



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5500 of 2014 (O&M)
Reserved On:25.02.2025
Date of Order:19.03.2025

Gurdev Singh

.Appellant

Versus

Jagdeep Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Navneet Kaur Waraich, Advocate, for the appellant.

Mr. Raghav Gulati, Advocate, for the respondents.

ANIL KSHETARPAL, JUDGE (Oral)

1. **FACTUAL MATRIX**

1.1. The plaintiff assails the correctness of first appellate court's judgement which in turn has reversed/modified the judgment of the trial court.

1.2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed

1.3. The appellant (Gurdev Singh son of Bhura Singh) filed a suit for possession by way of specific performance of the agreement to sell dated 02.01.2006. Smt. Hardeep Kaur wife of Sh. Gurdev Singh son of Sh. Kehar Singh was the owner of land measuring 48 kanals being 960/1954th shareholder of total land measuring 97 kanals and 14 marlas, situated in village Gobindgarh. She on receipt of Rs.5,25,000/-, out of total sale consideration of Rs.9,25,000/- entered into an agreement to sell in favour of plaintiff on

02.01.2006. The sale deed was to be executed on 05.06.2006, however, defendant no.1-Smt. Hardeep Kaur fraudulently sold the suit land in favour of defendant no.2-Jagdeep Singh son of Sh. Sadhu Singh, vide sale deed dated 27.03.2006.

1.4. Defendant no.1 denied the execution of the agreement to sell. It was asserted by her that one Sh.Harbans Singh, Ex. Sarpanch of the village Pana, who has good relations with her husband and family members came along with plaintiff-Gurdev Singh to her house and assured her that they will provide help from the government as she was suffering from Polio. Believing that she accompanied them to Dabwali in a car and got prepared certain documents from her under the pretext of receiving government aid, but, later on she came to know that the papers were on agreement to sell which has been got executed. She also made a complaint to the police but no action was taken. Defendant no.2 claims that he is a bonafide purchaser of the property for valuable consideration of Rs.9,25,000/- and he has no knowledge of the agreement to sell.

1.5. The suit was decreed by the trial court on 09.03.2010. However, the first appeal filed by defendant no.2-Jagdeep Singh was allowed and the case was remitted back for fresh trial. The trial court culled out the following issues:-

1. *Whether the defendant no.1 had entered into an agreement to sell dated 2.1.2006 regarding sale of his land measuring 48 kanals being 960/1954 shares of the land measuring 97 kanals 14 marlas sitauted at village Gobindgarg, Tehsil Dabwali, for a lawful consideration of Rs.9,25,000/- ?OPP*

2. *Whether the defendant no.1 has received Rs.5,25,000/- as earnest money from the plaintiff?OPP*
3. *Whether the sale deed no.6581 dated 27.3.2006 allegedly executed by defendant no.1 in favour of defendant no.2 is wrong and liable to be set aside as alleged?OPP*
4. *Whether the plaintiff was ready and willing and is still ready and willing to perform his part of contract?OPP*
- 4-A. *Whether the defendant no.2 is a bonafide purchaser of the suit for valuable consideration of Rs.9,05,000/- on the basis of sale deed no.6581 dated 27.3.2006 executed by defendant no.1 in favour of defendant no.2?OPD*
5. *Whether the plaintiff is entitled to the consequential relief of permanent injunction as prayed for?OPP*
6. *Whether the suit is not maintainable?OPD.*
7. *Whether the plaintiff has no cause of action and no locus standi to file the present suit?OPD*
8. *Relief.”*

1.6. Both the court have concurrently found that defendant no.1 executed the agreement to sell in favour of the plaintiff on payment of Rs.5,25,000/- and the plaintiff was always ready and willing to perform his part of the contract. Its correctness is not challenged by any of the parties.

1.7. The trial court found that defendant no.2 had the knowledge of agreement to sell as he was closely associated with all the three witnesses of the sale deed, namely, Sh. Sukhdev Singh, Sh. Balkar Saingh and Sh. Major Singh, who were the owners of adjoining land with the land in dispute and in fact, they were cultivating the suit land on contract basis. The first appellate court has reversed the trial court's decree while observing that defendant no.2 is a bonafide purchaser, hence, the court has ordered refund of double of the

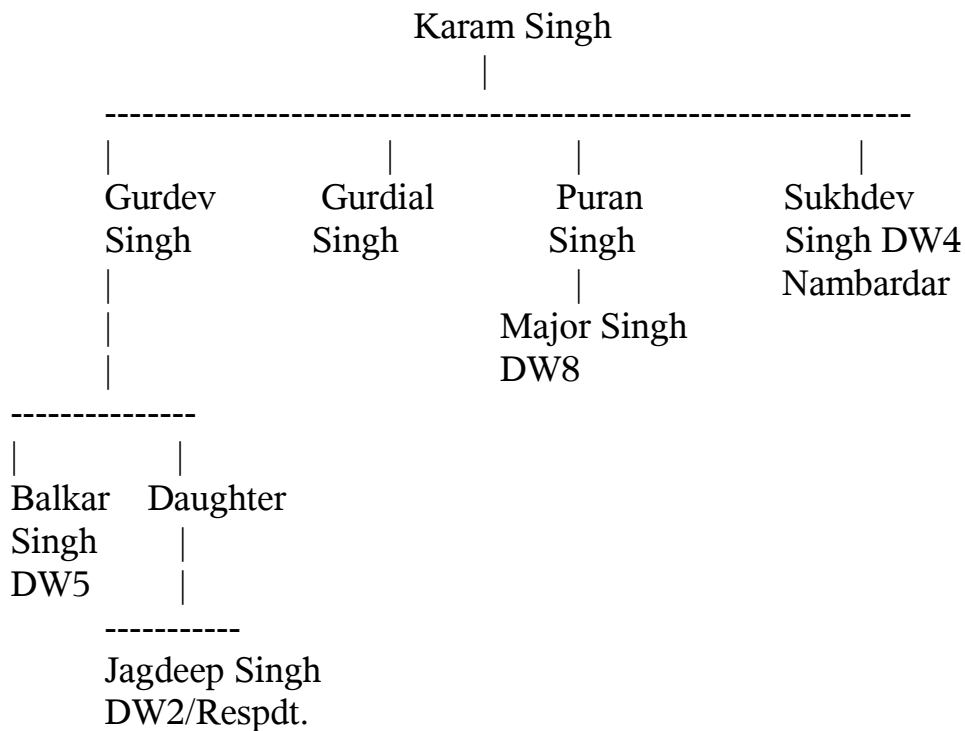
amount of Rs.10,50,000/- along with interest @ 6% per annum.

1.8. The Regular second appeal was allowed on 09.12.2015, however, Hon'ble Supreme Court in CA No.5405 of 2016, remitted the matter back to the High Court. Thereafter, once again Regular Second Appeal was allowed on 29.11.2016, by an ex-parte judgment which was subsequently recalled, that is how this appeal has come up for hearing.

2. ANALYSIS AND DISCUSSION

2.1. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the scanned copy of the trial court record.

2.2 While analyzing the relationship between the various marginal witnesses of the sale deed with defendant no.2, the appellant's counsel has drawn a pedigree family tree which is reproduced as under:-



2.3. The correctness of such family tree is also not in dispute. Thus, it

is evident that in order to defeat plaintiff's right to seek specific performance of the agreement to sell, the sale deed in favour of defendant no.2 was executed by Smt. Hardeep Kaur. It is also evident that she while filing the written statement took factually incorrect defence and efforts were made by her to defeat the plaintiff's right.

2.4. The defendant no.2's counsel contends that the village of defendant no.2 is 19 kms away and he has purchased the property for valuable consideration without knowledge.

2.5. On perusal of the first appellate court's judgment, it becomes evident that without analyzing or discussing the reasons recorded by the trial court, the first appellate court has recorded a finding that defendant no.2 is a bonafide purchaser merely on the ground that he is a resident of a different village while overlooking a positive finding recorded by the trial court after analyzing the statements of defendant no.2-Jagdeep Singh, Sukhdev Singh, Balkar Singh, Major Singh and Krishan Lal, Ex.Patwari that in fact defendant no.2 had the knowledge of the prior agreement to sell. The trial court has noted the statements of the witnesses in the following manner:-

Statement of Jagdeep Singh, defendant no.2:-

“19. DW3-Jagdeep Singh-defendant no.2 has tendered his affidavit Ex.DW2/A in his evidence, in which he has reiterated the facts and averments mentioned in different paras of the written statement.

In his cross-examination, he has stated that Hardeep Kaur is mentally fit then he himself stated that her buttock has broken. The name of her husband is Gurdev Singh who

is alive. He don't know the brother of Hardeep Kaur. He don't know that Hardeep Kaur has received whole of the amount after executing the agreement. She can affix her signatures. Sukhdev Singh, Numberdar is not his relative and they have only cursory acquaintance. **The witness on the sale deed was his uncle Balkara singh tehn he himself stated that initially Major Singh was the witness who had to leave. Gurdev Singh is his real maternal grand father. He has no relative in village Alikan. It is correct that they have not given the sale consideration in the Tehsil but it was given in the house on 27.3.2006 and at that time, he, Sukhdev Singh and Hardeep Kaur were present but no writing was made at that time. The registry was readover to Hardeep Kaur when they have appeared before the Tehsildar. They have made enquiries before purchasing the land. They have taken Hardeep Kaur to the Tehsildar and no body else was present along with her. The distance between village Panniwala Mohrikan and Masitan is 7-8 Kms. On 27.3.2006, he along with Sukhdev Singh went to village Masitan to the house of Hardeep Kaur. He denied the suggestion he is deposing falsely.**

Thereafter, the statement of **DW4-Sukhdev Singh**, the marginal witness of the sale deed is as under:-

“20.DW-4 Sukhdev Singh is the attesting witness of the sale deed has tendered his affidavit EXDW 4/A in his evidence and has supported the version of defendant no.2 in toto.

In his cross-examination, he has stated that no money was given in front of the Tehsildar then he himself stated that Hardeep Kaur has admitted before the Tehsildar that she has kept money in the house. The house of Hardeep Kaur is situated in village Alikan and at the time when

money was given then her mother and brother were present. Hardeep Kaur has taken this land after fighting with her husband as it was given to her in lieu of maintenance then he himself stated that it was the second marriage of the husband of Hardeep Kaur. He is on visiting terms with the husband of Hardeep Kaur for the last 5-7 years. He don't know plaintiff Gurdev Singh. The land of the husband of Hardeep Kaur is adjoining to his land. Hardeep Kaur was brought to the Tehsil by her brother but he don't know his name. Jagdeep is the maternal grand son of his elder brother, who is resident of village Panniwala Mohrikan. Major Singh son of Puran Singh is his nephew and Balkaur Singh is his real nephew. Hardeep Kaur has affixed her signature on the sale deed. He denied the suggestion he is deposing falsely.”

Similarly, **Balkaur Singh**, another attesting witness of the sale deed has stated as under:-

“21. **DW-5 Balkaur Singh**, the other attesting witness tendered his affidavit Ex DW5/A in his evidence in which he has also supported the version of the defendant has no.2.

In his cross-examination, he has stated that the registry was written in his presence on 27.3.2006 but his signatures was not affixed in the presence of the Scribe. He has affixed his signatures in the presence of the Tehsildar. Sukhdev Singh is his uncle, who is Numberdar of the village and Jagdeep Singh is their nephew who is resident of village Panniwala Mohrikan. He was called by Jagdeep Singh and Hardeep Kaur was brought by him. He was present in the court from where he was called and at that time, Sukhdev Singh, Numberdar and Major Singh were sitting. The area falls in village Govindgarh. Hardeep Kaur

is resident of village Alikan and is married in Masitan. They already knew Hardeep Kaur because their land falls in village Alikan then he himself stated that they used to cultivate the land of Hardeep Kaur on contract then he himself stated that they used to cultivate the land of some other person. Hardeep Kaur affixed her signatures and had agreed that she has received the money then he himself stated that all the money given in his presence. Her brother was present along with her who has received the money then he himself stated that Hardeep Kaur has herself received the money. He denied the suggestion he is deposing falsely.”

Statement of Major Singh:-

*“26. **DW-8 Major Singh**, one of the attesting witness of the sale deed has tendered his affidavit Ex. DW8/A in his evidence, in which he has reiterated the version of defendant no.2 in toto. In his cross examination, he has stated that he don't know Hardeep Kaur then he himself stated that since the date of the purchase of land, he knows her. He himself came there as Jagdeep Singh had asked him to accompany him. He did not appear before the Tehsildar then he himself stated that he had some work and, therefore, his photographs could not be taken in the computer. There was no dispute with Gurdev Singh regarding this land. He don't know that Gurdev Singh has procured the stamps for getting the registry executed. The registry was got executed by the Numberdar and Jagdev Singh is the maternal grand son of Sukhdev Singh, Numberdar. He don't know whether Jagdeep had returned the money to Gurdev Singh or not. His thumb impressions are there on the registry. Rs.9.05.000/ was given at the house and he himself, Jagdeep*

Singh and Numberdar were present Signatures of Hardeep Kaur were not taken in the house but they went to the Tehsil for executing the registry. He don't know other members of family of Hardeep Kaur were present in the house or not. They went to the house of Hardeep Kaur in a jeep. He don't know who has counted the money because he don't know his name. He don't know that money was counted by Hardeep Kaur or any person of his village. Sukhdev Singh, Numberdar is having 25-30 killas land in village Masitan then he himself stated that whole of the land does not belong to Sukhdev Singh, it is joint property. He don't know about any dispute between Gurdev Singh and Hardeep Kaur. He denied the suggestion he is deposing falsely.”

2.6. On analysis of the aforesaid evidence, the trial court recorded the following finding:-

“The defendant no.2 in his written statement has taken the plea that the plaintiff has no source of income to pay the consideration mentioned in the agreement to sell and he is in the habit of preparing false agreements to sell. From this fact, it is proved that defendant no.2 was having knowledge of the agreement sell which has been relied upon by the plaintiff, as person who has personal knowledge regarding the antecedents of a person will take such a plea because if defendant no.2 did not knew about the plaintiff then how he took such a plea, no such explanation is forthcoming on record. Further, defendant no.2 has failed to bring on record any evidence to show that the plaintiff is in the habit of purchasing the suit property which could have easily proved by leading documentary evidence qua the agreement being entered into by the plaintiff with the other persons qua other land. Further, in the evidence of DW-5 Balkaur Singh,

it has come record that they cultivate the land adjoining to the land of the defendant no.1 and further they took it on contract and, therefore, from this fact. inference is liable to be drawn that the defendant no.2 had knowledge of the agreement to sell because Balkaur Singh and the other attesting witness Sukhdev Singh and Major Singh, who has been examined in additional evidence are related to each other though defendant no.2 Jagdeep Singh has denied his relationship with Sukhdev Singh but the other witness have admitted their relations. The defendant no.2 Jagdeep Singh and all the witnesses are connected with each other as they belong to one family and the sale deed was executed in undue haste because from the testimony of Balkaur Singh, it is clear that he was present in the court from where he was called as Major Singh had to go for some work. Major Singh has been examined who has supported this contention but the relationship of the parties is clear that they belong to que family and the family members are cultivating this land on the contract, therefore, plea that the defendant no.2 could not have knowledge of the agreement to sell as he belongs to, other village is no acceptable. Further, all the witnesses are stating that money was given by the defendant no.2 to defendant no.1 in their presence and admittedly Balkaur Singh has only met them in the court premises and he is also stating that he was present when the money was transferred to defendant no.1 whereas defendant no.1 while stepping into the witness box has totally denied that she received any sale consideration from defendant no.2 for executing the sale deed. Major Singh DW-7 is stating that the money was given in his presence but Jagdeep Singh and Sukhdev Singh are totally silent regarding his presence at

the time of giving sale consideration to defendant no.1. Further, DW-3 Jagdeep Singh is stating that the plaintiff was alone when the money was given to her whereas DW4 Sukhdev Singh is stating Iprone that her mother and brother were present in the house when money was given to her and for executing the sale deed, she was brought by her brother whereas DW-3 is stating that for executing the sale deed, they have themselves brought her. Further, from the testimony of DW-4 Sukhdev Singh, it is clear that he knew about the antecedents of Hardeep Kaur as he knew about her marriage, her matrimonial dispute, her husband and, therefore, it cannot be stated that he was ignorant qua the execution of the agreement to sell as he is Numberdar of the village and his land is adjoining to the land of the defendant no.1. Further. Balkaur Singh has also admitted that brother of defendant no.1 was present at the time of execution of the sale deed but this witness has not been examined by them to substantiate their contentions when the defendant no.1 has totally denied receiving any sale consideration from the defendant no.1 qua the execution of the sale deed. Further, from the perusal of the sale deed, it is clear that Major Singh was mentioned as an attesting witness and he also thumb marked the sale deed on 27.3.2006 but on the last page of the sale deed when photograph were taken before Sub registrar, Major Singh is not there and photo of Balkaur Singh is there and this witness Major has been examined in the additional evidence who has supported this fact but still defendant no.2 has failed to show that what was the haste for the parties to get the sale deed executed and registered on the same date by changing the witness before the Sub Registrar. Further, the agreement to sell was

executed for Rs.9.25,000/ whereas the sale deed was executed for Rs.9,05,000/ which is also a suspicious circumstance and this payment was allegedly made at the house of defendant no.1 but all the defendant's witnesses are giving contradictory statements regarding the place of payment. No doubt, the defendant no.2 has examined Shri Naib Singh, who is the neighbourer of the defendant no.1 to show that he made enquiries before purchasing the land and when it was found free from any encumbrance then he purchased the same but this witness has referred to Jagdeep Singh-defendant no.2 as Hardeep Singh at every place and this fact creates doubt whether any enquiry was made from him when the Patwari has been examined as DW-7 who denied at every place that any revenue record was procured by defendant no.2 before the execution of the sale deed. From the testimony of this witnesses which were examined in additional evidence, it appears that defendant no.2 has tried to fill up the lacuna in their case but miserably failed to do. No doubt, in the they have additional evidence, the plaintiff has also examined himself and Harbans Singh who have taken the plea that the defendant no.2 has made enquiries from him though this fact was not raised by them previously but in view of the evidence brought on record which appears to fill up the lacuna in their case which will be of no help to them. However, in view of the cogent evidence brought on record by the plaintiff to show that the agreement was duly executed and the attending circumstances regarding the execution of the sale deed shows that it was not possible for the defendant not to know about the execution of the agreement because all the witnesses are related to them in one manner or the other

and they are cultivating the land of defendant no.1. All these facts goes to show that defendant no.1 Jagdeep Singh was having knowledge of the agreement to sell in favour of the plaintiff and to affect the rights of the plaintiff, he got the sale deed dated 27.3.2006 executed in haste manner in his favour.”

2.7. The first appellate court has not adverted to the aforesaid findings. While hearing the first appeal. The first appellate court is expected to critically analyze and evaluate the reasons recorded by the trial court before reversing the same. However, the first appellate court has neither critically analysed these findings nor reversed the same. Hence, the judgment passed by the first appellate court suffers from a fundamental error.

2.8. Before this court, the learned counsel representing the respondents did not make any attempt to contend that such finding recorded by the trial court is erroneous. Moreover, this court after verification from the trial court's record found that the observations made by the trial court were correct.

2.9. In a suit for specific performance of the agreement to sell, the subsequent purchaser can avoid decree only if it is proved that he is a bonafide purchaser for valuable consideration without notice of the prior agreement to sell. Section 19 of the Specific Relief Act, 1963, enables a bonafide purchaser to defend the transfer in his favour if he proves that he paid money in good faith and without notice of the original contract.

2.10. It is inappropriate on the part of the first appellate court to ignore the overwhelming evidence and the finding of the trial court to the effect that

all the marginal witnesses of the sale deed were related to him and they were cultivating the suit property as well as land abutting the suit property. Hence, they were expected to be having knowledge of the prior agreement to sell. Moreover, burden lay on defendant no.2 to prove that he had no notice of the prior agreement to sell executed by defendant no.1 in favour of the plaintiff. He failed to prove that fact. From the deposition of witnesses examined by him, it becomes evident that defendant no.2 had the knowledge of execution of prior agreement to sell and in fact he was party to the effort of defendant no.1 to defeat plaintiff's rights.

3. **DECISION:-**

3.1. This court has considered the submission, however, find no substance in view of the deposition of witnesses, namely, Sukhdev Singh, Balkar Singh and Major Singh. In fact, from the statement of Krishan Lal Patwari, it is proved that defendant no.2 did not make bonafide enquiry before purchasing the property.

3.2. Keeping in view the aforesaid discussion, the judgment of the first appellate court is set aside and that of the trial court is restored.

3.3. The regular second appeal is allowed.

3.4. All the pending miscellaneous applications, if any, are also disposed of.

**(ANIL KSHETARPAL)
JUDGE**

March 19, 2025

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No