

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

1. RSA-749-1994 (O&M)
Date of decision: 01.04.2024

JANGIR SINGH & ANR.
Versus
..Appellants

BALBIR SINGH (DECEASED) THROUGH LRS & ORS.
..Respondents

2. RSA-750-1994 (O&M)

JANGIR SINGH & ANR.
Versus
..Appellants

BALBIR SINGH (DECEASED) THROUGH LRS & ORS.
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Avnish Mittal, Advocate
and Ms. Ishika Jain, Advocate
for the appellants.

Mr. K.S. Sidhu, Sr. Advocate
with Mr. Praagbir S. Dhindsa, Advocate
and Mr. Kartik Bansal, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. With the consent of the learned counsel representing the parties,
two connected regular second appeals arising from two connected suits shall
stand disposed of by this common order.
2. In order to comprehend the issue involved in the present case,
the relevant facts, in brief, are required to be noticed.
3. Sh. Asa Singh was owner of land measuring 34 kanal and 19

marlas. On 08.05.1988, he entered into an agreement to sell with Sh. Balbir

Singh @ Sh. Bira Singh son of Sh. Kandhara Singh, on receipt of Rs.50,000/- out of total sale consideration of Rs.80,000/-. As per the agreement, the sale deed was to be executed on 10.06.1988. Sh. Balbir Singh @ Sh. Bira Singh filed a suit on 15.06.1988 for the grant of decree of specific performance. During the pendency of the suit, ex parte injunction was granted restraining Sh. Asa Singh from delivering possession to anyone else. On 09.08.1988, Sh Asa Singh executed a sale deed in favour of sons of Sh. Hazura Singh and Sh. Jangir Singh, however, it was not registered due to the injunction granted by the Registrar on 08.09.1988.

4. Subsequently, on 04.10.1988, Sh. Asa Singh through his special attorney registered a sale deed in favour of Sh. Hazura Singh and Sh. Jangir Singh.

5. Sh. Asa Singh while filing the written statement denied execution of the agreement to sell dated 08.05.1988. Defendant No.3 and 4 namely Sh. Jangir Singh and Sh. Hazura Singh claimed that Sh. Asa Singh executed an agreement to sell in their favour on 29.04.1988. The trial Court granted alternative relief of refund of earnest money with interest, however, the First Appellate Court modified the decree passed by the trial Court and granted relief of specific performance of the agreement to sell. The second suit was filed by Sh. Jangir Singh and Sh. Hazura Singh for the grant of decree of declaration that they have become owner by virtue of sale deed dated 04.10.1988.

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 of the Courts below.

7. The learned counsel representing the appellants while drawing the attention of the Court to interim order dated 22.08.1995, submits that the plaintiffs (respondents) have already withdrawn the amount of Rs.30,000/-, which was deposited by them pursuant to the decree passed by the First Appellate Court. He submits that the appeal is continuation of the suit and therefore, the plaintiffs are not proved to be ready and willing. He further submits that there is a prior agreement to sell in favour of Sh. Jangir Singh and Sh. Hazura Singh executed by Sh. Asa Singh on 29.04.1988, which has been proved on record. Thus, he submits that the appellants have a prior and superior right over the land.

8. He further submits that 36 years have elapsed from the date, the appellants were inducted in possession pursuant to the sale deed and therefore, the Court should not exercise discretion in favour of the plaintiffs.

9. Per contra, the learned Senior counsel representing the respondents (plaintiffs) has submitted that the agreement to sell dated 29.04.1988 is in fact an ante-dated agreement to sell, which has been projected for the first time in the sale deed dated 04.10.1988. He submits that this alleged agreement to sell dated 29.04.1988 is neither part of the pleaded case of Sh. Asa Singh when he filed the original written statement nor it is any where mentioned in the sale deed dated 09.08.1988, registration whereof was refused on 08.09.1988 by the Sub-Registrar.

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

11. With reference to the first argument of the learned counsel representing the appellants, it may be noted here that the plaintiffs withdrew

the amount with the permission of the Court particularly when the appeal had been admitted for regular hearing. Once, the amount was permitted to be withdrawn with the permission of the Court, it would not adversely impact the rights of the plaintiffs. The argument of the learned counsel representing the appellants that it amounts to waiver cannot be accepted because the plaintiffs pursuant to the decree passed by the First Appellate Court did deposit the amount. With the permission of the Court, the amount was withdrawn when the appeal was ordered to be admitted for regular hearing on 24.08.1995. There was no use of keeping the money in the Court particularly when the plaintiffs had already shown their intention of honouring the decree by depositing the remaining amount.

12. The second submission of the learned counsel representing the appellants is also not correct because in this case, the First Appellate Court upon reappreciation of evidence has come to conclusion that the agreement to sell dated 29.04.1988 is an ante-dated agreement to sell. It is evident that the appellants are purchasers who have purchased during the pendency of the suit hence, they are governed by *lis pendens*. Sh. Asa Singh while filing the written statement did not disclose any agreement to sell in favour of the appellants. Moreover, on 09.08.1988, the sale deed was drafted in favour of the children of the appellants with respect to the same land by the same vendor. There is no reference to the agreement to sell dated 29.04.1988. Moreover, as per the agreement to sell dated 29.04.1988, the amount of Rs.55,000/- was allegedly paid as earnest money, however, there is no bank transaction. Moreover, there were strong reasons for ante-dating the agreement to sell particularly when Sh. Asa Singh had denied the execution

of the agreement to sell in favour of the plaintiffs. Both the Courts have concurrently found that the agreement to sell in favour of the plaintiffs is a genuine document. Moreover, the finding of the First Appellate Court is based upon appreciation of evidence, which is not proved to be result of substantive misreading or non-reading of evidence.

13. With respect to the last submission of the learned counsel representing the appellant, it may be noted that the appeal has remained pending at the behest of the appellants. The plaintiffs filed the suit within four days from the date, the sale deed was to be executed as per the agreement to sell. Whereas, on the other hand, the appellants (defendant no.3 and 4) are purchasers of the land during the pendency of the suit. Hence, this Court does not find it appropriate to deny the relief of specific performance to the plaintiffs only because the appeal has remained pending for quite some time.

14. Keeping in view the aforesaid discussion, no ground to interfere is made out.

15. Dismissed accordingly.

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

April 01st, 2024

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(ANIL KSHETARPAL)
JUDGE

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