

(1997) 09 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2637 of 1995

Karam Singh Kamboj

APPELLANT

Vs

Harbans Singh

RESPONDENT

Date of Decision: Sept. 26, 1997

Acts Referred:

- Specific Relief Act, 1963 - Section 12(2)

Citation: (1998) 1 CivCC 665 : (1998) 118 PLR 284 : (1997) 4 RCR(Civil) 389

Hon'ble Judges: Sarojnei Saksena, J

Bench: Single Bench

Advocate: Jagmohan Singh Bhatti, for the Appellant; B.R. Mahajan, for the Respondent

Final Decision: Dismissed

Judgement

Sarojnei Saksena, J.

Appellant-defendant by filing this second appeal is challenging the concurrent findings of fact of the Courts below.

2. Short point involved in this appeal is, whether the findings recorded by the Courts below are erroneous. First of all, these are findings of fact and are not assailable in second appeal. Secondly, the appellant-defendant pleaded that agreement to sell the disputed land was not enforceable as it was vitiated by fraud and misrepresentation. In the written statement, the appellant-defendant has not pleaded bundle of facts on the basis of which he tried to state on oath in the trial Court that the contract was not enforceable because of fraud or mis-representation practised on him. On oath he stated that he was friendly with the respondent-plaintiff and at the same time he has also stated that his signatures thumb-marks were obtained when he was under the influence of intoxication. Since this fact was not pleaded in the written statement, both the Courts below have not believed his evidence. Furthermore, the factum of payment of consideration and execution of the agreement to sell is duly proved by the scribe as well as by the

attesting witnesses. Hence, the Courts below have not fallen in error in relying on the plaintiff-respondent's aforementioned evidence and recording a finding on issue No. 1 against the appellant-defendant.

3. No doubt, in the trial it was pleaded that whole of the land comprised in the impugned agreement to sell is not exclusively owned by the appellant defendant. Both the Courts below have taken this fact also into consideration. Having held that the appellant-defendant is exclusive owner of 4 Kanals 15 Marlas of land in Khasra No. 40/1/3 and 2/3 and he has 1/4th share in land comprised in Khasra No. 40/2 min. measuring 3 Kanals 11 Marlas, out of which the respondent-plaintiff being a cosharer is entitled to get his share of 18 Marlas only. Thus, the Courts below have decreed the suit for specific performance of land measuring 4 Kanals 11 Marlas plus 18 Marlas out of 3 Kanals 11 Marlas of joint ownership. The lower appellate Court has rightly relied on Partap Chand Aggarwal v. Nand Lal 1993(2) R R R 656; [Kartar Singh Vs. Harjinder Singh and others](#), , and Sat Paul Singh v. Hukam Chand 1992 (1) L J R 312. Respondent's learned counsel's reference to the apex Court's judgment in [Sardar Singh Vs. Smt. Krishna Devi and another](#), , is also apposite.

4. Appellant's learned counsel has vehemently argued that such a suit for possession on the basis of specific performance of contract is not maintainable. To support his contention, he has relied on the judgment of the Privy Council in AIR 1932 43 (Privy Council) . That decision does not advance the case of the appellant-defendant. On the facts of the case, it was held by their Lordships of the Privy Council that where a co-sharer professes to grant a lease of the entire estate in a property of which he held a share only in the belief that the other party had already obtained the consent of the other co-sharer, it cannot be deemed that there was a concluded contract, whereby the co-sharer undertook a binding obligation on behalf of himself and other co-sharer to obtain the lease of the property and even though such co-sharer may have received the salami fixed, no suit for specific performance to execute a kabuliyat and give possession can lie against the entire body of the proprietors. In this case, other co-sharers of the joint holding are not parties to the suit.

5. The appellant-defendant cannot take any help of the provisions of Sections 12(1) 14(1)(a) and 16(a) of the Specific Relief Act, 1963. The suit for possession has been rightly decreed by the Courts below u/s 12(2) of the Specific Relief Act.

6. Thus, finding no merit in this second appeal, it is hereby dismissed.