

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.5854 of 2003

Date of Decision: 30.3.2007

Jagat Singh

...Appellant

Versus

Jeet Singh and another

....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Sandeep Chhabra, Advocate, for the appellant.

Shri Sandeep Ganghas, Advocate, for the respondents.

HEMANT GUPTA, J.

The challenge in the present appeal is to the judgment and decree passed by the Courts below, whereby the suit for specific performance of the agreement dated 29.12.1992 in respect of the land measuring 5 kanals 2 marlas was decreed.

It is the case of the plaintiff that on the aforesaid date, defendant No.1 agreed to sell the land in the sum of Rs.26,500/-. The entire amount was paid to the said defendant. It was agreed that the sale deed will be executed subsequently. Earlier, the plaintiff filed a suit for permanent injunction on 4.6.1994 restraining the defendants from dispossessing the plaintiff from the suit land. Subsequently, the present suit for specific performance was filed on the ground that the defendant No. 1 has sold the land in dispute to defendant No. 2 i.e. the present appellant on 23.5.1994.

Both the Courts have returned concurrent finding

of fact that the agreement of sale dated 29.12.1992 Exhibit P.1 stands proved from the testimony of PW2 Prithi Singh, Charan Singh PW4 and Rameshwar-PW6, the attesting witnesses. The said attesting witnesses have deposed that the possession of the land was delivered to the plaintiff. Still further, both the Courts have recorded concurrent finding of fact that the agreement of sale was executed by defendant No. 1 and such execution of the agreement is not result of fraud or misrepresentation. It is also found that the possession of the land was delivered to the plaintiff in pursuance of the agreement of sale. The sale deed in favour of the defendant has been executed on 24.5.1994 in the sum of Rs.36,000/-. The sale deed has been produced on record as Exhibit DW4/A. The learned first Appellate Court has also found that it is unbelievable that the appellant, who is also resident of village Babail, was not aware of the agreement of sale, having been executed by defendant No.1 in favour of the plaintiff.

Learned counsel for the appellant has vehemently argued that the suit for specific performance is barred in view of the provisions of Order 2 Rule 2 CPC. Reference is made to **Smt. Ralli v. Smt. Satinderjit Kaur 1998(2) RCR (Civil) 114** and **Tarsem Singh v. Siburam 1998(2) RCR (Civil) 222**.

However, I do not find any merit in the aforesaid argument raised by the learned counsel for the appellant. A Division Bench of this Court in **Smt. Bhagwan Kaur v. Shri Harinder Pal Singh 1992(2) PLR 643**, has held that the cause of action in the suit for injunction is different than the one in a suit for specific performance. It was held that the provisions of Order 2 Rule 2 CPC do not bar the subsequent suit for specific performance.

Apart from the said fact, the suit for specific performance was filed when the suit for injunction was already pending before the trial Court. Admittedly, the earlier suit for injunction was filed in the absence of knowledge in respect of the sale effected by the vendor in favour of the present appellant. After *ex parte ad interim* injunction was granted on 4.6.1994, the plaintiff filed the present suit for specific performance having derived information regarding sale in favour of the present appellant. Therefore, it cannot be said that the cause of action to seek specific performance was available to the plaintiff when the suit for injunction was filed on 4.6.1994.

Concurrent findings of facts recorded by the Courts below, have been sought to be disputed by way of re-appreciation of evidence. It could not be pointed out that any evidence has been misread or not taken into consideration.

Consequently, I do not find any patent illegality or material irregularity in the findings recorded by the Courts below, which may give rise to any substantial question of law in the present appeal.

Dismissed.

30-03-2007  
ds

(HEMANT GUPTA)  
JUDGE