

2024:PHHC:037260



110.

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

RSA No.2686 of 2018

Date of decision: 11.03.2024

Shaheed and another

.... Appellants

Versus

Bhagwan Sahai and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Jugansh Goyal, Advocate for
Mr. Denesh Goyal, Advocate, for the appellants.

GURBIR SINGH, J.

1. Present regular second appeal has been filed by the plaintiffs against the concurrent findings of courts below dismissing the suit of the plaintiffs.

2. The parties herein are being addressed as per their status in the suit.

2.1 Brief facts of the case are that the plaintiffs filed a suit for possession by way of specific performance of agreement to sell dated 30.06.1986; for declaration that the sale deed bearing vasika No.1703, executed and registered on 31.07.2008 by defendants No.1 to 6 and Devki in favour of defendant No.7-Naresh Kumar is illegal, null and void document; and for permanent injunction restraining defendant No.7 from

interfering into the peaceful possession of the plaintiffs over the suit land and from alienating the same to any person.

2.2 As per the case of the plaintiffs, defendant No.1-Bhagwan Sahai entered into an agreement to sell for a residential plot bearing Khasra No.926, measuring 7 marlas, as detailed in the suit, with the father of plaintiffs, namely, Alisher, on 30.06.1986, for a total sale consideration of Rs.5,000/-. Defendant No.1 received said amount of Rs.5,000/- at the time of execution of said agreement and possession of suit land was handed over to the father of the plaintiffs. As per the terms and conditions of said agreement to sell dated 30.06.1986, time was not the essence of contract and it was stipulated as and when father of the plaintiffs desired, defendant No.1 would execute and get the sale deed registered in favour of father of the plaintiffs. The father of the plaintiffs constructed a residential house on the suit property. The possession of the plaintiffs over the suit property is continuous, uninterrupted and adverse to the interest of the defendants No.2 to 6. During lifetime of Hatti, father of defendants No.1 to 6, suit property came into the share of defendant No.1. Defendant Nos.2 to 6 never raised any objection regarding the execution of agreement to sell and also handed over the possession of suit property to the plaintiffs. Father of the plaintiffs was ready and willing to perform his part of agreement to sell dated 30.06.1986 and requested defendant No.1 to execute sale deed on the basis of said agreement. Even after the death of the father of plaintiffs, the plaintiffs requested defendant No.1 to execute the sale deed on the basis of

said agreement, but to no avail. The plaintiffs have come to know that defendants No.1 to 6 have sold the suit land on 31.07.2008 to defendant No.7-Naresh Kumar.

2.3 Notice of the suit was issued. Defendant Nos.1 to 4 were proceeded against ex-parte and suit qua defendants No.5 and 6 was dismissed.

2.4 Defendant No.7 contested the suit, filed written statement that Hatti son of Moti, father of defendant Nos.1 to 6 and husband of Devki-defendant, was owner in possession of the suit plot. Hatti died in the year 1992 and suit plot was inherited by defendants No.1 to 6 and Devki. Mutation of inheritance was sanctioned in their favour on 07.08.1993. Said defendants No.1 to 6 and Devki-defendant sold the suit land to defendant No.7-Naresh Kumar vide registered sale deed dated 31.07.2008 and mutation bearing No.5612, dated 20.08.2008 was also sanctioned in favour of Naresh Kumar-defendant No.7. Defendant No.1-Bhagwan Sahai was neither owner nor in possession of suit plot and was not competent to execute agreement dated 30.06.1986. The alleged agreement is false and fabricated document. Since defendant No.1 was neither owner nor in possession of suit land, so there was no question of receiving the amount of consideration or handing over the possession of suit land. Defendant No.7-Naresh Kumar has been in possession of the suit property since the date of purchase.

2.5 After appreciating the evidence on record, the trial Court, vide judgment and decree dated 20.10.2014, dismissed the suit. The plaintiffs filed appeal which, vide judgment and decree dated 14.09.2016, was partly allowed to the extent of recovery of Rs.5,000/- which was paid by the father of the plaintiffs as sale consideration vide agreement Ex.P1 and receipt Ex.P2 from defendant No.1-Bhagwan Sahai, along with interest @ 9% per annum from the date of payment till its realization.

2.6 Aggrieved against the judgments and decrees of both the courts below, the plaintiffs have approached this Court by way of present appeal.

3. Learned counsel for the appellants-plaintiffs has argued that agreement to sell dated 30.06.1986 was duly proved. Earlier, the father of the plaintiffs and thereafter, plaintiffs themselves were ready to get the sale deed executed but defendant No.1 failed to execute the same. Moreover, time was not the essence of the contract. Sale deed could be executed as and when desired by the father of the plaintiffs. Defendants No.1 to 6 and Devki did not contest the suit since they were not ready and willing to perform their part of the contract. Defendant No.7 contested the suit on the ground that no agreement was ever executed between the parties whereas it was duly proved and so held by the courts below that the agreement to sell dated 30.06.1986 was executed. The possession of the suit property is with the plaintiffs, so they are entitled for specific performance of agreement to sell dated 30.06.1986.

4. I have heard the submissions of learned counsel for the appellants and have gone through the record.

5. There is no dispute that the suit property belongs to Hatti son of Moti. Plaintiffs examined Azad Singh Poswal, Advocate, as PW1 who deposed that the agreement to sell dated 30.06.1986 Ex.P1 was got typed on the instructions of Bhagwan Singh, defendant No.1. The plaintiffs also examined Parkash as PW2, one of the attesting witnesses of the agreement to sell Ex.P1 and receipt Ex.P2. Defendant No.1-Bhagwan Sahai, who stepped into the witness box as PW3, deposed that the agreement to sell Ex.P1 was executed in favour of father of the plaintiffs for a sum of Rs.5,000/- and he had received the entire amount of consideration. The learned first appellate Court rightly held that the agreement to sell Ex.P1 was executed by defendant No.1 in favour of Alisher son of Chajju, father of the plaintiffs. The plaintiffs failed to prove that defendant No.1-Bhagwan Sahai was the owner of the property. Defendant No.1 could not execute agreement to sell in favour of the plaintiffs. Hatti died and thereafter, mutation of inheritance Ex.D1 was sanctioned in favour of all the legal heirs of Hatti. Said entry was never challenged by defendant No.1. Defendant No.7 proved that vide sale deed dated 31.07.2008, the plaintiffs sold the suit property to him and mutation Ex.D2 was sanctioned in his favour.

5.1 It is well settled that burden lies on the party who pleads that a document was the result of fraud, by pleading and proving the same with

the evidence. In the instant case, the plaintiffs failed to prove the same. Since defendant No.1 was not proved to be the owner of the property on the day of the execution of the agreement to sell Ex.P1, so there is no question of grant of decree for specific performance. Defendant No.1-Bhagwan Sahai had admitted the execution of the agreement to sell Ex.P1 and rather supported the version of the plaintiffs while stepping into the witness box. The learned lower Appellate Court has rightly held that father of the plaintiffs had paid the sale consideration of Rs.5,000/- to defendant No.1, so the plaintiffs are entitled to recover the said amount of consideration from defendant No.1 alongwith interest.

6. In view of above, this Court affirms the findings of the courts below that the appellants-plaintiffs are not entitled for specific performance of agreement to sell. There is neither any misreading of evidence nor any mis-appreciation of evidence. No substantial question of law is involved in the present appeal. No ground for interference in the lawful judgments and decrees passed by the courts below is made out. The appeal is without any merit and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

March 11, 2024
sanjeev

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