



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102)

RSA No. 2346 of 1991 (O&M)
Date of Decision : 27.11.2024

Dara Singh (deceased) through his LRs

...Appellants-defendants

Versus

Piyara Singh

...Respondent-plaintiff

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Uday Agnihotri, Advocate for the appellants.

Ms. Lovepreet Kaur, Advocate for
Mr. A.S. Kalra, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

1. In the present regular second appeal, the challenge is to the judgment and decree of the lower appellate Court dated 16.08.1991 by which, the judgment and decree of the trial Court dated 29.10.1988 has been set-aside and the suit filed by the respondent-plaintiff has been allowed.
2. Learned counsel for the appellant-defendant (since deceased) argues that keeping in view the facts and circumstances of the present case, without dealing with the various aspects, the well reasoned judgment of the trial Court has been set-aside by the Lower Appellate Court, hence, the judgment of Appellate Court is liable to be set-aside so as to restore the judgment and decree of the Trial Court dated 29.10.1988. Learned counsel for the appellant-defendant (since deceased) further submits that without appreciating certain facts, which had already come on record that the appellant-defendant Dara Singh was illiterate and he had taken a plea that he had only entered into an agreement for the release of the loan and had only



received ₹1500/- and he was made to sign certain documents and that too regarding the land of which the ownership was not with the appellant-defendant on the date of execution of the agreement to sell on 25.01.1984, the Lower Appellate Court has wrongly reversed the judgment of the Trial Court.

3. Learned counsel for the appellant-defendant further submits that the date fixed in the agreement to sell for execution of the sale deed was 25.07.1984 and even on the said date, the land was not under the ownership of the appellant-defendant (since deceased) and keeping in view the said fact, finding was recorded by the Trial Court that the appellant-defendant assertion was to be believed qua agreement for the purpose of release of loan and further, the suit was filed after a period of more than two years of the expiry of the date for execution of the agreement which clearly shows that the said agreement could not have been executed, especially when, the land which was allotted to the appellant-defendant (since deceased) on 16.01.1986, the same could not have been sold for a period of 10 years, the Lower Appellate Court wrongly allowed the suit by setting-aside the finding of the Trial Court.

4. Learned counsel appearing on behalf of the respondent-plaintiff submits that in the judgment and decree of the Lower Appellate Court, a finding has been recorded that the agreement to sell was proved and the appellant-defendant was ready and willing to perform his part of the contract, hence, the judgment of the Lower Appellate Court may kindly be upheld and the appeal may kindly be dismissed.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.



6. From the facts, which have been noticed here-in-before, it has also come on record that the suit for specific performance was filed by the respondent-plaintiff in pursuance to the agreement to sell dated 25.01.1984. It is a conceded position between the parties that on the said date, the land in question which was the subject matter of the agreement to sell, was not under the ownership of the appellant-defendant (since deceased). Further, the appellant-defendant who is an illiterate person, is denying the execution of the agreement to sell regarding the land of which, he only became owner in January, 1986 and raised a fact that agreement was for loan and he was paid 1500/- and the said fact was given importance by the Trial Court while exercising the discretion in the facts and circumstances of the case qua prayer for grant of Specific Performance.

7. Learned Lower Appellate Court has not at all dealt with all these facts while reversing the judgment of the Trial Court dated 29.10.1988. Not only this, as per the evidence which has come on record, the appellant-defendant had put thumb mark on the agreement to sell. He was an illiterate man. Under these circumstances, Trial Court used the discretion as agreement to sell was under a doubt. Lower Appellate Court could only set-aside the finding of the Trial Court in case, same are perverse. Once in the facts and circumstances, Trial Court exercised its discretion keeping in view the evidence on record and the setting-aside of the judgment of Trial Court by Appellate Court with a finding that findings of Trial Court are perverse, cannot be sustained.

8. Keeping in view these facts, the trial Court observed that there is a doubt with regard to the agreement to sell of that land which is subject



matter of which, the specific performance was being sought and directed the appellant-defendant (since deceased) to refund ₹1500/- which he had received in terms of the said agreement to sell dated 25.01.1984, Lower Appellate Court failed to notice as to why the plaintiff waited for more than two years to file a suit of Specific Performance.

9. Further, it may be noticed that the date fixed under the agreement to sell for execution of the sale deed was 25.07.1984. In case, the respondent-plaintiff was ready to perform his part of the agreement, he could not have waited for a period of more than two years to file the suit claiming the execution of the agreement to sell. This fact also goes to show that the respondent-plaintiff was aware that the appellant-defendant (since deceased) was not the owner of the land in question, which give credibility to the fact that agreement was for loan and the appellant-defendant was not made aware of what he was accepting while putting his thumb impression.

10. From the facts which have been narrated here-in-before, allowing of the suit filed by the respondent-plaintiff for the Specific Performance of the agreement to sell dated 25.01.1984, by the Lower Appellate Court, without giving any cogent reason, only on the ground that the agreement to sell was proved ignoring the fact that grant of the said relief was discretionary at the relevant date and discretion was exercised by the Trial Court keeping in view the evidence which came on record, hence, the said reversal of Trial Court's order cannot be sustained keeping in view the detailed discussions of the facts and the evidence by the Trial Court.

11. Further, it is a settled principle that prior to the year 2019, the Court had a discretion to grant the specific relief as being claimed keeping in



view the facts and circumstances of the case. The trial Court, in its wisdom rightly directed refund of ₹1500/- to the respondent-plaintiff, which in the facts and circumstances of the case was valid.

12. As of now, it has been conceded between the parties that the land is being enjoyed by the respondent-plaintiff and has taken the benefits out of the said land for a period of more than 40 years. That being so, keeping in view the findings of the Trial Court using its discretion, it is ordered that keeping in view the facts and circumstances of the present case, the judgment and decree of the Lower Appellate Court dated 16.08.1991 cannot be sustained and the judgment and decree of the Trial Court dated 29.10.1988 be restored.

13. Further, prior to the year 2019, the grant of relief under the Specific Performance Act was discretionary. In the present case, the suit of the respondent-plaintiff for Specific Performance also contained the alternative prayer of recovery of ₹3,000/- stated to have been given to the appellant-defendant. The value of the 2 kanals land has grown since the year 1984. It will not be in the fitness of things that the land in question should be given to the appellant-defendant at the rate mentioned in the agreement to sell as the same will cause further prejudice to the appellant-defendant. The execution of the decree had been stayed by the Bench while admitting the present regular second appeal, hence, keeping in view the fact that the relief claimed is discretionary and in the facts and circumstances of the case, the Trial Court had already used the discretion to direct the appellant-defendant to refund ₹1500/-, hence, allowing the respondent-plaintiff the execution of



sale deed on the basis of the agreement to sell will not be in the interest of justice, equity and fair play.

14. The benefits, which the respondent-plaintiff has already derived on the land in question for a period of 40 years, are good enough for him qua the doubted agreement to sell and as, no sale deed has been executed keeping in view the interim order granted by this Court, the direction given by the Lower Appellate Court that the sale deed be executed in terms of the agreement dated 25.01.1984 is set-aside and the judgment and decree of the Trial Court dated 29.10.1988 is restored.

15. As, the respondent-plaintiff has been allowed to keep the benefits which he has taken out of the land for 40 years, the payment of ₹1500/- at the hands of the respondent-plaintiff will be good enough without there being any interest.

16. The present regular second appeal is allowed in above terms and the judgment and decree of the Lower Appellate Court dated 16.08.1991 is set-aside and that of the Trial Court dated 29.10.1988 is restored with the modification as made here-in-before and the suit filed by the respondent-plaintiff is dismissed.

17. Pending miscellaneous application, if any, also stands disposed of.

November 27, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No