also proved. No other arguments have been raised. In view of the fact that there is no evidence on the record that the land ever belonged to Mst. Asgari, no fault can be found with the judgments and decrees passed by both the Courts.

9. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

20.05.2024
Ankur

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO