

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4255 of 2011 (O&M)

Date of Order:15.02.2024

Gurdeep Singh

.Appellant

Versus

Sua Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Inderjit Sharma, Advocate
for the appellant.**

**Mr. Nandan Jindal, Advocate and
Mr. Amninderjit Singh Sandhu, Advocate
for the respondents.**

ANIL KSHETARPAL, J

1. In this regular second appeal, the defendant no.2 in a suit for specific performance of the agreement to sell, assails the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff's suit. It may be noted here that all the three parties in the suit are closely related.

2. The appellant-Gurdeep Singh is nephew of defendant no.1-Sh. Joginder Singh alias Mohinder Singh. Whereas, the plaintiff-Sh. Suba Singh, is sister's husband of Joginder Singh alias Mohinder Singh. Joginder Singh alias Mohinder Singh was owner of the property. It is the case of Sh. Suba Singh, the plaintiff (respondent no.1 herein) that Joginder Singh alias Mohinder Singh, his brother-in-law executed an agreement to sell dated 26.11.1999 with respect to the land measuring 8 kanals on receipt of Rs.1,00,000/- as earnest money, out of total sale consideration of Rs.1,25,000/-.

3. On the other hand, the appellant-Gurdeep Singh claims that Joginder Singh alias Mohinder Singh executed the agreement to sell in his favour on 10.01.2000. The appellant-Gurdeep Singh filed a suit on 08.09.2000, for specific performance of the agreement to sell dated 10.01.2000. Defendant no.1 and 3 did not contest the suit and an ex-parte decree was passed in favour of the appellant-Gurdeep Singh.

4. In this suit filed by Sh. Suba Singh, Joginder Singh alias Mohinder Singh did not contest. The appellant-Gurdeep Singh was impleaded party on an application filed by him under Order I Rule 10 CPC. He claims that the agreement to sell dated 26.11.1999 is fabricated document.

5. Both the courts have come to a conclusion that the plaintiff -Suba Singh has proved the execution of the agreement to sell as both the marginal witnesses PW2-Shamsher Singh and PW3-Mukhtiar Singh have consistently prove the agreement to sell. Despite lengthy cross-examination of both the marginal witnesses, the learned counsel representing the appellant failed to impeach their credibility. Thus, the suit filed by the plaintiff-Suba Singh was decreed.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

7. The learned counsel representing the appellant submits that the appellant's suit was decreed on 04.04.2001, hence, the suit filed by Sh. Suba Singh was liable to be dismissed. He submits that at the most the courts could grant alternative relief of refund of earnest money.

8. This court has considered the submissions of the learned counsel representing the parties.

9. It is evident that the agreement to sell in favour of Sh. Suba Singh was prior in point of time. Hence, his rights are superior. Even if the suit filed by the appellant was decreed prior in point of time, however, that would not make any difference because the agreement to sell dated 26.11.1990, proved to have been executed by Sh. Joginder Singh alias Mohinder Singh prior in point of time when compared with the agreement to sell in favour of Sh. Gurdeep Singh.

10. The learned counsel representing the appellant did not press any other issue.

11. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

12. Dismissed.

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

February 15, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO