

**In the Court of Monika Lamba, PCS
Additional Civil Judge (Senior Division), Kapurthala
(UID No. PB00244)**

CNR No. PBKP020007622011

Case No. CS/7254/2013



Date of institution : 06-09-2010

Decided on : 26-02-2020

Inderjit son of Kewal Krishan, resident of Jalandhar Road, Kapurthala.

.....Plaintiff

Versus

1. Surinder Kaur wife of Balwinder Singh s/o Baldev Singh
2. Banti widow of Baldev Singh (mother of deceased Balwinder Singh)
3. Laddi son of deceased Balwinder Singh
4. Sonu son of deceased Balwinder Singh
All r/o Village Khera Majja, Tehsil and District Jalandhar.
5. Sukhwinder Singh son of Harcharan Singh r/o Village Saidpur, Tehsil
Sultanpur Lodhi, District Kapurthala.
6. Parampal Singh s/o Niranjan Singh
7. Hira Singh s/o Prem Singh
8. Swaran Singh s/o Salwant Singh, all residents of village Hussainpur
Dulowal, District Kapurthala.

.....Defendants

9. Gagan Kumar s/o Ramesh Lal
10. Raj Kumar son of Joginderpal
11. Ajay Kumar s/o Kewal Krishan, all r/o Jalandhar Road, Kapurthala.

.....Performa defendants

Suit for possession by way of specific performance of the agreement to sell dated 31/7/2016 executed by defendants No.5 to 8 in favour of plaintiffs and performa defendants No.9 to 11, who in turn were competent to execute the said agreement on the strength of agreement to sell dated 06.05.2006 executed in their favour by the original owners defendant No.1 and her husband since deceased Balwinder Singh son of Baldev Singh, with respect to land measuring 44 kanal 19 marla out of land

comprised of khewat/khatauni No.1220/1488 khasra No.4723/11-5, 4724/10-17, 4726/7-18, 4727/6-10, 4728/4-10, 4729/1-9, 4730/5-10, 4731/4-2, 4732/3-16, 4733/4-2, 4734/1-2, 4735/1-10, 4736/0-17, 4737/0-10, 4738/0-2, 4739/0-4, 4662/2/2/1-17, 9357/2/4659/1/2/2-13, situated within the revenue estate of Kapurthala Sharki, Tehsil and District Kaupurthala as per jamabandi for the year 2005-06 alongwith all rights appurtenant thereto, on payment of balance sale consideration of Rs.98,39,187/- after adjusting a sum of Rs.55,00,000/- paid under the agreement to sell and endorsement, out of total sale consideration of Rs.1,53,39,187/-,

AND

In the alternative suit for recovery of Rs.1,10,00,000/- along with interest @18% p.a. from the date of receipt of earnest money till actual realization of the decretal amount with details as under:-

Earnest money paid on 31/7/2016	Rs.10,00,000
Addl.Earnest money paid on 1.9.06	Rs.10,00,000
Addl.Earnest money paid on 10.5.07	Rs.35,00,000
Stipulated Damages	<u>Rs.55,00,000</u>
Total	<u>Rs.1,10,00,000</u>

AND

Suit for permanent injunction restraining the defendants from alienating or transferring the suit property to any other person or creating any charge over the suit land wrongly or illegally in any manner and forever.

Present: Sh.JJS Arora, Advocate for the plaintiff.
Sh.Malkiat Singh Thind, Advocate for Kulwinder Singh
attorney of defendants Nos.1 to 4.
Suit against defendants Nos.5 to 11 dismissed in default.

JUDGMENT:

In brief the version of plaintiff is that defendant No.1 and her

husband were owners in possession of the land measuring 68K-19M, which they have agreed to sell in favour of defendants Nos.5 to 8 vide agreement to sell dated 06.05.2006 with the terms and conditions that land was to be sold at the rate of Rs.32,500,00/- per acre. It is further pleaded that Rs.15,00,000/- was paid by defendants Nos.5 to 8 to deceased husband of plaintiff as earnest money under the agreement to sell dated 06.05.2006 and the date fixed for execution of sale deed was 25.05.2007. It was further agreed that in case husband of defendant No.1 and defendant herself failed to execute the sale deed in favour of defendants Nos.5 to 8 or the persons of their choice within stipulated date, then they shall pay sum equal to earnest money as damages and the agreement shall stand cancelled and earnest money shall stand forfeited. It is also agreed in the said agreement that defendants Nos.5 to 8 were given authority to enter into further agreement for sale or to execute the sale deed regarding the property not less than one acre at a time. It is further pleaded by plaintiff that according to terms and conditions of agreement dated 06.05.2006, defendants Nos.5 to 8 further executed agreement to sell of land measuring 68K-19M in favour of plaintiff and performa defendants vide agreement to sell dated 31.07.2006 with the condition that land was to be sold at the rate of Rs.27,30,000/-per acre, Rs.10,00,000/- was paid by plaintiff to defendants Nos.5 to 8 as earnest money under the agreement to sell dated 31.07.2006, sale deed would be executed on or before 10.05.2007. It was further agreed that plaintiff and performa defendants shall pay Rs.10,00,000/- more as earnest money on or before 01.09.2006 and sale deed qua land measuring 23K-11M was to be executed on or before 10.11.2006. It

was further agreed that in case, defendants Nos.5 to 8 failed to execute the sale deed, then defendants Nos.5 to 8 shall pay sum equal to the earnest money as damages.

2. The plaintiff has further pleaded that vide endorsement dated 01.09.2006, the plaintiff and performa defendants paid the agreement amount of Rs.10,00,000/- to defendants Nos.5 to 8 and an endorsement was reduced into writing on the backside of original agreement to sell and date for execution of sale deed was mutually extended upto 15.11.2006. It is further pleaded that defendants Nos.5 to 8 further extended date of execution vide endorsement dated 10.05.2007 upto 05.09.2007 after receiving another amount of Rs.35,00,000/- as earnest money. Therefore, now total earnest money of Rs.55,00,000/- has been paid by plaintiff and performa defendants to defendants Nos.5 to 8. The plaintiff has further pleaded that on 05.09.2007, performa defendant No.8 remained in the office of Sub Registrar Kapurthala alongwith balance sale consideration and amount of expenses to get the sale deed executed in favour of plaintiff and performa defendants as per terms and conditions of agreement to see but defendants Nos.5 to 8 did not turn up. In the meantime, original owner (Balwinder Singh) husband of defendant No.1 had died leaving behind his Lrs, who are defendants Nos.2 to 4 and defendant No.1 who all have inherited the estate of deceased. So, they are liable to execute sale deed in favour of plaintiff on the terms and conditions as settled in the agreement. It is further pleaded that there was some bar created by some executive orders regarding the execution of sale deed of the land, on account of which, the sale deed with respect to the land

in dispute could not be executed under the agreement to sell, however, in the meantime, the defendant Nos.1 to 4 went abroad with a promise to execute the sale deed as and when the said bar is lifted. Now the plaintiff has come to know that there is no bar over the title of the suit property in the name of the defendants. So, defendants are bound to execute sale deed in favour of the plaintiff or any other person as desired by them. Hence the present suit.

3. Upon notice, defendant No.1 appeared through attorney Kulwinder Singh. Suit of plaintiff against defendants Nos.5 to 11 was dismissed in default. It is pertinent to mention here that Kulwinder Singh who appeared as attorney of defendant No.1 had filed written statement jointly on behalf of defendants Nos.1 to 4 and taking preliminary objection of locus standi or cause of action and maintainability. It is further pleaded that plaintiff has not come to the Court with clean hands because defendant Nos.5 to 8 had filed another suit No.6886 of 29.09.2010 on the basis of agreement dated 06.05.2006, which was decided exparte on 20.02.2014 and money decree exparte has been passed against defendants Nos.1 to 4. It is further pleaded that in view of suit No.6886, the present suit is not maintainable. He has also mentioned that Counsel who has filed the present suit on behalf of plaintiff was the Counsel for defendants Nos.5 to 8 in the previous suit. So, the present suit has been filed to harass the defendants. On merits, they have denied their knowledge regarding agreement dated 31.07.2006 as there is no privity of contract dated 31.07.2006 between the plaintiff and defendants Nos.1 to 4. Denying the remaining averments, prayer has been made for dismissal of present suit.

4. The plaintiff has filed replication to the written statement and has simply denied all the facts mentioned by the defendant in written statement and reiterating those of plaint and prayed that suit may be decreed.

5. From the pleadings of the parties, the following issues were framed vide Order dated 27.11.2018 of this Court:-

1. Whether the plaintiff is entitled for possession by way of specific performance of an agreement to sell dated 31.07.2006?OPP
2. Whether plaintiff is entitled to recover the suit amount as mentioned in the head note of the plaint? OPP
3. Whether the plaintiff is entitled to interest, if so at what rate and what extent?OPP
4. Whether the plaintiff is entitled to relief of permanent injunction, as prayed for?OPP
5. Whether the plaintiff has got no locus standi or cause of action to file the present suit?OPD
6. Whether the suit is not maintainable in the present form? OPD
7. Whether the plaintiff has not come to the Court with clean hands and has suppressed true facts from this Hon'ble Court? OPD
8. Relief.

6. In order to prove his case, plaintiff has examined following witnesses:

- Plaintiff himself stepped into witness box as PW-1, and tendered into evidence affidavit EX.PW-1/A wherein he reiterated all the facts of the suit. He placed on record documents as under:
 - agreement to sell dated 06.05.2006 EX.P1,
 - endorsement dated 01.09.2006 EX.P2,
 - endorsement dated 10.05.2007 EX.P3,

- affidavit of Gagan Kumar performa defendant No.9 EX.P4 and copy of jamabandi for the year 2005-2006 EX.P5.
- Further plaintiff examined PW-2 Vijay Kumar attesting witness of agreement to sell dated 06.05.2006 EX.P1 who tendered into evidence his duly sworn affidavit EX.PW-2/A and corroborated the version of the plaintiff. Thereafter, plaintiff closed his evidence. This is entire evidence led by plaintiff.

7. In order to rebut the case of plaintiff, Kulwinder Singh attorney of defendant No.1 Surinder Kaur and also Legal heirs of deceased Balwinder Singh stepped into the witness box as DW-1 and tendered into evidence his duly sworn affidavit EX.DW-1/A. He also placed on record attested copy of power of attorney EX.D1. After tendering certified copy of plaint titled “Sukhwinder Singh Vs. Surinder Kaur” which is pending in the Court of Addl.Civil Judge (Sr.Divn.) Kapurthala EX.D2, Ld.Counsel for defendant No.1 closed the evidence on her behalf.

8. Ld. Counsel for the plaintiff has argued on the lines that defendant No.1 and her deceased husband had initially executed agreement to sell in favour of defendants Nos.5 to 8, vide which, latter were given right to execute further sale deed. On the basis of said authority/right, defendants no. 5-8 executed agreement to sell to him in favour of plaintiff and performa defendants. But they had not executed sale on the basis of agreement to sell dated 31.07.2006 and hence the plaintiff is entitled for relief of specific performance and possession of the suit property. Hence he has requested that suit be decreed.

9. On the other hand, Ld. counsel for defendants Nos.1 to 4 has

argued that there is no privity of contract in between the plaintiff and defendants Nos.1 to 4, so no decree can be passed against the defendant No.1, as they are not aware about the terms and conditions settled between the defendants Nos. 5 to 8. Hence, he has requested for dismissal of the suit.

He has referred to the following authorities in support of his arguments:

- (i). Mritunjoy Sett Vs. Jadunath Basak (D) by Lrs 2011(2) RCR (Civil) 894
- (ii). Shiju Vs. Nalini 2016(3) Civil Court Cases 42
- (iii). Major Singh & Anr. Vs. Baljit Kaur & Ors. 2016(Suppl.) Civil Court Cases 349

10. After hearing the arguments advanced by Ld. Counsel for the parties and after going through the material on record, my issue wise findings are as under:-

Issue No.1

11. In order to prove this issue, plaintiff himself stepped into witness box as PW-1 and vide his affidavit Ex.PW-1/A, he reiterated the entire version of the plaint filed by him, contents of which, have already been discussed in detail in foregoing paragraphs of this judgment. Therefore, contents of his deposition and documents are not being reproduced in detail for the sake of brevity. It is important to discuss here cross-examination of this witness (PW1), wherein he stated that he has no knowledge about true owner of the suit property. He had never met the true owner of the disputed property nor Sukhwinder Singh etc introduced him with the true owner. He further stated that agreement to sell EX.P1 was scribed after seeing the Khasra number from revenue record. He admitted that as per revenue record, the real owner of the disputed property is defendant No.1 and Balwinder

Singh her deceased husband. He further stated that EX.P1 was never executed by defendant No.1 and her deceased husband in their favour nor they have paid any amount to defendant No.1 or their attorney. He stated that they had paid Rs.55,00,000/- as earnest money to defendants Nos.5 to 8 but he does not know the name and address of the persons, who executed agreement to sell EX.P1 in their favour. He admitted that suit against defendants Nos.5 to 11 had been dismissed in default. He could not produce the agreement to sell in favour of Sukhwinder Singh executed by defendant No.1 and her deceased husband. He has shown his ignorance if any civil litigation regarding agreement to sell was filed by Sukhwinder Singh against defendant No.1. He stated that as per revenue record, defendant Nos.5 to 8 who executed agreement to sell are not owner of the disputed property. He has shown his ignorance that auit property has been declared '*Nazul land*' and sale of Nazul lands has been banned by the Government. He admitted that they have no concern with the defendant No.1 or her husband because they never gave any amount to them when EX.P1 was scribed.

12. PW-2 Vijay Kumar who is the attesting witness of the agreement dated 31.07.2006 has tendered into evidence his duly sworn affidavit EX.PW-2/A and deposed that he has seen the agreement to sell dated 31.07.2006 in the Court, whereby Sukhwinder Singh, Hira Singh and Swaran Singh on behalf of Dharampal Singh agreed to sell the suit land in favour of Gagan Kumar, Inderjit, Raj Kumar and Ajay Kumar. The said agreement was got typed from the typist, who after typing the same, read over its contents to the parties and Sukhwinder Singh for himself, Hira Singh aand Swaran Singh

all for themselves and for remaining, had duly signed the said agreement to sell in his presence and also in the presence of Vinod Kumar Mitter EX.President Nagar Council Sultanpur Lodhi District Kapurthala. He further deposed that plaintiff also signed the same in his presence, he alongwith Vinod Kumar also signed said agreement to sell which is EX.P1.

13. In his cross-examination, he (PW2) has stated that he does not know the date, on which, agreement to sell was executed neither he knew who is the real owner of the property as he had never met him. He stated that agreement EX.P1 was scribed from another agreement but he does not know names of the parties of the previous agreement. He stated that till date, no amount has been paid to defendant No.1 or his husband. He admitted that defendant No.1 and her husband has no concern with the agreement to sell EX.P1.

14. On the other hand, to rebut the case of plaintiff, defendants Nos.1 to 4 have examined attorney Kulwinder Singh as DW-1 who has tendered into evidence his duly sworn affidavit EX.DW-1/A in which he has reiterated the facts as mentioned in the written statement. In his cross-examination, he (DW1) admitted the fact that property is a Nazul land and in the jamabandi EX.P5, there is a note to the fact that suit land is a Nazul land. He stated that he has no knowledge, if Government has cancelled the ownership of suit land of defendant on account of being violation of Nazul land. He admitted that he came to know about the cancellation, he became party to the litigation and filed the appeal before Commissioner Jalandhar. He admitted that defendants Nos.1 to 4 executed agreement in favour of

defendants Nos.5 to 8, on the basis of which, civil suit for specific performance was filed, which is still pending in the Court Addl.Civil Judge (Sr.Divn.) Kapurthala, copy of agreement placed on record as EX.DW-1/P1. But he could not tell about terms and conditions of the agreement. Further he denied that suit land being Nazul land, the defendants Nos.1 to 4 are unable to execute the sale deed. In the end, he tendered certified copy of plaint titled “Sukhwinder Singh Vs. Surinder Kaur” which is pending in the Court of Addl.Civil Judge (Sr.Divn.) Kapurthala EX.D2.

15. This is the entire evidence led by both the parties.

16. After hearing the arguments and considering the material on record, this Court has observed that there are two agreements in the present case, firstly 06.05.2006 and secondly 31.07.2006. Firstly by virtue of previous agreement, allegedly defendant No.1 alongwith her deceased husband had executed agreement to sell with defendants Nos.5 to 8, in which, allegedly defendant No.1 and her husband had given the authority to defendants Nos.5 to 8 to further execute the sale of land. It is most important to mention here that the previous document dated 06.05.2006, on the basis of which, the plaintiff alleges that defendants Nos.5 to 8 have derived the rights to execute the sale deed in their favour, had not been placed on record by the plaintiff in his affirmative evidence. That was the most important document, which reflected that defendants Nos.5 to 8 had any authority to execute further sale deed. In absence of that document on file, plaintiff could not prove the title of defendants Nos.5 to 8 for the purpose of executing the agreement to sell in their favour.

17. Further this Court has observed that there is no privity of contract between plaintiff and defendants Nos.1 to 4. The persons, against whom the plaintiff is claiming the specific relief are defendants Nos.5 to 8 and the suit of the plaintiff against defendants Nos.5 to 8 had been dismissed in default. So, plaintiff cannot claim any relief against rest of the defendants and hence, the plaintiff has no right to seek any relief against defendants Nos.1 to 4 who had never agreed to sell any land with the plaintiff, neither were they party to the agreement. Moreover, there is admission on the part of plaintiff that they had not paid any amount to defendants Nos.1 to 4, so there is no privity contract between plaintiff and defendants Nos.1 to 4.

18. In view of above-said chain of observations, this Court has observed that no decree can be passed in favour of plaintiff. Therefore, he is not entitled to the relief of specific performance, as prayed for. Hence, this issues is decided against the plaintiff and in favour of defendants.

Issue No.2

19. Onus of proving this issue was upon plaintiff. From the foregoing discussion, and findings given in issue No.1, it has been rendered crystal clear that there is no privity of contract between plaintiff and defendants Nos.1 to 4, hence, the plaintiff is also not entitled to the recovery as prayed for. Thus, this issue is also decided against the plaintiff and in favour of defendants.

Issue No.3

20. Onus of proving this issue was upon plaintiff. From the foregoing discussion, and findings given in issue No.1, this issue is also

decided against the plaintiff and in favour of defendants.

Issue No.4

21. Onus of proving this issue was upon plaintiff. From the foregoing discussion, and findings given in issue No.1, it has been rendered crystal clear that plaintiff could not prove his case, and hence, he is also not entitled to the relief of permanent injunction, as prayed for. Hence this issue is decided against the plaintiff and in favour of defendants.

Issue Nos.5 and 6

22. Onus of proving these issues were upon defendants. From the foregoing discussion, and findings given in issue No.1, it has been rendered crystal clear that suit filed by the plaintiff is not maintainable and he could not prove his locus standi or cause of action to file suit. Hence, these issues decided in favour of defendants and against the plaintiff.

Issue No.7

23. Onus of proving this issue was upon defendant. However neither any evidence has been adduced by defendants in support of this issue, nor Ld. counsel for defendants has addressed any argument on this issue. Thus, this issue is decided against defendants being not pressed.

Issue No.8/Relief:-

24. As a sequel of discussion aforementioned and in context of the given factual matrix, the suit of plaintiff fails and the same is dismissed with cost. Misc. application, if any, lying pending stands disposed of as not pressed. Undisbursed diet money and unexhibited documents be returned to the respective parties against proper receipt and identification. Decree be

drawn accordingly. File be consigned to the Record Room, Kapurthala after due compilation.

Pronounced in the Open Court
Dated:26.02.2020
(Munish)

(Monika Lamba)
Addl.Civil Judge(Sr.Divn.),
Kapurthala(UID No.PB00244)