



103 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3682-1999 (O&M)
Reserved on: 22.01.2025
Pronounced on: 11.02.2025

Gurdial Singh (Deceased) through LRS
and others

...Appellants

Vs.

Onkar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Ghuman, Advocate
for the appellant(s).

Mr. Ashok Kumar Sharma, Advocate
for respondents No. 1, 3 and 4.

ANIL KSHETARPAL, J.

1. Factual Backgrounds:-

1.1 The plaintiff assails the correctness of concurrent findings of fact arrived at by the Courts below while partly decreeing his suit, whereas, dismissing the remaining part.

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

1.2 Sh. Onkar Singh son of Sh. Sarwan Singh was the owner of properties located in the villages Naura and Pandrawal. On receipt of Rs. 10,000/-, Sh. Onkar Singh executed an agreement to sell in favour of the plaintiffs (appellants herein) with respect to the properties located in two



different villages, namely, Naura and Pandrawal. It was recited that he is the owner of some part of the land, whereas, remaining property located in village Noura is likely to be inherited by him alongwith with his sisters. He executed the agreement for himself as well as on behalf of his sisters. With respect to property located in village Noura, the price was settled @ Rs.1,80,000/- per acre, whereas, with respect to property located in village Pandrawal, Sh. Mangal Singh s/o Sh. Nahar Singh was required to determine the market value.

1.4 The plaintiff filed a suit for specific performance of the agreement to sell or in the alternative recovery of Rs. 50,000/-. He claimed that with respect to land located in village Pandrawal, Sh. Mangal Singh settled Rs. 85,000/- per acre as market rate. The defendant did not come forward to honour the agreement, though, he was present in the office of sub-Registrar. The suit was filed on 22.01.1994. The defendant No.1 contested the suit while admitting the execution of the agreement to sell. However, he denied that he executed an agreement to sell on behalf of his sisters. He claimed that Sh. Mangal Singh has not fixed the price of the land located in village Pandrawal.

1.5 In this case, DW/2-Sh. Mangal Singh while appearing in evidence stated that he fixed the price of the land in village Pandrawal @ Rs. 3,00,000/- per acre. The trial Court partly decreed the suit with respect to the land measuring 01 kanal 07 sarsahies as per the share of defendant No.1. The appeal filed by the plaintiff was dismissed.



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

2.1 Learned counsel representing the appellant has drawn the attention of the Court to order dated 24.02.2003, which reads as under:-

“A compromise in original executed between the parties has been tendered in court today, which is taken on record. An amount of Rs. 10,97,750/- has been delivered to Mr. L.N. Verma, counsel for the respondents by way of five demand drafts bearing Nos. 175100 dated 7.2.2003 for Rs. 6 lacs, 528830 dated 6.2.200 for Rs.three lacs; 528831 dated 6.2.2003 for Rs.73328/-; 3606 dated 18.2.2003 for Rs.7422/- and 33095 dated 8.2.2003 for Rs.117000/- drawn in favour of respondent No.1 Onkar Singh, stated to be delivered for and on behalf of respondents 2 to 4, as their attorney.

Counsel for the appellants states that the suit filed by the plaintiffs be decreed in terms of the compromise accordingly. The parties are present in Court. However, the court time is over. The parties are directed to be present in court on the next date of hearing. demand drafts SO delivered to Mr. L.N. The Verma, shall remain in his custody till the execution of the sale deed. Adjourned to 7.3.2003.”

2.2 He submits that the plaintiff is prepared to pay the amount @ Rs.3,00,000/- per acre. He further submitted that the Court had the jurisdiction to determine the reasonable, fair and equitable price to enforce the agreement to sell.



2.3 Learned counsel representing the appellant has also filed the written submissions contending that defendant No.1 in para 14 of the written statement had admitted the agreement to sell, hence, the Court was required to pass decree under Order 12 Rule 6 of the CPC.

3. **Analysis and Discussion:-**

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

3.2 At this stage, it is significant to note that the decree under Order 12 Rule 6 of the CPC can be passed only if there is no issue in between the parties. At that stage, the dispute was with regard to price of the land located in village Pandrawal. In any case, the plaintiff claimed that price was Rs.85,000/-, per acre with respect to the land located in village Pandrawal, whereas, Sh. Mangal Singh stated that the price was Rs.3,00,000/- The defendant No.1 on the other hand claimed that no price has been fixed. In such circumstances, the parties were having a dispute on an issue and there was not mutual agreement with respect to the price. Hence, the argument lacks substance.

3.3 It would be noted here that the parties could not finally settle the dispute and the demand drafts handed over to the learned counsel representing the respondents were returned as recorded in the order dated 07.03.2003, which reads as under:-

“Learned counsel for the parties, have apprised this Court that compromise which has been executed by the parties has not been adhered to, as such, no sale deed has been executed. Mr. L.N.Verma, Advocate has returned the



demand drafts amounting to Rs.10,97,750/- in original, which had been handed over to him vide order dated 14.2.2003.

In view of the above, there is no compromise which has been effected by the parties, as such, the application is dismissed.”

3.4 Hence, the appellant cannot claim disposal of the suit in terms of alleged agreement.

3.5 With regard to second submission, it would be noticed that the plaintiff came to the Court claiming that price of Rs. 85,000/- per acre with respect to land located in village Pandrawal was fixed by Sh. Mangal Singh. However, he failed to prove the same. Before the trial Court, he never agreed with respect to the execution of sale deed of land located in village Pandrawal @ Rs.3,00,000/- per acre. It is the stand of the plaintiff that the rate was never fixed by Sh. Mangal Singh.

3.6 In such circumstances, while deciding a suit for specific performance, the Court was required to examine as to whether there was enforceable contract between the parties. In this case, defendant No. 1 is nephew of the plaintiff. The plaintiff came to the Court claiming that the price of the land has been fixed @ Rs.85,000/- per acre at village Pandrawal, which stood belied by his own witness Sh. Mangal Singh. Hence, the parties were not even *ad idem*.



3.7 Moreover, the agreement to sell was executed on 01.07.1993, after a passage of 32 years, it will not be equitable to grant decree for specific performance.

4. **Decision:-**

4.1 Keeping in view the aforesaid facts and discussions, the appeal is dismissed.

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

(ANIL KSHETARPAL)
JUDGE

11.02.2025

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Whether speaking/reasoned : Yes No

Whether Reportable : Yes No