



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4579 of 2001 (O&M)

Date of Order:23.05.2025

Darshan Singh and others

.Appellants

Versus

Surjit Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Naresh Prabhakar, Advocate
for the appellant.

Mr. Prabhjot Singh Chahal, Advocate, for
Mr. G.S.Nagra, Advocate
for respondent no.4.

ANIL KSHETARPAL, JUDGE (Oral)

1. The plaintiff assails the correctness of the First Appellate Court's judgment which in turn has reversed the judgment of the trial court.
2. The plaintiff filed a suit for possession by way of specific performance of the agreement to sell allegedly executed by Smt. Surjit Kaur widow of Late Sh. Bara Singh with respect to 5 kanals land on 22.02.1991, while agreeing to sell the land for a total sale consideration of Rs.97,000/- on a receipt of Rs.10,000/- as earnest money. It was agreed that the sale deed would be executed on or before 05.06.1991. On 10.12.1991, the plaintiff filed the suit, claiming that he visited the office of Registrar on 05.06.1991 and got an affidavit attested from the office of Registrar. Thereafter, he sent notice to the defendants to come on 19.06.1991, in the office of Registrar but she failed to honour the same. Ultimately, the date for execution of the sale deed was revised to 30.08.1991.



3. The defendant-Surjit Kaur denied the execution of the agreement to sell. It was claimed that the suit property was owned by Bara Singh, who bequeathed the property in favour of his two sons, namely, Balwinder Singh and Gurmeet Singh, vide Will dated 15.09.1984 and Surjit Kaur was not the owner of the property.

4. The trial court held that the execution of the agreement to sell on receipt of earnest money is proved and the Will dated 15.09.1984, is fabricated, however, as per natural succession, Surjit Kaur will inherit only 1/5th share of the property left behind by Bara Singh. Consequently, the decree for possession by way of specific performance was granted only to the extent of 1 kanal land on payment of the proportionate sale consideration.

5. Two appeals were filed before the First Appellate Court, one by the Radha Singh, who has purchased the property from Balwinder Singh and Gurmeet Singh sons of Bara Singh vide registered sale deed dated 27.11.1994, and second by the plaintiff. The First Appellate Court found that the execution of the agreement to sell is suspicious, hence, refused to grant specific performance but granted alternative relief of earnest money along with interest.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record.

7. The learned counsel representing the appellant while drawing the attention of the court to the order dated 06.09.2007, submits that the will was produced for the first time during the pendency of the suit. He submits



that this Will has been propounded to defeat the rights which accrued in favour of the appellant because Surjit Kaur has admitted execution of the agreement to sell, hence decree for 1/5th share should have been passed.

8. Per contra, the learned counsel representing the respondents submits that the plaintiff while appearing in evidence has admitted that Surjit Kaur was not the owner of the property.

9. This court has considered the submissions of the learned counsel representing the parties.

10. The relief of specific performance of the agreement to sell was a discretionary relief before the amendment of Specific Relief Act, 1963, in the year 2018. If one carefully reads the statement of the appellant, it becomes evident that he without verifying about the ownership of Surjit Kaur entered into an agreement to sell. The appellant was not certain as to how much land Smt. Surjit Kaur would inherit from her husband who died in the year 1984. Moreover, the First Appellate Court has exercised discretion. Additionally, the plaintiff has failed to prove that he was ready and willing on 30.08.1991, the extended date for execution of the sale deed by proving his visit to the office of Registrar. The property has already been sold in favour of Radha Singh. There is no evidence to prove that the Will executed by Bara Singh was fabricated.

11. The learned counsel representing the appellant submits that Surjit Kaur would not have entered into an agreement to sell if she had signed the Will.

12. It was the responsibility of the plaintiff to prove that the Will was fabricated. Onus lay upon the plaintiff to prove the same, however, he



did not lead any evidence. The plaintiff wants the Court to draw inference only on the ground that Surjit Kaur appended her signatures on the Will which in the facts of this case would not be appropriate

13. In view of the aforesaid finding, the question of law as proposed do not come up for consideration. Hence, there is no requirement to answer those question.

14. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

15. Dismissed.

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

(ANIL KSHETARPAL)
JUDGE

May 23, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No