



RSA-2478-1991(O&M)

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

RSA-2478-1991(O&M)
Date of decision: 17.01.2025

Amarjit Singh

..Appellant

Versus

Sarwan Singh Bhogal (deceased) through LR's and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ayush Gupta, Advocate for the appellant

Mr. G.S. Punia, Senior Advocate
with Ms. Harveen Kaur, Advocate for non-applicants

ANIL KSHETARPAL, J. (Oral)

CM-10060-C-2012

1. Though this Regular Second Appeal was withdrawn on 09.09.2011, however, an application was filed by the appellant claiming that the defendants have got the appeal withdrawn. Originally, this appeal was filed through Sh.M.L.Saggar and Sh.O.P.Sharma, Advocates. Application on behalf of appellant for withdrawal of the appeal was filed by Sh.Vaibhav Narang, Advocate. The appellant, while filing the application, has stated that he never engaged Sh.Vaibhav Narang, Advocate, nor signed the application or the affidavit. The assertions made by the appellant are supported by an affidavit. Notice of the application was issued to Sh.Vaibhav Narang, Advocate, however, he never appeared.
2. Keeping in view the aforesaid facts, the appeal is restored to its original number, while recalling the order dated 09.09.2011.

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3. At this stage, learned counsel representing the respondent submits that the applicant is Amarjit Singh son of Sh.Uday Singh whereas Amarjit Singh son of Sh.Sucha Singh is the appellant. Hence, the applicant is different from the appellant.

4. Learned counsel representing the appellant has explained that Sh.Uday Singh and Sh.Sucha Singh were brothers. Amarjit Singh was biological son of Sh.Uday Singh, however, he was adopted by his uncle Sh.Sucha Singh. Hence, there is discrepancy in the name of the father of Amarjit Singh.

5. Be that as it may be. It would not be appropriate to finally decide this issue while deciding an application for revival. Hence, this issue is kept open to be decided by the competent court as and when some suit is filed.

CM-11069-C-2016

6. This is an application for bringing on record the legal representatives (as mentioned in para 2 of the application) of deceased appellant- Amarjit Singh.

7. Learned senior counsel representing the respondent seriously contests the same, however, for the purpose of adjudicating this appeal, they are brought on record, however, such question shall be open to the defendant to question the correctness of the legal representatives before the competent court.

8. CM stands disposed of.

Main appeal**I. Brief facts:-**

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9. This is the plaintiff's Regular Second Appeal to challenge the First Appellate Court's judgment, which in turn has reversed the judgment of the trial court.

10. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

11. On 25.05.1982, the plaintiff filed a suit for possession by way of specific performance of the agreement to sell. He claimed that defendant no.1 Bakshish Singh agreed to sell 500 sq. yards plot for a total sale consideration of Rs.8,000/-. Rs.3300/- was paid on 12.06.1978 i.e the date on which the agreement to sell was executed. Subsequently, the plaintiff paid another sum of Rs.2500/- to defendant no.1 on 25.05.1979. The possession of the property was delivered to the plaintiff at the time of execution of the agreement to sell and balance sale consideration was to be paid after the competent authority granted permission for the sale of property. It is claimed that defendant no.1 (after a month from the date of the agreement to sell) applied for permission to sell the property from the competent authority. The plaintiff also sent a notice to defendant no.1 on 10.06.1981 to come forward and execute the sale deed. However, he did not. It was also alleged that he came to know on 18.05.1982 that defendant no.1 has executed a sale deed of 1208 sq. yards plot including the suit property in favour of defendant no.2 who was aware of the prior agreement to sell in favour of the plaintiff. The plaintiff also asserted that he has spent Rs.5,000/- for raising construction thereon.

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13. Defendant no.1 denied the execution of the agreement to sell. It was claimed that he has already sold the property in favour of defendant no.2 by means of a registered sale deed for Rs.32,000/-.

14. Defendant no.2 asserted that he is a bona fide purchaser for value and consideration and without notice vide sale deed dated 30.01.1981 which was registered on 25.05.1981.

15. The trial court held that execution of the agreement to sell is proved and the possession was delivered to be plaintiff at the time of execution of the agreement to sell. The Court also held that defendant no.2 failed to prove that he was a bona fide purchaser as he had knowledge of the agreement to sell before the sale deed was executed in his favour by defendant no.1

16. The First Appellate Court has upheld the finding of the fact arrived at by the trial court to the effect that execution of the agreement to sell in favour of the plaintiff is proved. However, the court has reversed the judgment and decree on the ground that plaintiff has stated that he came to know on 18.05.1982 about the sale deed in favour of defendant no.2 which was executed on 30.01.1981. The court has held that since the sale deed was registered on 25.05.1981 therefore, it will relate back to 30.01.1981, the date of its execution and hence, the plaintiff had knowledge on 30.01.1981. It has further been held that recital with regard to delivery of possession has been inserted in the agreement to sell but still the plaintiff has tried to assert and establish his possession only in May, 1982 after learning about the subsequent sale.

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17. Thus, the First Appellate Court has refused to grant decree for specific performance of the agreement to sell, however, granted decree for refund of Rs.5800/- earnest money plus Rs.4,000/- towards the cost of construction which was demolished by defendant no.2.

II. Arguments put forth by the learned counsel representing the parties:-

18. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

19. Learned counsel representing the appellant contends that the First Appellate Court has recorded a contradictory finding with respect to the plaintiff's possession of the property. He submits that on one hand the court has held that the plaintiff was never in possession of the suit property whereas on the other hand, the court has awarded damages in favour of the plaintiff to the extent of Rs.4000/- towards cost of construction as defendant no.2 demolished the same. He submits that once the plaintiff was in possession and had already constructed a room then defendant no.2 had the knowledge of the agreement to sell because he never inquired from the plaintiff.

20. Per contra, learned senior counsel representing the respondent (defendant no.2) submits that plaintiff dug the foundation for constructing building in the plot on 09.05.1982. Hence, the plaintiff for the first time tried to take possession in 1982 after coming to know of the sale deed in favour of defendant no.2. He further submits that the plaintiff is not proved to be ready and willing as there was inaction on the part of the plaintiff from 25.05.1979 till 25.05.1982 i.e. the date when the suit was filed. He further submits that the delivery of possession is not supported by oral evidence.



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III. Discussion and Analysis:-

21. This Court has considered, analysed and evaluated the arguments made by the learned counsel representing the parties.

22. A perusal of trial court's record proves that the agreement to sell Ex.P1 dated 12.06.1978 has been scribed on a non-judicial stamp paper of Rs.2.25. It runs into two pages. It is thumb marked by Bakshish Singh. On page 2 there is a specific recital with regard to the delivery of possession to the plaintiff. Moreover, on the reverse side of the first page there is an endorsement of payment of Rs.2500/- which is again thumb marked by defendant no.1. As per the agreement to sell, the sale deed was to be executed after defendant no.1 obtains the permission of the competent authority. Defendant no.1 applied for said permission but further development/information is not available on file. Thus, there is no errors in the findings of fact with regard to the execution of the agreement to sell.

23. With regard to the delivery of possession to the plaintiff at the time of execution of the agreement to sell, there is a specific recital in the agreement. It is signed by the plaintiff and thumb marked by the defendant no.1. Delivery of possession is with respect to the plot. It would be deemed to have continued with the plaintiff, particularly when on 09.05.1982 he dug the foundation for constructing the room, which was duly constructed. This fact is proved from deposition of plaintiff, PW2 and PW3. Moreover, when the suit was filed on 25.05.1982 the trial court appointed a Local Commissioner, who visited the property after notice to the counsels and reported that there were bricks, wooden battens, wooden joints lying in the

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plot. There were household articles including two chairs, utensils, basket and cot when he inquired from the persons present at the spot, he was informed that these articles belong to the plaintiff.

24. Furthermore, the First Appellate Court has erred in recording finding with regard to delivery of possession because from the overwhelming evidence it is proved that the plaintiff was delivered possession and he was able to make some construction (Kotha). Similarly, the First Appellate Court has recorded a contradictory finding as on the one hand the court has observed possession was not delivered whereas on the other hand damages have been awarded in his favour to the extent of Rs.4000/-.

25. With respect to defendant no.2 having knowledge of the agreement to sell prior to the sale deed, the First Appellate Court has factually erred. The sale deed by defendant no.1 in favour of defendant no.2 was executed on 30.01.1981, whereas it was registered only on 25.05.1981, after a period of approximately 4 months. While appearing in evidence, the plaintiff has stated that he came to know of the sale deed on 18.05.1982 and not 1981. The court has wrongly observed that the plaintiff stated he came to know of the sale deed on 30.01.1981.

26. Defendant no.2 claims to be bona fide purchaser for value and without notice. However, once the plaintiff was in possession, he was required to inquire about the plaintiff's possession. In any case, the genuineness of the sale deed in his favour also becomes doubtful, particularly when there was a gap of 4 months between registration of the sale deed and its execution.


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27. The last argument of the learned counsel representing the defendant no.2 is with regard to delay in filing the suit. The First Appellate Court has not denied relief to the plaintiff on the question of delay. However, since this argument has been pressed, hence, this Court proceeds to examine the same. As is evident there was no target date fixed for the execution and registration of the sale deed. The period of limitation would begin to run only when permission to sell was granted by the competent authority. Defendant no.1 has not claimed that permission was granted but plaintiff did not come forward to execute the sale deed. Moreover, the plaintiff was in possession of the property. He filed the suit immediately when his possession was sought to be disturbed. This fact is corroborated by report of the Local Commissioner who has also been examined as a witness.

IV Decision:-

28. Keeping in view the aforesaid facts, the suit filed by the plaintiff shall stand decreed subject to payment of balance sale consideration of Rs.2200/- to defendant no.2 alongwith interest at the rate of 8% per annum within a period of two months from the date of filing of the suit i.e 25.05.1982 till the date of deposit. Consequently, the judgment of the First Appellate Court is set aside and the judgment passed by the trial court shall stand modified accordingly.

29. Regular Second Appeal stands disposed of.

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

(ANIL KSHETARPAL)
JUDGE

17.01.2025

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No