

2025:PHHC:037886



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

RSA-729-2021 (O&M)
Reserved on : 10.03.2025
Pronounced on : 20.03.2025

GAJENDER SINGH Appellant

VERSUS

BHATERI AND ORSRespondents

AND

RSA-769-2021 (O&M)

GAJENDER SINGH Appellant

VERSUS

BHATERI AND ORSRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sudhanshu Makkar, Advocate for the appellant.

ALKA SARIN, J.

1. By the present judgment, two appeals being RSA-729-2021 and RSA-769-2021 both titled 'Gajender Singh V/s Bhateri and others' are being decided. Both the aforesaid regular second appeals have been preferred by the plaintiff-appellant challenging the judgment and decree dated 07.08.2015 passed by the Trial Court partly decreeing the suit of the plaintiff-appellant and the judgment and decree dated 18.02.2020 passed by the First Appellate Court whereby the appeal filed by the plaintiff-appellant was dismissed and the appeal filed by the defendant-respondents was accepted.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a suit for declaration to the effect that sale deed No.9196 dated 27.12.2010 allegedly executed by defendant-respondent No.6 in favor of defendant-respondents No.1 and 2 in respect of land to the extent of 5/33 share i.e. 5 Kanals 0 Marla comprised in Khewat No.594 Khatoni No.638 Kitta 9 total land 33 Kanals 0 Marla as per the Jamabandi for the year 2008-09 situated in the revenue estate of Village Gujrani, Tehsil and District Bhiwani was null and void. Further, subsequent record, if any, entered in favour of defendant-respondents No.1 and 2 on the basis of the alleged sale deed was also challenged as being illegal, null and void on the ground that the plaintiff-appellant had a preferential right to purchase the suit land from defendant-respondent No.6 on the basis of a writing dated 05.05.2003 executed by defendant-respondent No.6 in favour of the plaintiff-appellant. As a consequential relief, prayer for mandatory injunction was sought with the direction that defendant-respondents No.1, 2 and 6 be directed to execute the sale deed in favour of the plaintiff-appellant on the basis of the writing dated 05.05.2003. It was case set up by the plaintiff-appellant that in the month of January 1997 defendant-respondent No.6 was in dire need of money for his personal necessity and as such he approached the plaintiff-appellant to advance an amount of ₹1,00,000 (rupees one lakh). The plaintiff-appellant acceded and paid the said amount to defendant-respondent No.6 with an assurance that if the amount was repaid within a period of three months, no interest would be charged. It was further the case that defendant-respondent No.6 failed to repay the amount and in May 2000 a total amount of ₹1,80,000

(rupees one lakh eighty thousand) was due towards the plaintiff-appellant including interest. The defendant-respondent No.6 paid ₹38,000 (rupees thirty-eight thousand) and a balance of ₹1,42,000 (rupees one lakh forty-two thousand) remained. He is alleged to have executed a writing dated 05.05.2003 by virtue of which defendant-respondent No.6 entered into an agreement for sale in respect of share measuring 5 Kanals 0 Marla. It was further the case that defendant-respondent No.6 agreed and undertook in the presence of witnesses, namely, Jai Parkash son of Bhim Singh, that he shall not sell the land to any other person except for the plaintiff-appellant unless the amount taken as loan is refunded to the plaintiff-appellant and that there was a further stipulation in the writing that in case of any violation of the terms and conditions of the writing dated 05.05.2003, the plaintiff-appellant will have a right to file a civil suit. The plaintiff-appellant also claimed to be in possession of the suit property. The sale deed dated 27.12.2010 executed by defendant-respondent No.6 in favour of defendant-respondents No.1 and 2 was also challenged on the grounds firstly there was a writing dated 05.05.2003 in favour of the plaintiff-appellant and secondly the possession was already with the plaintiff-appellant.

3. Joint written statement was filed by defendant-respondents No.1 to 5. Defendant-respondents No.1 and 2 pleaded that they were *bonafide* purchasers and that they enquired and checked all the revenue records and found that the revenue record stood in the name of defendant-respondent No.6 and thereafter purchase of the land was completed. Defendant-respondent No.6 filed a separate written statement raising preliminary objections qua

locus standi, suit not being maintainable in the present form and suit being hopelessly time barred. On merits it was pleaded that the entire amount of ₹1,42,000 (rupees one lakh forty-two thousand) along with interest had been refunded to the plaintiff-appellant in the month of November 2003 and the plaintiff-appellant delivered actual physical possession of 5 Kanals 0 Marla to defendant-respondent No.6. It is further the case that a receipt was executed qua the amount of ₹1,42,000 (rupees one lakh forty-two thousand) which was paid along with interest to the plaintiff-appellant and thereafter the land was sold to defendant-respondents No.1 and 2 by way of sale deed dated 27.12.2010. It was further the case that there was some dispute which arose between defendant-respondent No.6 and his wife and sons due to the interference of the plaintiff-appellant and that he was ousted from his house and all the documents were in the custody of his wife and sons.

4. Replication was not filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the relief of declaration as well as permanent injunction and mandatory injunction as prayed for in the head note of the plaint ? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiff has no cause of action and no *locus standi* to file the present suit ? OPD
4. Whether the suit of the plaintiff is time barred ? OPD

5. Plaintiff has not come to the Court with clean hands
? OPD
6. Whether the plaintiff is estopped from filing the
present suit ? OPD
7. Whether the suit of the plaintiff is bad for mis-
joinder and non-joinder of necessary party ? OPD
8. Relief.

5. The Trial Court partly decreed the suit vide judgment and decree dated 07.08.2015 restraining defendant-respondents No.1 and 2 from dispossessing the plaintiff-appellant by adopting any illegal means and the remaining prayers for declaration and mandatory injunction were denied. Aggrieved by the same, two separate appeals were preferred - one by the plaintiff-appellant and the second by defendant-respondents No.1 and 2. Vide judgment and decree dated 18.02.2020 the First Appellate Court dismissed the appeal filed by the plaintiff-appellant and allowed the appeal filed by defendant-respondents No.1 and 2. The suit of the plaintiff-appellant was dismissed. Hence, the present two regular second appeals by the plaintiff-appellant.

6. The learned counsel for the plaintiff-appellant would contend that the First Appellate Court erred in dismissing his suit. It is urged that Ex.P-1, the writing dated 05.05.2003 alleged to have been written by defendant-respondent No.6, was neither vague nor ambiguous as held by the Court. Rather, it was a promissory note in favour of the plaintiff-appellant and on the basis of this writing (Ex.P-1) the plaintiff-appellant had a first right to

purchase the land and the land could not have been sold without prior notice to him. Learned counsel would further contend that though initially a suit for declaration and mandatory injunction was filed, however, subsequently, before the First Appellate Court, the counsel for the plaintiff-appellant had made a statement on 10.02.2020 that the suit be treated as one for specific performance and he was ready to pay the requisite court fees. On 18.02.2020 the requisite court fees was also deposited and by judgment of even date, the appeal filed by the plaintiff-appellant was dismissed. Learned counsel would further contend that once the writing (Ex.P-1) was admitted in the written statement by defendant-respondent No.6, nothing more remained to be proved and that the suit ought to have been decreed by the Courts concerned. In support of his arguments, the learned counsel for the plaintiff-appellant has relied upon the judgments passed by the Hon'ble Supreme Court in the cases of **R.K. Mohammed Ubaidullah V/s Hajee C. Abdul Wahab (D) by LR's. [2000 (3) RCR (Civil) 595]; Ram Niwas (Dead) through LR's V/s Smt. Bano & Ors. [2000 (4) RCR (Civil) 83] and Ramdas V/s Sitabai & Ors. [2011 (7) RCR (Civil) 9] and the judgment passed by this Court in **Smt. Krishna Devi & Ors. V/s Shiv Dev Singh & Ors. [1984 PLR 301].****

7. Heard.

8. In the present case the plaintiff-appellant had initially filed a suit for declaration and mandatory injunction. The edifice of the entire suit is based on the writing (Ex.P-1) dated 05.05.2003. A translation of the writing (Ex.P-1) reads as under :

I, Vikram Singh s/o late Sh. Jawahar Singh had borrowed ₹1,00,000 (rupees one lakh) in January 1997 from my younger brother Gajender on the condition of returning the same in three years and it was agreed upon that in case of non-payment of the said amount in three years, interest would be imposed on the amount thereafter. Hence, till May 2000, total amount i.e. principal amount including the interest stood worth ₹1,80,000 (rupees one lakh eighty thousand). Out of this amount, I paid ₹38,000 in case in May 2000 and ₹1,42,000 remained outstanding at the time. It was agreed upon vis-à-vis 5 Kanals land that I would neither sell nor mortgage the same to anyone else other than Gajender. It was agreed upon that this 5 Kanals land would remain in the possession of Gajender until the aforesaid amount (₹1,42,000) is paid. In case I happen to sell or mortgage this land to anyone before the said amount is returned, then in that scenario Gajender will have every right to initiate legal action against me. This document was scribed so that it may serve as an authority at the time of need.

Witness

Sd/-

Sd/-

Vikram Singh

Jai Parkash S/o Sh. Bhim Singh 05.05.2003

V.P.O. Bhnodsi, Gurgaon,

Sd/-

Haryana

Gajender Singh

05.05.2003

Vikram Singh son of

Sh. Jawahar Singh

R/o Bhiwani

Sd/-

A perusal of the translation of Ex.P-1 reproduced above reveals that there is not a word in the said writing to even remotely suggest that the said writing was an agreement to sell. The writing only mentions an area of 5 Kanals without referring to any details regarding the property. The writing simply states that in case defendant-respondent No.6 happens to sell or mortgage his land before the amount is returned in that case the plaintiff-appellant would have every right to initiate legal action against him. This, by no means, can be treated as an agreement to sell. Neither is there a target date mentioned nor is there any reference to any particular piece of land nor does the writing itself talk about any first right to purchase the property, as has been argued by the learned counsel for the plaintiff-appellant. The argument of the learned counsel for the plaintiff-appellant that before the First Appellate Court the suit was treated as a suit for specific performance and hence the appeal ought to have been allowed also deserves to be rejected. The essential ingredients of a suit for specific performance have not been pleaded in the plaint. There is not a word regarding readiness and willingness. There was no endeavour by the plaintiff-appellant to amend his suit at any point of time praying for specific performance. That apart, the learned counsel for the plaintiff-appellant has not been able to convince this Court that the writing (Ex.P-1) was an agreement to sell and hence the suit ought to have been decreed. Merely because the writing (Ex.P-1) was admitted by defendant-respondent No.6 would not make the writing an agreement to sell.

9. The judgments in the case of **R.K. Mohammed Ubaidullah** (supra), **Ram Niwas (Dead)** (supra) and **Krishna Devi** (supra) all pertain to

bonafide purchasers. In the present case, the issue of *bonafide* purchasers would be an issue to be considered after the plaintiff-appellant was able to convince this Court that there existed an agreement to sell in his favour. In view of the findings above, the judgments relied upon by the learned counsel for the plaintiff-appellant would not come to his aid. The judgment relied upon in the case of **Ramdas** (supra) would also not come to the aid of the learned counsel for the plaintiff-appellant as the same pertains to the sale of an undivided share by a co-owner. There can be no quarrel with the proposition that an undivided share sold by a co-parcener would be subject to partition and the co-owner was not entitled to possession and that the purchaser of the co-owner's undivided share was not entitled to possession. However, in the present case, there is neither any prayer in the suit nor any issue revolves around the said fact. No cogent or reliable evidence has been shown by the learned counsel for the plaintiff-appellant to even remotely suggest that the writing (Ex.P1) was an agreement to sell. Both the Courts have satisfactorily dealt with the writing (Ex.P-1). In the absence of any cogent and reliable evidence having been produced, the plaintiff-appellant is not entitled to the relief as prayed for. In the face of the findings recorded by both the Courts, there is no scope for interference by this Court. Further, there is no ground for this Court to take a contrary view from the one taken by the Courts.

10. In view of the discussion above, I do not find any merit in the present regular second appeals. No question of law, much less any substantial question of law, arises in the present case which requires determination by

this Court. Both the appeals, being devoid of any merit, are accordingly dismissed. Pending applications, if any, also stand disposed off.

20.03.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No