

(1995) 08 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1334 of 1980

Dalip Singh

APPELLANT

Vs

Jagdish Singh and Another

RESPONDENT

Date of Decision: Aug. 7, 1995

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Transfer of Property Act, 1882 - Section 41

Citation: (1995) 111 PLR 341

Hon'ble Judges: N.K. Kapoor, J

Bench: Single Bench

Advocate: M.L. Sarin and Ashish Handa, for the Appellant; J.S. Wasu and C.L. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Kapoor, J.

This is defendant's appeal against the judgment and decree of the Additional District Judge affirming in appeal the judgment and decree of the trial Court whereby the suit of the plaintiff was decreed as prayed for.

2. Briefly put, the plaintiff filed a suit for possession by means of specific performance of the sale agreement dated 19.10.1976 executed by Maninder Singh alias Sawinderjit Singh in favour of the plaintiff in respect of sale of 1/3rd share of land measuring 26 Kanals 10 Marlas as per details given in the plaint or in the alternative for grant of a decree of Rs. 4000/- against defendant No. 1 on account of return of earnest money and damages/compensation for breach of the above mentioned sale agreement. According to the plaintiff, as per agreement dated 19.10.1976 to the sale deed was to be executed and registered by defendant No. 1 by 15 Jaith Samat 2034 corresponding to 28th May, 1977 and in case he refuses to execute the same, he was to pay back the earnest amount of Rs. 2000/- and in equal

sum by way of damages and in case the vendee refuses to get the sale deed executed, the amount of earnest money was to be forfeited. It is further the case of the plaintiff that he was in possession of the whole land i.e. 26 kanals 10 marlas as he had already purchased 2/3rd share of 26 kanals 10 Marlas of land from the other two co-sharers. The plaintiff further stated that he is tenant at will and so is in possession of the suit land. With these broad averments, it has been stated that the sale deed dated 14.2.1977 effected by defendant No. 1 in favour of defendant No. 2 does not bind the plaintiff in any manner and is liable to be set aside.

3. Defendant No. 2 only contested the suit. In the written statement, material averments made in the plaint have been denied. According to the defendant, agreement to sell is a fictitious document. In fact, the plaintiff knew of the sale in favour of the defendant. The defendant, however, denied his knowledge of the alleged agreement of sale. Defendant No. 1 admitted the allegations of the plaintiff in toto.

4. On the pleadings of the parties, following issues were framed:-

1) Whether Maninder Singh alias Sawinderjit Singh defendant No. 1 agreed to sell the suit property to the plaintiff by way of agreement dated 19.10.1976 as alleged in para No. 1 of the plaint ? OPP.

2) Whether the plaintiff has always been ready and willing to perform his part of contract and is still ready and willing to do so ? OPP

3) Whether defendant No. 2 is a bona fide transferee for consideration without notice of the agreement in favour of the plaintiff ? OPD

4) Relief.

5. The trial Court on the basis of evidence came to the conclusion that Maninder Singh alias Sawinderjit Singh defendant No. 1 entered into agreement of sale vide agreement deed dated 19.10.1976 and so decided issue No. 1 in favour of the plaintiff. Under issue No. 2, it has been held that the plaintiff has ever been ready and willing to perform his part of the contract and is now ready and willing to do so. Under issue No. 3, the Court came to the conclusion that since the plaintiff is admittedly in possession of the suit property, had the defendant enquired he would have known about the existence of a prior agreement dated 19.10.1976. Accordingly, the Court held that defendant No. 2 is not a bona fide transferee. This issue was accordingly decided. Resultantly, a decree for possession by way of specific performance of contract dated 19.10.1976 in respect of 1/3 rd share of 26 kanals 10 Marlas was passed in favour of the plaintiff and against defendants No. 1 and 2 on payment of Rs. 4000/- in terms of sale agreement Exhibit P-1. Further direction was given to defendant No. 1 to execute the sale deed and to defendant No. 2 that he should join in the conveyance so as to pass on the title to the plaintiff else the plaintiff was permitted to get the sale deed executed.

6. Feeling dissatisfied with the judgment and decree of the trial Court, defendant No. 2 Dalip Singh filed appeal. The lower appellate Court once again examined the matter as per evidence led by the parties. Finding no substance in any of the contentions raised by the appellant, the appellate Court affirmed the decision of the trial Court and so dismissed his appeal.

7. With a view to seek reversal of the concurrent findings of the Courts below, learned counsel for the appellant termed these to be wholly illegal and otherwise unwarranted on the proved facts as well as on law. According to the learned counsel for the appellant, it is a clear case of collusion between the plaintiff and Maninder Singh. Elaborating the counsel urged that agreement to sell dated 19.10.1976 set up by the plaintiff is nothing but a fabrication which has come into existence in connivance with Maninder Singh. Had this agreement been in existence, Maninder Singh would have not executed the sale deed in favour of the present appellant on 14.2.1977. The stand of the plaintiff otherwise stands belied as no mention of this agreement was made in the suit filed by him seeking an injunction restraining the defendants from interfering in his possession and from dispossessing him otherwise than in due course of law. This suit was filed on 29.7.1977 in which the present appellant was defendant No. 2. It is with a view to support this contention that the appellant filed an application under Order 41 Rule 27 read with Section 151 of the CPC seeking permission to place on record the judgment of the Court dated 21.11.1978 in the above-mentioned case. It has been urged by the learned counsel for the appellant that since no reply has been filed and also the fact that the document has a material bearing on the point in controversy that the same be permitted to be adduced in evidence. Assailing the agreement Exhibit P-1, the counsel urged that it is not a genuine document and has come into existence in connivance with defendant No. 1 and complicity of attesting witness and the scribe. According to the counsel, Chander Kumar scribe had already faced trial in an embezzlement case and was convicted. This person has a shady antecedents and otherwise also not a licence deed writer. Not only this, the agreement has not been scribed on an appropriate stamp paper as required by law. This document has also not been registered. Bakhshish Singh, an attesting witness, is father of Maninder Singh. The trial Court examined this aspect of the matter as per evidence led by the parties and came to the conclusion that no doubt that the plaintiff as well as defendant are near relations i.e. plaintiff and defendant are real brothers, Maninder Singh is son of Datar Kaur, a daughter of Moola Singh. According to the trial Court, there is no evidence on record that the parties had any strained relationship. Rather Prithvi Pal Singh, DW3, son of Dalip Singh has admitted in his cross-examination that Sawinderjit Singh alias Maninder Singh had cordial relations with them till today. Similarly, Bakshish Singh father of Maninder Singh had admitted in his cross-examination that Maninder Singh is having no relations with Dalip Singh. Similarly, the Court came to the conclusion that merely for the reason that on one given time the scribe was accused of a criminal charge will not make a genuine

document as bogus. The court found as a fact that the document was entered in his register at serial No. 86. With the corroborative evidence of the attesting witness, the trial Court has accepted it to be a genuine document which finding has been affirmed by the appellate Court as well. Thus, this plea of the counsel is devoid of any merit. Both the Courts on appraisal of evidence have come to the conclusion that the plaintiff was in possession of the suit property at the time of execution of sale deed and even now. Precisely for this reason, it was incumbent upon the appellant-defendant No. 2 to have enquired about it from the plaintiff. Examining the plea of defendant in terms of Section 41 of the Transfer of Property Act, the trial Court held that defendant No. 2 (appellant) in his statement has nowhere stated that he had no notice of any " agreement to sell the suit property between the plaintiff and defendant No. 1. In these circumstances, the Court came to the conclusion since proper enquiry had not been made by the appellant before purchasing the property, he cannot seek protection u/s 41 of the Transfer of Property Act. The lower appellate Court found no ground to differ with the conclusion arrived at by the trial Court in this regard. The findings recorded by the Courts below are pure finding of fact and thus not amenable to be interfered with u/s 100 of the Code of Civil Procedure.

8. Cautioning the Court with regard to its power in terms of Section 100 of the Code of Civil Procedure, the apex Court in case reported as *Deity Pattabhiramaswamy v. S. Hanyamayya and Ors.* AIR 1959 S.C. 57 observed as (at page 59)

"... But, notwithstanding such clear and authoritative pronouncements on the scope of the provisions of Section 100, Civil Procedure Code, some learned Judges of the High Courts are disposing of Second Appeals as if they were first appeal..."

9. In case reported as [R. Ramachandran Ayyar Vs. Ramalingam Chettiar](#), the Court had again the occasion to revert to the same subject. It was pointed out that the learned Judges of the High Court should bear in mind the caution and warning pronounced by the Privy Council in the case of *Mst. Durga Chowdhraim v. Jawahir Singh Chowdhri* 17 IA 122 (Privy Council) and should not interfere with the finding of fact. To the similar effect is the decision of the Supreme Court in case reported as [Madamanchi Ramappa and Another Vs. Muthalur Bojjappa](#), .

10. If the judgment placed on record along with application under Order 41 Rule 27 of the CPC is admitted in evidence even then it does not advance the case of the appellant in any manner. This is a judgment in civil suit instituted by Jagdish Singh (plaintiff in the present case) for permanent injunction restraining the defendants from interfering into his possession and from dispossessing him forcibly. The basis of the suit was possession of the plaintiff over the suit land as tenant at will. The plea of the appellant that there is no mention with regard to alleged agreement to sell in this judgment dated 21.11.1978 and it is reasonable to infer that the agreement dated 19.10.1976 set up by the plaintiff is a sheer fabrication, is highly conjectural. Firstly, this could be verified only if a copy of the plaint and replication, if

any, had been placed on record. Otherwise too, the contention raised by the appellant is devoid of any substance as in this suit. Jagdish Singh plaintiff was merely protecting his possession as tenant at will. So even if no reference was made to the agreement in the plaint, the same is inconsequential. This plea is in the realm of conjecture.

11. Resultantly, finding no merit in this appeal, the same is dismissed. No costs.