
(2012) 10 P&H CK 0203

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal NO. 4443 of 2012 (O and M)

Santokh Singh and Another

APPELLANT

Vs

Sukhwinder Singh and Others

RESPONDENT

Date of Decision: Oct. 16, 2012

Citation: (2013) 169 PLR 209 : (2013) 2 RCR(Civil) 581

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Rajan Bansal, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 12361-C of 2012

1. This is application for impleading Chankaur Singh-plaintiff No. 3 as party to the instant second appeal although he was not impleaded as party to the first appeal.

Heard.

Decree of trial Court against plaintiff No. 3 has attained finality as no first appeal was preferred against plaintiff No. 3. Consequently in second appeal, plaintiff No. 3 cannot be impleaded as party. The application is misconceived and meritless and is accordingly dismissed.

Main Case

Defendants Santokh Singh and Jagroop Singh having failed in both the Courts below have filed this second appeal.

Suit filed by respondents/plaintiffs for specific performance of agreement to sell. The plaintiffs alleged that defendants and their two other brothers are cosharers in 137 Kanals 10 Marlas land in equal shares. The defendants agreed to sell 24 Kanals

16 Marlas being 496/866 share of 43 Kanals 6 Marlas land out of the aforesaid joint land, to plaintiffs for Rs. 6,20,000/- and received Rs. 4,00,000/- as earnest money and executed agreement to sell dated 17.11.2004. Plaintiffs have always been ready and willing to perform their part of the contract, but defendants committed breach thereof. Accordingly, plaintiffs sought specific performance of the agreement to sell with consequential relief of permanent injunction restraining the defendants from alienating the suit land. In the alternative, plaintiffs claimed recovery of Rs. 6,20,000/-.

2. Defendants broadly denied the plaint averments. They denied having agreed to sell the suit land to the plaintiffs or having received any earnest money or having executed the impugned agreement. The defendants alleged that they are addicted to liquor. Taking advantage of said weakness of the defendants, the plaintiffs brought the defendants to Court complex and made them to drink heavily and under intoxication, thumb impressions of defendants were obtained on blank papers by the plaintiffs in collusion with attesting witnesses thereof. The impugned agreement is forged and fabricated.

3. Both the Courts below have decreed the suit of the plaintiffs. Feeling aggrieved, defendants have filed this second appeal.

4. I have heard learned counsel for the appellants and perused the case file.

5. The instant second appeal is liable to fail on the short ground that decree of trial Court qua plaintiff No. 3 has attained finality, having not been challenged by first appeal because plaintiff No. 3 was not impleaded as party to the first appeal.

6. Even otherwise, the appellants have no case. Plaintiffs have led sufficient cogent evidence to prove their case. Plaintiff No. 1 himself appeared in the witness box as PW-1. Plaintiffs examined Kaka Singh an attesting witness of the agreement as PW-2 and Yashpal Sharma, Deed Writer, scribe of the agreement as PW-3. All of them have broadly stated according to plaintiffs' version.

7. On the other hand, defendant No. 1 appeared as DW-1 and broadly stated according to the version of the defendants. They also examined Balour Singh, Patwari DW-2 who simply proved copy of jamabandi.

8. Plaintiffs have proved due execution of the impugned agreement by examining an attesting witness of the agreement and also scribe thereof, besides testimony of plaintiff No. 1 himself. The said evidence is cogent and reliable. Their statements could not be impeached in cross-examination. There is no reason to doubt or discard the said statements. On the other hand, there is solitary testimony of defendant No. 1 in support of version of the defendants. The said self-serving oral statement of defendant No. 1 is not sufficient to rebut the cogent evidence led by the plaintiffs to prove their case. On the contrary, defendant No. 1 admitted that they have no litigation or enmity with Roop Singh, Nambardar and Kaka Singh,

attesting witnesses of the agreement. Consequently there is no reason why these attesting witnesses would become party to the alleged fraud. There is also no reason why the professional deed writer Yashpal Sharma would also depose falsely. Plea of fraud even in civil cases has to be proved beyond reasonable doubt just like a criminal charge. In the instant case, however, defendants have failed to establish their version of alleged fraud even on preponderance of evidence or probability much less beyond reasonable doubt. Evidence of the plaintiffs is very trustworthy and far outweighs the evidence of the defendants. Concurrent finding recorded by the courts below to decree the suit of the plaintiffs is fully justified by the evidence on record and is supported by cogent reasons recorded by the Courts below. The said finding is not shown to be perverse or illegal or based on misreading or misappreciation of evidence. Therefore, there is no ground to interfere with the said finding.

9. Counsel for the appellants contended that sale consideration mentioned in the impugned agreement is far below the prevailing market price at that time. It was also argued that appellants have only the suit land and, therefore, it would be a case of hardship if specific performance of the agreement is ordered. It was also submitted that defendants being cosharers in 137 Kanals 10 Marlas land could not have agreed to sell 24 Kanals 16 Marlas suit land out of specific 43 Kanals 6 Marlas land out of the joint land measuring 137 Kanals 10 Marlas. In support of these contentions, reliance has been placed on four judgments of this Court namely in the cases of *Ravinder Kumar v. Harcharan Singh*, (2008-3)151 PLR 747 (F.B.); [Balwinder Singh Vs. Gurcharan Singh and Others](#), [Bhartu Vs. Ram Sarup](#), *Ram Chander v. Bhim Singh & others & Rohtash Singh & another v. Ram Niwas & others*, 2008(3) RCR (Civil)685 and one judgment of Karnataka High Court in the case of [Ramachandraiah Vs. Nagappa Naidu](#),

10. I have carefully considered the aforesaid contentions but the same cannot be accepted. Counsel for the appellants conceded that no such plea, as now sought to be canvassed by way of aforesaid contentions, was raised in the written statement. There is also no material on record to substantiate the same. Consequently these contentions are liable to summary rejection. Even otherwise, specific performance of an agreement cannot be declined merely on the ground of inadequate consideration. In the instant case, there is also no evidence of any sale transaction or any other evidence to depict that the sale consideration mentioned in the agreement was inadequate or below the prevailing market price.

11. The contention that defendants have only the suit land is belied by other contention that defendants are cosharers in 137 Kanals 10 Marlas land having half share therein which would come to 68 Kanals 15 Marlas whereas defendants have agreed to sell only 24 Kanals 16 Marlas land to the plaintiffs. Consequently it cannot be said that suit land is the only land with the defendants. Moreover a person may agree to sell his entire land also and specific performance of the agreement cannot

be declined merely because the vendor has no other land.

12. The contention that the defendants could not have agreed to sell share of specific land out of bigger joint land is also untenable because the plaintiffs would become cosharers to the extent of 24 Kanals 16 Marlas land (in the joint land) on purchasing the suit land by way of instant lis, even if specific land is sold to them, if the bigger joint land measuring 137 Kanals 10 Marlas has not been partitioned. It has been so held by Full Bench of this Court in the case of [Bhartu Vs. Ram Sarup](#). According to this judgment, even sale of specific land out of joint land which has not been partitioned would amount to sale of share in the total joint land and rights of the vendee would also be subject to partition of the total joint land. For the reasons aforesaid, I find no merit whatsoever in the contentions canvassed by the counsel for the appellants. No question of law, much less substantial question of law, arises for adjudication in this second appeal. The appeal is devoid of merit and is accordingly dismissed in limine.