

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.6303 OF 2012**

BAXIS SINGH

... APPELLANT

VERSUS

SUKHDEV SINGH (DEAD) THRU. LRS. & ORS.

... RESPONDENTS

J U D G M E N T

S.ABDUL NAZEER, J.

1. This appeal by special leave is directed against the judgment and decree dated 24.1.2006 in S.B. Civil First Appeal No. 296 of 2003 whereby the High Court of Judicature of Rajasthan at Jodhpur has allowed the appeal in part and directed the defendant No.1 to refund the amount received by her along with interest @ 6% p.a. from the date of filing of the suit till the date of the payment.

2. Baxis Singh (the appellant herein), was the plaintiff in the suit, Sukhdev Singh (dead) through LRs. (the first respondent herein) was the second defendant and Smt. Gurdev Kaur, widow of Buta Singh (the fourth respondent herein) was

the first defendant. The appellant-plaintiff filed a Civil Suit No.114 of 2002 on the file of Additional District Judge No.1, Hanumangarh for specific performance of the sale agreement dated 27.5.1996 against the first defendant. Sukhdev Singh got impleaded as the second defendant. In the suit, the plaintiff contended that defendant no.1 was the tenant of the suit schedule property. The first defendant had appointed her nephew Baga Singh as her General Attorney for supervision and cultivation of the land in question. The General Attorney executed a sale agreement dated 27.5.1996 for sale of the suit schedule property in favour of the plaintiff. It is further contended that the plaintiff was always ready and eager for payment of balance of the sale consideration and getting the execution of the sale deed in his favour but the defendant refused to execute the sale deed.

3. The second defendant filed the written statement stating that the disputed agricultural land does not belong to the Khatedari of defendant No.1 and that the said land is in his Khatedari of which the plaintiff had full knowledge and he conspired with defendant No.1 and got the sale agreement executed from alleged General Attorney of defendant No.1 in an unlawful manner and without any right. It was further contended that the Khatedari of the land in question was recorded in his favour on 4.5.1979 on the basis of registered Will dated 15.1.1979 executed by late Buta Singh and on having proceedings of Section 145 Cr.P.C. on it, declaration of possession in respect of the disputed land was issued in favour of defendant

No.1 as final order. The second defendant filed a Revenue suit No. 214/95 against defendant No.1 under Section 183 of Rajasthan Tenancy Act before Sub-Divisional Officer, Hanumangarh for getting possession of the land. This suit was decided on 11.3.97 in his favour and he got possession of the land by execution of the said decree. The appeal filed by the plaintiff against the said decree was dismissed on 3.11.78. The Will executed in his favour was also challenged unsuccessfully by the plaintiff. The present suit has been filed suppressing all these material facts.

4. On the basis of the pleadings of the parties, the trial court framed relevant issues. The parties led evidence in support of their respective contentions. On appreciation of the materials on record, the trial court decreed the suit by directing defendant No.1 to execute the sale deed in respect of the land in question in favour of the plaintiff. The decree of the trial court directing the first defendant to execute the sale deed was set aside by the High Court and defendant no.1 was directed to refund the amount received by her under the aforesaid agreement.

5. The main contention of learned counsel for the appellant is that defendant No.2 relied on a Will said to have been executed by Buta Singh, husband of the first defendant. He has failed to produce the said Will in the proceedings before the trial court or before the High Court. Therefore, the High Court was not justified in dismissing the suit in so far as specific performance of the agreement dated 27.5.1996 is concerned.

6. The contention of defendant no.2 is that the suit land had already been mutated in his favour on the basis of the aforesaid Will. It is clear from the materials on record that certain proceeding under Section 145 of the Cr.P.C. were initiated by defendant No.1 against defendant No.2 in relation to the land in question. Since the said proceedings did not determine the title or ownership in the land, the second defendant filed a revenue suit under Sections 88 and 183 of the Tenancy Act against the first defendant. In these proceedings, the aforesaid Will was produced. There was yet another proceeding between the parties. In the said proceedings it was concluded that defendant no.2 was in possession of the property in question. There was yet another proceeding in relation to the record of Samvat Year 2057 to 2060 corresponding to the year 2000 to 2003. On the basis of the judgment and decree of the Revenue Court in favour of the appellant-defendant, possession was also given by the Tehsildar on 25.4.1997. Relying on these two orders of the competent court, the High Court has concluded that second defendant is the owner and in possession of the property on the basis of the Will. We do not find any error in the aforesaid finding. The High Court, in our view, has rightly denied specific performance of the agreement in favour of the plaintiff and directed refund of the amount by the first defendant with interest @ 6% p.a. In view of our conclusion as above, it is unnecessary to consider the other contentions of the parties.

7. The appeal is devoid of merit and is hereby dismissed without any order as to costs.

.....J.
(N.V. RAMANA)

.....J.
(S. ABDUL NAZEER)

New Delhi;
April 10, 2018.