

2024:PHHC:014756

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

RSA-2006-1994 (O&M)
Date of decision: 02.02.2024

Dharam Singh (since deceased) through LR's and others
....Appellant

Versus

Balbir Singh ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vishal Sharma, Advocate for the appellants

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the defendants assail the correctness of the concurrent findings of fact arrived at by the courts below, while decreeing the plaintiff's suit for grant of specific performance of the agreement to sell.
2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.
3. While asserting that the defendant no.1 (appellant no.1 herein) agreed to sell land measuring 45 kanals vide agreement to sell dated 24.07.1985, on receipt of Rs.55,000/- out of the total sale consideration of Rs.1,10,000/-, the plaintiff prayed for the grant of decree for the specific performance of the agreement to sell. The defendants, in the meantime, sold a part of the property in favour of the defendant no.2 and 3. The defendant no.1 filed his separate written statement whereas the defendant no.2 and 3 filed their respective written statements. It was contended by the defendants that the agreement to

sell is forged and fabricated and the plaintiff was not ready and willing to perform his part of the contract.

4. Both the courts, on appreciation of evidence, have found that the execution of the agreement to sell is proved and the plaintiff was always ready and willing to perform his part of the contract. The courts further found that defendant no.2 and 3 are not the bonafide purchasers.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the requisitioned digital record, which is available on the website.

6. The learned counsel representing the appellant contends that there is an interpolation/cutting on the area of the land in the agreement to sell 'Ex.P-4'. He further submits that 4 kanals was agreed to be sold however, on the instrument, it was converted into 45 kanals. He further submits that the plaintiff failed to prove his readiness and willingness and defendant no.2 and 3 are the bonafide purchasers. Therefore, the court erred in decreeing the suit.

7. This Court has considered the submissions made by the learned counsel representing the parties.

8. The learned counsel representing the appellant is attempting to make out a new case for the defendant. In the written statement, the defendant has taken a stand that no agreement to sell was executed. It was not his case that the agreement to sell was executed only with respect to 4 kanals land. Moreover, it is evident that not only the area i.e 45 kanals has been specifically mentioned in the agreement to sell but even its description by referring to khasra no.486, 487, 488/1 and 489/1

has been given. The over-writing has been signed by one of the attesting witnesses of the agreement to sell. Furthermore, it may be noted that the defendant no.1 sold 12 kanals land out of the 45 kanals agreed to be sold in favour of the plaintiff for Rs.30,000/-. If the value of the 45 kanals is calculated, it comes to Rs.1,00,000/- approximately whereas the agreement to sell reflects total sale consideration of Rs.1,10,000/-.

9. Hence, the first submission of the learned counsel representing the appellant lacks substance.

10. With reference to the second submission, it may be noted here that the plaintiff himself appeared as PW1 and examined Ramji Dass the attesting witness as PW2, Hakam Singh as PW3, Gurcharan Singh, Manager of the Cooperative Bank as PW4 and other witnesses. He produced the notice and original application filed before the Registrar in order to prove his readiness and willingness to perform his part of the contract. He has also produced the statement of his account.

11. Keeping in view the aforesaid facts, both the courts have come to a conclusion that the plaintiff was always ready and willing to perform his part of the contract. Furthermore, the agreement to sell was to be executed and registered on 05.12.1986, whereas the suit was filed on 30.07.1987 i.e. within a period of around 50 days from the date for execution of the sale deed. Furthermore, it is proved that the defendant no.1 deposited Rs.40,000/- in his account, which was converted into a fixed deposit receipt. The account statement of the defendant no.1 has been proved by the plaintiff as Ex.P-6 and P-7.

12. With respect to the last submission of the learned counsel, it may be noted here that both the courts have found that in fact the defendant no.2 and 3 had the knowledge of the execution of the agreement to sell and now they cannot be permitted to defeat the rights of the plaintiff to seek the specific performance of the agreement to sell.

13. Keeping in view the aforesaid facts, no ground to interfere is made out.

14. Hence, dismissed.

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

02.02.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE