



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

110

RSA No.903 of 2021 (O&M)
DATE OF DECISION: 28th AUGUST, 2024

Gajender Pal Singh (Deceased) through his LRs

.... Appellant(s)

Versus

Sripal Dagar

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Gaurav Mohunta, Advocate and
Mr. Yashavi Goyal, Advocate,
for the appellant(s).

Mr. Keshav Pratap Singh, Advocate,
Mr. Nitin Sansanwal, Advocate and
Mr. Vikas Sharma, Advocate,
for the respondent.

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RAJBIR SEHRAWAT, J. (Oral)

1. The present appeal has been filed by the appellant challenging the concurrent findings recorded by both the Courts below, whereby the suit for possession by way of specific performance of contract with consequential relief of permanent injunction was dismissed.

2. The brief facts, as involved in the present appeal are that respondent-Sripal Dagar filed a suit for specific performance claiming therein that deceased Gajender Pal Singh had executed agreements dated 09.01.2013 and 29.01.2013 in his favour for sale of the property bearing Khewat No.1471, Khatoni No.1691, Rectt. No.288, Killa No.8/1/2(1-2), 13/2(3-7), 16/1(6-3), 18/1/2(0-9) measuring 11 kanals 1 marla, situated within the revenue estate of Palwal, Tehsil and District Palwal. The total



sale consideration agreed between the parties was Rs.69,06,250/-. Out of which, an amount of Rs.68,66,250/- had been paid and only an amount of Rs.40,000/- was remaining outstanding. The target date for execution of the sale deed was fixed as 30.04.2013. On the said target date, the respondent appeared before the Sub Registrar with the balance amount. However, the appellant did not come present to execute the sale deed. Even before the target date, since the respondent-plaintiff had got apprehensive that the appellant-defendant may sell the land to some other person, therefore, he had filed a suit for permanent injunction, which was later on converted into a suit for specific performance, from which the present appeal has arisen.

3. The parties led their respective evidence. After appreciating the material on record, the trial Court decreed the suit in favour of the respondent. Aggrieved against the same, the appellant had filed the appeal before the Additional District Judge, Palwal. However, even the said appeal has been dismissed. Hence, the present appeal has been filed by the defendant of the original suit.

4. While arguing the case, learned counsel for the appellant has submitted that initially, the first agreement dated 09.01.2013 was entered into with the respondent-Sripal Dagar for an amount of Rs.69,06,250/-, out of which, Rs.8,00,000/- were paid to the appellant. However, the target date for that agreement was 25.01.2013. Thereafter, the second agreement dated 29.01.2013, which is the agreement in question in the present case, was entered with the respondent for the same amount of consideration. Pursuant to this agreement, the appellant had received an amount of Rs.68,66,250/-. After receiving this amount from the



respondent, the appellant had re-paid the said money as an amount payable to an earlier vendee towards still another agreement, and the said vendee had withdrawn the suit for specific performance filed against the appellant. Referring to this chain of events, learned counsel for the appellant has submitted that the appellant, in fact, has not entered into an agreement to sell with the respondent. Rather, it was a loan agreement under which the appellant had received the money from the respondent. To prove the transaction to be a loan agreement, the appellant had examined Mr. Anil Rana, Panchayat Member as DW-5, who has deposed that in the panchayat, the respondent had agreed not to insist upon the agreement for sale and had agreed to take the money back. The said witness has also stated that subsequently; the respondent had denied releasing the land by taking the money back. Learned counsel has further submitted that he has also examined Mr. Than Singh, the earlier vendee, as DW-4, who has deposed that after taking the money from the respondent-Sripal Dagar, the said amount was paid to him by the appellant; and as a result of which he had withdrawn the suit against the appellant. Hence, it is submitted that the series of taking money and returning the same by the appellant would reflect only one fact that he was a debt ridden person on account of his serious ailments; and even the transaction involved in the present case was only a loan agreement. No other argument is raised.

5. As response to this, learned counsel for the respondent has submitted that the agreement is duly proved on record by examining the attesting witness, namely, Ghanshyam as PW-7, who has categorically deposed that it was an agreement to sell and that the money was received



by the appellant as consideration of sale in question. Not only that, even the witness i.e. DW-1 Siddharth produced by the appellant, is none other than the son of the appellant, who has admitted in his cross-examination that it was an agreement to sell under which his father had taken money from the respondent. Still further, learned counsel for the respondent has referred to the witness, namely, Than Singh, DW-4, who has also admitted in his cross-examination that he was not sure whether the transaction entered into by the appellant with the respondent was a sale transaction or not. So far as the testimony of DW-5 Anil Rana is concerned, he is the cousin of the vendor Gajender Pal Singh. Therefore, this testimony has to be dealt very cautiously, particularly, in view of the positive testimony of the witnesses examined by the respondent-plaintiff and the admissions made by the witnesses examined by the appellant-defendant himself. Accordingly, it is submitted that the suit has rightly been decreed by the trial Court and the appeal has rightly been dismissed by the lower Appellate Court.

6. Having heard learned counsel for the parties and having perused the record, this Court finds that the receipt of money is not even disputed by the appellant. Not only that, the execution of the document as agreement to sell has been duly proved on record by the respondent by examining the attesting witness of the said agreement. Therefore, it is amply proved on record that the appellant had entered into an agreement with the respondent-plaintiff and he had received almost the entire sale consideration amount. Everything else being pleaded by the appellant-defendant is only ancillary, which is nothing but a self serving version put up by him, which is not supported by any material on record.



7. Although, learned counsel for the appellant has laid much stress on the fact that the transaction between the appellant and the respondent was only a loan agreement, however, no evidence worth named has been led on record by the appellant to substantiate this aspect. Rather, none of the attesting witnesses of the agreement has been examined by the appellant to prove the fact that the agreement in question was not, in fact, an agreement to sell, and that it was executed only as a security for return of the loan amount. Although the appellant claims to have examined Mr. Than Singh as DW-4 in this regard, however, even the said witness has given only evasive response, wherein he has deposed that he was not aware whether any agreement to sell was executed by the appellant with the respondent or not. Not only that, even the son of the appellant, who has been examined as DW-1 by the appellant has also admitted that the document of agreement, receipt and the factum of payment of money by the respondent to the appellant.

8. In view of the above, this Court does not find any merit in the present appeal, as such. Moreover, there are concurrent findings recorded by both the Courts below. The concurrent findings of the Courts below are not even to be interfered only for the possibility of arriving at a different conclusion by re-appreciating the evidence; unless an extreme perversity in appreciation of the evidence or any substantial question of law is pointed out by the appellant. However, in the present case, neither is there any perversity in appreciation of the evidence by the Courts below nor is learned counsel for the appellant able to point out any substantial question of law involved in the present case.



9. In view of the above, finding no merit in the present appeal, hence, the same is dismissed.

10. The pending miscellaneous application, if any, is also disposed of as such.

28th AUGUST, 2024
'Sandeep'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No