

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

RSA-346-2013 (O&M)

Date of decision: 02.02.2024

Amrik Singh and others

....Appellants

Versus

Paramjit Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ripudaman Sidhu, Advocate for
Mr. B.S.Sewak, Advocate for the appellants

ANIL KSHETARPAL, J (Oral)

1. This Regular Second Appeal has been taken for preliminary hearing, after a period of 11 years from the date of its filing. From time to time, it has been adjourned at the request of the learned counsel representing the appellant. Ultimately, the learned counsel representing the appellant has come forward to argue the appeal.

2. In this appeal, the correctness of the concurrent findings of fact arrived at by the courts below is assailed by the defendants. The suit filed by the plaintiff for grant of decree of possession by way of specific performance of the agreement to sell and declaration with a consequential relief of permanent injunction has been decreed. Sh.Rulda Singh, defendant No. 1 was owner of the property. He entered into an agreement to sell with plaintiff- Sh.Paramjit Singh on 22nd March, 2002 with respect to approximately 2 acres of land for Rs. 5,20,000/-, on receipt of the earnest money of Rs. 4 lacs. As per the agreement to sell, the sale deed was to be executed on 28 June, 2002. However, that day

was a Friday and the Registrar was expected to come to the office on Monday. The plaintiff attended the office of Sub-Registrar on 28 June, 2002 as well as on 1st July, 2002. However, the defendant no.1 sold some part of the property in favour of defendant No. 2 to 4 by way of the sale deed dated 27th June, 2002. The defendant, while contesting the suit, claim that he never executed any agreement to sell and defendant No. 1 was not owner of the whole land at the time of the agreement to sell.

3. In fact, both the courts, on appreciation of evidence, have come to the conclusion that defendant. No. 1 has tried to defeat the rights of the plaintiff in a suit for specific performance. In fact, defendant No. 1 created agreement to sell dated 1st October 2001 and thereafter, sold the land measuring 4 kanals in favour of defendant No. 2 and 3. Again defendant No. 1 sold the remaining land vide sale deed dated 27th June, 2002, in pursuance of the alleged agreement to sell dated 30th June, 2002.

4. Both the courts have also held that the plaintiff was always ready and willing and in fact, defendant no. 2 to 4 colluded with defendant no.1. Thus, the suit filed by the plaintiff was decreed and the sale deed, which was executed on 27th June, 2002, was declared null and not binding on the rights of the plaintiff.

5. Learned counsel representing the appellant submits that Sh.Rulda Singh was not the owner of 16 kanals land i.e 2 acres but he was owner of 15 kanals 18 marlas land and therefore, the agreement to sell is not enforceable. He further contends that though, in the agreement

to sell it has been recited that the possession has been delivered, however, the plaintiff has sought possession.

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

7. In the agreement to sell itself, it has been recorded that the total land is approximately 2 acres. In fact, it is 2 marlas short of 2 acres. Furthermore, it is the positive case of the plaintiff that he was dispossessed by defendant No. 2 to 4 when he went to mark his attendance on 1st July, 2002. The plaintiff was apprehending dispossession and therefore, he filed the suit for injunction on 26th June, 2002.

8. Keeping in view the aforesaid discussion, there is no substance in the appeal.

9. Hence, dismissed.

10. 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