

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

107

**RSA-955-1991 (O&M)
Date of decision : 22.04.2025**

Karan Inderjit Singh and others**..... Appellants**

versus

Faquir Chand and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

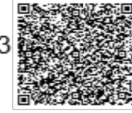
Present: Mr. Amit Jain, Senior Advocate with
Mr. Aryaman Thakur, Advocate
for the appellants.

Mr. Sajiv Vij, Advocate for
for respondents No.6 and 7.

Mr. Kunal Dawar, Advocate and
Mr. Vipul Sharma, Advocate
for respondent No.8.

PANKAJ JAIN, J. (Oral)

1. Plaintiffs are in second appeal.
2. Plaintiffs filed suit for declaration seeking decree of perpetual injunction restraining defendant No.3 from interfering in the peaceful possession of the plaintiffs over the suit land. As per the plaintiffs, defendant No.1 was allotted land by State of Punjab in the year 1962 on lease for 10 years. Plaintiffs agreed to develop land of defendant No.1 by way of an oral agreement. Plaintiffs claim that pursuant to the said agreement, physical possession of the suit land was delivered to them in the year 1973. Plaintiff further claims that an agreement to sell dated 14.08.1981 was executed in his favour by defendant No.1 to sell the entire land for a valuable consideration of



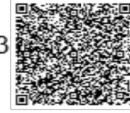
Rs.25,000/- and an amount of Rs.10,000/- was paid as an earnest money. It was further claimed by the plaintiffs that on the asking and disclosure made by defendant No.1, an amount of Rs.10,000/- was paid to defendant No.4 and 5 on 21.07.1975 and the same was agreed to be adjusted at the time of registration of the sale deed. Plaintiffs pleaded that defendant No.1 appointed defendant No.2 as his attorney. Defendant No.4 and 5 surrendered original agreement in favour of the plaintiffs on receipt of Rs.10,000/-. In the year 1981, the land was allotted to defendant No.1 as owner. On 17.07.1984, defendant No.1 executed sale deed in favour of defendant No.3. Instant suit was instituted on 21.09.1984. Defendant No.2 admitted the case of the plaintiffs. Defendant No.1 denied receiving any amount from the plaintiffs.

3. Defendant No.3 in a separate written statement pleaded on the lines of the written statement filed by defendant No.1 and claimed of having purchased the suit land vide sale deed dated 17.07.1984 for consideration of Rs.1,51,400/- and claimed that he being a bonafide purchaser for consideration, is absolute owner and prayed for dismissal of the suit.

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

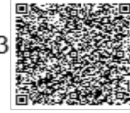
“i) Whether defendant no.1 made any agreement dt. 14.8.1981 to sell the suit land in consideration of Rs.25000/- and also accepted Rs.10,000/- as earnest money from the plaintiffs as alleged?

ii) Whether defendant no.1 appointed the defendant no.2 as general power of attorney on 14.8.1981 regarding the suit land?OPP.



- iii) *Whether the defendant no.1 has got an amount of Rs.7000/- from defendants no.4 and 5 as per an agreement dated 21.7.1975 and returned Rs.10000/- (Rs.7000/- as principal money and Rs.3000/- as interest) to defendant no.2 and agreed to account for the same towards the cost of the suit land?OPP.*
- iv) *Whether the defendant no.1 had also got an amount of Rs.5000/- as earnest money in full and final payment against the said agreement of the suit land through his general power of attorney defendant no.2 as alleged?OPP.*
- v) *Whether the defendant no.2 deposited an amount of Rs.30,000/- as Government price of the share of the suit land during the year 83-84?*
- vi) *Whether the sale deed executed on 17-7-84 in favour of defendant no.3 by the defendant no.1 is illegal, void and not binding upon the rights of the plaintiffs as alleged?OPP.*
- vii) *Whether the defendant no.1 and defendant no.2 executed their affidavits on 6-1-1982 and 19.1.1982 regarding the cultivating possession of the suit land by the plaintiffs?OPP.*
- viii) *Whether the plaintiffs are in possession of the suit land as owners as alleged?OPP.*
- ix) *Whether the suit is not maintainable in the present form?OPD.*
- x) *Whether the suit has not been properly valued for purposes of court fee and jurisdiction?OPD*
- xi) *Whether the plaintiff has no locus standi to file this suit?OPD.*
- xii) *Whether the plaintiffs are estopped by their act and conduct acquiescence latches from filing the present suit?OPD.*
- xiii) *Relief.”*

5. Trial Court decided issue No.1 to 5 in favour of the plaintiffs. However, plaintiffs were non-suited on issue No.8 and 9. Thus, holding that the plaintiffs having failed to prove succession of the suit land at the time of institution of the suit and the defendant having proved his possession, the suit filed by the plaintiffs was dismissed. Unsuccessful plaintiffs preferred appeal. Lower Appellate Court has



affirmed the findings recorded by the Court of the first instance.

6. Mr. Amit Jain, senior counsel appearing for the appellants-plaintiffs has assailed the findings recorded by the Courts below. He submits that the Courts below erred in ignoring the affidavits and the covenant contained in the agreement to sell with respect to handing over of the possession by defendant No.1 to the plaintiffs. He submits that despite the fact that the finding has been recorded with respect to payment of the earnest money and the execution of the agreement to sell in favour of the plaintiffs, yet the suit filed by the plaintiffs stands dismissed.

7. *Per contra*, counsel for the respondents-defendants submits that the plaintiffs having filed suit for declaration with the consequential relief of permanent injunction were required to prove establish possession over the suit land. Pure finding having been recorded by the Courts below. Section 53-A of Transfer of Property Act cannot be invoked to the aid of the plaintiffs.

8. Mr. Kunal Dawar, Advocate for respondent No.8 submits that the alternate remedy of specific performance being available, suit for permanent injunction barred in terms of Section 41 of the Specific Relief Act. He thus, submits that the plaintiffs have been rightly non-suited by the Courts below.

9. To rebut the submission made by Mr. Dawar, Mr. Jain submits that since the agreed date for execution of the sale deed had not yet arrived. There being no cause of action matured to file suit for specific performance, thus, suit was filed seeking decree of permanent injunction.



10. I have heard counsel for the parties and have carefully gone through the records of the case

11. In order to appreciate the legal proposition canvassed by the counsels, it will be apt to pursue Section 41 of the Specific Relief Act, 1963. The same reads as under:-

“41. Injunction when refused.—

An injunction cannot be granted—

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;
- (j) when the plaintiff has no personal interest in the matter.”

12. In view of the aforesaid provision, alternate remedy being available, the plaintiff is precluded from claiming injunction. In the present case, though the agreed date had yet not arrived, but from the



frame of suit, it is evident that the plaintiffs were in the knowledge of the fact that defendant No.1 having executed sale deed in favour of defendant No.3 was in breach of the agreement and thus, it cannot be said that the plaintiffs on the date of institution of the suit were not competent to claim relief of specific performance. In view thereof, this Court finds that the Courts below have rightly non-suited the plaintiffs in view of Section 41 of the Specific Relief Act.

13. Apart from the aforesaid legal proposition, even on facts, both the Courts below have concurrently held that the plaintiffs failed to prove their possession over the suit land. It has been proved by way of documentary evidence that a tubewell connection was released qua the suit land for cultivation in favour of defendant No.3. Plaintiffs claimed of being in possession of the suit land, they were required to show as to how the electricity connection with respect to tubewell was obtained by defendant No.3 in his name. Plaintiffs having remained evasive, Courts below rightly dismissed the suit.

14. In view of above, finding no merits in the present appeal, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

22.04.2025

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Whether speaking/reasoned : Yes

Whether Reportable : No