

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****220****RSA-3758-2011 (O&M)****Date of decision: 04.02.2025****Amarjit Kaur and another****...Appellant(s)****Vs.****Dalip Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Gurmeet Singh Saini, Advocate for
Mr. S.C.Chhabra, Advocate for the appellants.

Mr. Akshay Jain, Advocate for respondent No.1.

NIDHI GUPTA, J.

The defendants No. 3 and 4 are in second appeal before this Court against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiff/respondent No.1 herein, for specific performance of Agreement to Sell dated 21.07.1998 regarding the suit property, was partly decreed by the learned trial Court vide judgment and decree dated 07.01.2010; and the appeal filed by the defendants No.3 and 4 before the learned District Judge, Mansa, was dismissed vide judgment and decree dated 15.04.2011. Hence, the present second appeal.



2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants are the 'defendants No. 3 and 4'; and the respondent No. 1 is the 'plaintiff'.

3. The brief facts of the case as set out in the plaint are that as per the Jamabandi for the year 2002-03, the minors/defendants No. 1 and 2 were the owners of the suit property measuring 24 Kanal as described in the plaint. On 21.07.1998, as the defendants No. 1 and 2 were the minors at that time, their parents i.e. defendants No. 3 and 4 entered into Agreement to Sell with the plaintiff to sell the suit property on behalf of defendants No. 1 and 2. The agreement dated 21.07.1998 was executed in favour of the plaintiff after receiving Rs.3,15,000/- as earnest money in the presence of the witnesses out of the total sale price of Rs.3,30,000/-. The target date for registration of the sale deed upon payment of the remaining amount of Rs.15,000/- for execution and registration of the sale deed was set to be 28.12.1999. Possession was also transferred to the plaintiff. Thereafter, on the basis of mutual understanding, date of registration of sale deed was extended to 15.12.2005. The plaintiff was ready and willing to perform his contract as is evident from the fact that out of the total sale consideration of Rs.3,30,000/-, only Rs.15,000/- remained to be paid. However, the defendants No. 3 and 4 did not obtain the required permission to sell the property of the minors defendants No. 1 and 2 from the Guardian Court concerned. On 15.12.2005, the plaintiff remained in the office of Sub Registrar alongwith balance and other expenses, but the



defendants No. 3 and 4 did not turn up. The plaintiff has got his presence duly marked. Hence, the present suit was filed.

4. Upon notice, defendants appeared, and 2 sets of written statements were filed to the above suit of the plaintiff. The defendants No. 1 and 2 denied the execution of agreement stating that defendants No. 3 and 4 were not having any right to sell the property. Defendants No. 3 and 4 filed a separate written statement alleging that Agreement to Sell dated 21.07.1998 was a forged and fabricated document; and that no earnest money had been received. The plaintiff filed replication denying the averments made in the written statement and reiterating the plaint.

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

1. Whether on 21.07.1998 on behalf of defendant nos. 1 and 2 defendant nos.3 and 4 executed Agreement to Sell land measuring 24 kanals of defendant nos. 1 and 2 and received a sum of Rs.3,15,000/- as earnest money? OPP
2. Whether the plaintiff has always been ready and willing and is still ready and willing to perform his part of contract? OPP
3. Whether the plaintiff is entitled to specific performance of the agreement in question? OPP
4. If plaintiff is found not entitled to specific performance of the agreement, whether he is entitled to recover the earnest money along with interest? OPP
5. Whether the plaintiff has no locus standi and cause of action to file this suit? OPD
6. Whether the agreement in question is forged and fabricated document? OPD
7. Whether the suit is not within limitation? OPD



8. Whether the plaintiff is estopped by his own act and conduct from filing the suit? OPD

9. Whether the agreement is question being unregistered is inadmissible in evidence? OPD

10. Whether the defendants are entitled to special costs? OPD

11. Relief.

6. Upon appraisal of the pleadings and the evidence led by the parties, the learned trial Court found that the defendants No. 1 and 2 had admitted their ownership of the suit property. However, on the basis of the evidence on record, it was proven that the defendants No. 1 and 2 were not the owners of the property on the date of execution of the Agreement to Sell since the property had been acquired by the Govt. in respect of which compensation had also been accepted by defendants No. 1 and 2. The learned trial Court further found that Agreement in question had been executed by the defendants No. 3 and 4 without obtaining permission of the Court to sell the property of the minors.

7. Keeping in view the above facts, the learned trial Court found that defendants No.1 and 2/minors were not bound by the act of their parents/defendants No. 3 and 4. All the issues were decided against the defendants and in favour of the plaintiff; and the suit was partly decreed holding that the plaintiff is entitled to recover the sum of earnest money of Rs.3,15,000/- from the defendants No. 3 and 4 only alongwith interest @ 6% per annum from the date of filing suit till its decision.



8. As already noticed above, in appeal, the said judgment and decree dated 07.01.2010 of the learned trial Court was affirmed by the learned First Appellate Court.

9. Learned counsel for the appellants/defendants No.3 and 4 prays that the concurrent findings of the learned Courts below are liable to be set aside as, even if as per the case of the plaintiff, Agreement to Sell dated 21.07.1998 had been executed by defendants No. 3 and 4 on behalf of defendants No. 1 and 2, still defendants No. 3 and 4 were not competent to enter into said Agreement to Sell *in-as-much-as* no permission had been taken by them from the competent Guardian Court to sell the property of the minors. It was further proven on record that on the date of execution of Agreement to Sell dated 21.07.1998, even the defendants No. 1 and 2 were not the owners of the suit property. As such, question of sale did not arise. Moreover, the Agreement in question was not proven in accordance with law before the learned Courts below. As such, the learned Courts below have gone wrong in law and acted contrary to law in admitting the execution of Agreement to Sell by defendants No. 3 and 4 and receipt of huge amount of earnest money of Rs.3,15,000/- in cash without taking possession when the remaining balance to be paid was just Rs.15,000/-.

10. Learned counsel for defendants No. 3 and 4 further contends that the transaction is surrounded by suspicious circumstances as the plaintiff has not been able to disclose his source of money specifically. Accordingly, the plaintiff was not entitled to any relief under the Specific Relief Act. Even the alleged payment of the earnest money is cast a shadow



of doubt. It is accordingly prayed that the impugned judgments be set aside.

11. Per contra, learned counsel for the contesting respondent No.1/plaintiff opposes the prayer made on behalf of the appellants and submits that impugned judgments suffer from no error. It is admitted that defendants No. 1 and 2 were not found to be owners of the suit property. However, the execution of the Agreement to Sell dated 21.07.1998 has been duly proven on record and even the payment of the earnest money is proved to have been made. It is contended that in these circumstances, the learned Courts below have correctly held that the plaintiff is entitled to recovery of Rs.3,15,000/- from the defendants No. 3 and 4 along with interest @ 6%. Hence, it is prayed that the present appeal be dismissed.

12. No other argument is raised on behalf of the parties.

13. Heard learned counsel for the parties and perused the case file in great detail.

14. The basic arguments raised on behalf of the appellants is that they were not competent to execute the Agreement as no permission had been taken by them from the Guardian Court; that the defendants no.1 and 2 were not owners of the property at the relevant time; and that no earnest money was received from the plaintiff.

15. It is to be noted that the defendants No.3 and 4 did not step into the witness box. Nonetheless, basic law is that no one can sell the property of minor without permission of Court. It is admitted fact that no permission has been obtained by defendants No. 3 and 4 till 28.12.1999.



Thereafter with mutual understanding, the date of registration of sale deed was extended to 15.12.2005. On 15.12.2005, the plaintiff remained present before the office of Sub-Registrar alongwith balance sale consideration but defendants did not turn up. As such, the Plaintiff was ready and willing to perform his contract.

16. It has also been proven that on the relevant date, defendants No.1 and 2 were not owners of the suit property. Since defendants No. 1 and 2 were not owners of property on the date of execution of agreement as suit property had been acquired by Govt, it was held that plaintiff was not entitled to specific performance; and question of readiness has not to be seen. It was further held that since defendants No. 1 and 2 were not owner of property on date of alleged agreement, they were not bound by the agreement; and they are not bound by any act of defendants No. 3 and 4.

17. However, it was held that under void agreement, if party has attained benefit, he/she is required to compensate other party. From the evidence on record, it was proven that the plaintiff had paid the earnest money of Rs.3,15,000/- out of the total sale consideration of Rs.3,30,000/- to the appellant. In this regard, the evidence of the plaintiff as PW2; and the evidence of PW3, Advocate, namely Darshan Singh, who had scribed the Agreement; and the evidence of PW4/Baldev Singh, attesting witness of the Agreement, is relevant. The plaintiff as PW2 had deposed that he had entered into Agreement with the defendants no.3 and 4 @ ₹1,10,000/- per acre and had paid total amount of ₹3,15,000/- as earnest money. PW3,



Darshan Singh, Advocate had stated that he had scribed the agreement at the instance of defendants No.3 and 4, and that at that time, the plaintiff had paid ₹3,15,000/- as earnest money to the said defendants in his presence. He further stated that it was agreed by defendants no.3 and 4 that they will obtain the necessary permission from the court for selling the property of the minors. Similarly, PW4 Baldev Singh, attesting witness of the Agreement also stated that the defendants no.3 and 4 had executed the agreement in favour of the plaintiff on behalf of defendants no.1 and 2, and received ₹3,15,000/- as earnest money. It was for this reason/evidence that the learned Courts below partly decreed the suit of the plaintiff and held the plaintiff entitled to refund of earnest money of Rs.3,15,000/-. The suit for specific performance was dismissed against defendants No. 1 and 2.

18. Ld. Counsel for the appellants is unable to dispute or controvert the above said findings of the learned Courts below. As such, no ground is made out to interfere in the impugned judgment and decree dated 07.01.2010 passed by learned trial Court; and judgment and decree dated 15.04.2011 passed by learned District Judge, Mansa.

19. The present regular second appeal is hereby **dismissed**.

20. Pending applications, if any, stand disposed of.

04.02.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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