

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2475-2016 (O&M)
Reserved on : 11.02.2025
Pronounced on : 18.02.2025

HARBRINDER SINGH

....Appellant

VERSUS

JASWINDER SINGH AND OTHERS

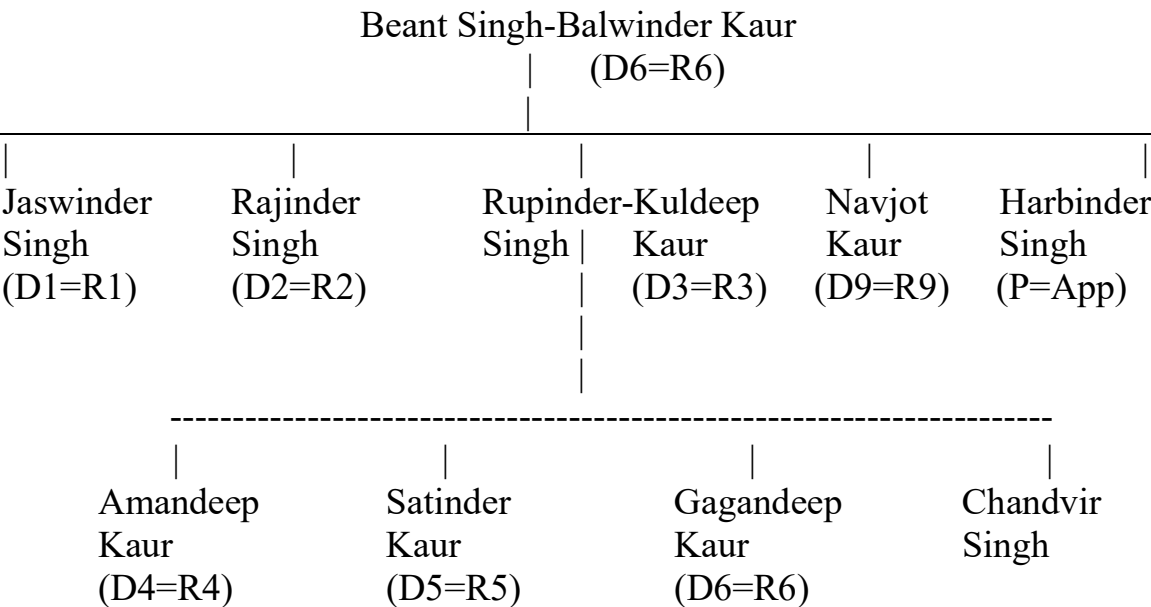
....Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ramesh Sharma, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging concurrent findings recorded by the Trial Court vide judgment and decree dated 19.12.2013 and by the First Appellate Court vide judgment and decree dated 07.09.2015.
2. Before advertng to the facts relevant to the present *lis* a small pedigree table is being drawn up for a clear understanding of the dispute in hand :



D denotes defendant and R denotes respondent. P denotes plaintiff and App denotes apellant

Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for specific performance and permanent injunction averring in the plaint that on 22.06.2001 the defendant-respondents entered into an agreement to sell the suit land as fully detailed in the plaint for an amount of ₹30,00,000 (rupees thirty lakh) and further averred that an amount of ₹7,50,000 (rupees seven lakh fifty thousand) was received as earnest money in the presence of marginal witnesses by the defendant-respondents. The defendant-respondents were to get the sale deed executed on or before 26.06.2009. The possession of the rice sheller was also delivered to the plaintiff-appellant at the time of execution of the agreement dated 22.06.2001 and since then the plaintiff-appellant was in peaceful possession of the suit property. It was further averred that the plaintiff-appellant was always ready and willing to perform his part of the contract.

3. Defendant-respondent No.10 did not appear despite service and was proceeded against *ex parte*. Defendant-respondents No.1 and 7 to 9 filed an admitted written statement. Suit was contested by defendant-respondents No.2 to 6 who raised various preliminary objections qua maintainability and cause of action. On merits it was averred that the property in dispute was owned by Rupinder Singh son of Beant Singh who expired on 19.05.2000 and thereafter his property was inherited by his wife and three daughters (defendant-respondents No.3 to 6 herein). It was further the stand that the land measuring 9 Bighas 10 Biswas never belonged to defendant-respondent No.10 i.e. M/s Dashmesh Rice Mills nor to defendant-respondents No.1 and 7 to 9 and they had no right, title or interest in the said property to have entered into

an agreement to sell. It was further the stand taken that Rupinder Singh died on 19.05.2000 at a young age and that defendant-respondents No.3 to 6 being ladies and his son Chandvir, being a minor, could not look after the suit property and the assets. The firm also stood dissolved on 10.01.1988 on the death of Beant Singh, one of its partners. There were outstanding loans of Punjab Civil Supplies Corporation and PUNSUP and litigations were pending at different Courts at Malerkotla. The plaintiff-appellant, who is none other than the husband of Navjot Kaur (defendant-respondent No.9), son-in-law of Balwinder Kaur (defendant-respondent No.7) and brother-in-law of Jaswinder Singh (defendant-respondent No.1) got a *farzi* (fictitious) writing as a family settlement in June 2001 for repayment of the outstanding loan. The plaintiff-appellant and defendant-respondent No.1 sold the machinery and building material of the sheller for ₹25,00,000 (rupees twenty-five lakh) on the pretext of repaying the loan. However, they embezzled the said money. It was further the stand taken that the plaintiff-appellant in connivance with defendant-respondent No.1 forged the present agreement to sell. It was further the stand taken that the said document was prepared in March 2009.

4. Replication was filed. On the basis of the pleadings of the parties the following issues were framed by the Trial Court :

1. Whether the defendants entered into an agreement to sell dated 22.06.2001 with the plaintiff regarding the suit property and received ₹7,50,000 from the plaintiff as earnest money ? OPP

2. Whether the agreement to sell in question is false, forged, fictitious and without consideration ? OPD
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiff was/is always remained ready and willing to perform his part of agreement to sell ? OPP
5. Whether the plaintiff is entitled to decree for possession by way of specific performance of the agreement to sell in question ? OPP
6. If issue No.5 is not proved, whether the plaintiff is entitled to the alternative relief of recovery, as prayed for ? OPP
7. Whether the plaintiff is entitled to injunction as prayed for ? OPP
8. Relief.

5. The Trial Court vide judgment and decree dated 19.12.2013 dismissed the suit. Aggrieved by the decision of the Trial Court, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 07.09.2015. Hence, the present regular second appeal by the plaintiff-appellant.

6. The learned counsel for the plaintiff-appellant would contend that the agreement to sell was entered into by the defendant-respondents on 22.06.2001 for a total sale consideration of ₹30,00,000 (rupees thirty lakh) and out of that amount, a sum of ₹7,50,000 (rupees seven lakh fifty thousand)

was received as earnest money in the presence of marginal witnesses by the defendant-respondents. It is further contended by the learned counsel that the possession of the rice sheller was also handed over to the plaintiff-appellant and he had been in possession of the same. The learned counsel has further contended that both the Courts have erred in dismissing the suit of the plaintiff-appellant. It is yet further the contention of the learned counsel that onus to prove the sale deed in favour of defendant-respondent No.10 was wrongly cast upon the plaintiff-appellant.

7. Heard.

8. In the present case the plaintiff-appellant filed the present suit averring therein that defendant-respondents had entered into an agreement to sell qua the suit property. The contesting defendant-respondents had raised a plea in their written statement that the property belong to Rupinder Singh i.e. the husband of defendant-respondent No.3 and father of defendant-respondents No.4 to 6. Cogent evidence was produced on the record to show that the property belongs to Rupinder Singh. Mutation of inheritance of Rupinder Singh was entered on 31.01.2003 in favour of his wife and children. The plaintiff-appellant set up a case that a sale deed had been executed in the year 1980. The plaintiff-appellant claimed that the property in dispute was sold vide sale deed dated 15.12.1980 in favour of defendant-respondent No.10 i.e. M/s Dashmesh Rice Mills. The said firm was dissolved on the death of Beant Singh on 10.01.1988 and thereafter the entire property was inherited by all the defendant-respondents, and they executed an agreement to sell on 22.06.2001. Both the Courts concurrently found that there was not an iota of

evidence produced on the record that the property was ever sold to defendant-respondent No.10 i.e. M/s Dashmesh Rice Mills. Infact, the sale deed dated 15.12.1980 was never proved by the plaintiff-appellant by leading any evidence and the same was marked as Mark-A. There was also no explanation as to why the sale deed, if any, was executed on 15.12.1980 in favour of defendant-respondent No.10 i.e. M/s Dashmesh Rice Mills or why the mutation had not been entered in its favour. It has further come on the record that even the mutation of inheritance in favour of the wife and the children of Rupinder Singh was not challenged by the defendant-respondents at any point of time. Even qua the agreement to sell dated 22.06.2001 (Ex.P-3) itself, both the Courts returned a finding that the same was not proved in accordance with law as none of the attesting witnesses were examined. Once a categoric stand was taken by the contesting defendant-respondents that the agreement to sell was forged and fabricated, the onus was upon the plaintiff-appellant to have proved the same in accordance with law. Both the Trial Court and the First Appellate Court found that the agreement to sell did not appear to be a genuine document inasmuch as the first part of the document was typed on a stamp paper of ₹20 (rupees twenty) and the second part on a petition paper of ₹0.25 (twenty-five paise). There were other discrepancies which remained unexplained. The signatures of the parties are also strangely missing from the first page and only find appended on the second page of the alleged agreement. The learned counsel for the plaintiff-appellant has not been able to point to any evidence on the record to suggest that the defendant-respondents No.1 and 7 to 9 had any right and title to enter into the agreement to sell. Defendant-

respondents No.3 to 6 had denied the agreement. The plaintiff-appellant failed to lead any evidence to prove the genuineness of the said agreement. In the face of the findings recorded by both the fact finding Courts, there is no scope for any interference by this Court. No cogent and reliable evidence has been highlighted by the counsel for the plaintiff-appellant for this Court to take a contrary view from the one taken by both the Courts. In view thereof, no fault can be found with the findings returned by both the Courts concerned. No other point was argued.

9. In view of the discussion above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

18.02.2025

Aman Jain

(ALKA SARIN)
JUDGE

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