

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

RSA No.107 OF 1987 (O&M)
DATE OF DECISION : 2nd SEPTEMBER, 2015

Chint Ram

.... Appellants

Versus

Lekh Raj & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Onkar Singh, Advocate for the appellant.

Mr.Ranjit S. Saini, Advocate for the respondents.

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SURINDER GUPTA, J. (ORAL)

1. This regular second appeal has been filed against the judgment and decree passed by the First Appellate Court whereby the suit filed by the plaintiff-appellant-Chint Ram seeking the relief of specific performance of agreement in respect of land measuring 14¼ Marla out of the land measuring 2 Kanals 17 Marlas bearing Khasra No.93 comprising Khewat No.176 Khatauni No.270 as per Jabamabdi for the year 1980-81 situated in village Hajipur, H.B. No.357 Tehsil Dasuya District Hoshiarpur, was dismissed.

2. In the later part of judgment the parties will be referred as plaintiff and defendants as per the original civil suit.

3. Plaintiff-Chint Ram filed suit pleading that on 15.08.1979 the defendants Des Raj and Balwant Rai through their attorney Sh. Mulkh Raj

entered into an agreement to sell the suit land for a sum of ₹3,000/- and earnest money of ₹1,000/- was paid at the time of agreement. The sale deed was to be executed and got registered after the conclusion of the partition proceedings. The plaintiff was given the possession of the suit property adjoining the road on the North and Muslim Takia (Graveyard) on its East. The plaintiff was always ready and willing to get the sale deed executed. On 05.08.1983 he came to know that defendant No.2 has come to the village and is negotiating his sale with defendant No.1. He appeared before the Sub-Registrar, Mukarian and filed objection to the registration of the sale deed executed by defendant No.2 in favour of defendant No.1. The sale made by defendant No.2 in favour of defendant No.1 was illegal, null and void and it was alleged that the plaintiff is entitled to specific performance of the agreement dated 15.08.1979 on payment of ₹2,000/- as balance sale consideration.

4. Defendant No.2 and 3 did not appear to contest the claim of plaintiff while defendant No.1 filed written statement contesting and controverting the averments in plaint, pleading as follows:

- (i) The agreement dated 15.08.1979 propounded by plaintiff is baseless and bogus as no agreement was executed by Mulkh Raj (wrongly mentioned as Lekh Raj) on behalf of defendants No.2 and 3.
- (ii) The plaintiff is not in possession of the suit land which is owned and possessed by defendant No.1 in terms of the sale deed dated 05.08.1983.

- (iii) The entry in the Khasra Girdawari for the crop of Rabi 1983 showing the possession of the plaintiff was got entered mischievously in a wrongful manner.
 - (iv) The suit land has fallen to the share of defendant No.2 in the partition proceedings dated 03.08.1982 and he was competent to execute the sale deed of the same.
5. The plaintiff controverted the pleas of the defendants by filing replication.
6. Pleadings of the parties led to the framing of issues as follows:
- (1) Whether defendants no.2 to 4 through their real brother and general attorney Shri Mulkh Raj entered into agreement/contract of sale of the suit property with the plaintiff on 15-8-79 and received Rs.1000/-? OPP
 - (2) Whether the plaintiff was ready and willing and is still ready and willing to perform his part of agreement ? OPP
 - (3) Whether the plaintiff is entitled to the specific performance of the agreement/contract dated 15-08-79 ? OPP
 - (4) If specific performance of the agreement dated 15-8-79 cannot be enforced as to whether the plaintiff is entitled to recover Rs.2000/- ? OPP.
 - (5) Whether the suit is not maintainable in the present form ? OPD.
 - (6) Whether the plaintiff has no locus standi to file the suit ? OPD.

- (7) Whether defendant No.1 is a bonafide purchaser of the suit land with consideration and without notice and is in possession of the suit land ? OPD.
- (8) Whether the suit is bad for non joinder of necessary parties? OPD.
- (9) Whether the suit is bad for misjoinder of parties? OPD.
- (10) Whether the suit is properly valued for the purposes of court fee and jurisdiction ? OPP.
- (11) Whether the plaint does not disclose any cause of action ? OPD.
- (12) Whether the plaintiff has made unauthorized amendment in the plaint?
- (13) Relief.

7. The basis of the claim of the plaintiff is the agreement alleged to have been executed by Mulkh Raj as attorney of defendant No.2 Des Raj and defendant No.3 Balwant Raj. The original power of attorney in favour of Mulkh Raj was not produced or proved on record. In the statement of Mulkh Raj a plea was taken that the original power of attorney had been lost and its photocopy was placed on record. No permission was taken to prove this document by leading secondary evidence. No scribe or witness to prove this document was examined. In view of the above facts the first appellate court observed that the statutory presumption arising under Section 85 of the Evidence Act cannot be drawn with regard to a photocopy of power of attorney and held that the photocopy of the power

of attorney produced on file, as exhibit, cannot be admitted/read in evidence. Even Mulkh Raj was not impleaded as defendant being the person who executed the alleged agreement dated 15.08.1979 in favour of plaintiff. The other factors which weighed before the first appellate Court to decline the relief of specific performance of agreement based on agreement dated 15.08.1979 Ex.P-1 are contained in paras 10 to 13 of the judgment as follows:

- (i) The sale agreement is on plain paper and no cogent reason was put-forth as to why it was not written on stamp papers.
- (ii) This agreement was not scribed by regular deed writer or petition writer.
- (iii) The scribe of this document Gurdial Singh was a shop keeper. He was not maintaining the record of any document scribed by him. Usually the parties do not take such risk when the transaction relate to an immoveable property.
- (iv) The agreement was suspicious as even the date of deed of power of attorney in favour of Mulakh Raj was not mentioned in the agreement and no date, month or year, stipulated for the execution of the sale deed, was mentioned therein.
- (v) The revenue record discarded the plea of plaintiff that he was in possession of the suit land under the agreement. Under the order of partition of the joint land Des Raj defendant No.2 got land measuring 15 marla denoted by khasra No.93/1 and Balwant Rai-defendant No.3 and Yudhbir-defendant No.4

were allotted land measuring 14 marlas denoted by khasra No.93/2 and 93/3 respectively. Lekh Raj Patwari who appeared as DW-5 has stated that the Khasra Girdawari entries revealed that out of 2 Kanals 17 marlas land bearing Khasra No.93 or land measuring 2 Kanals 3 Marlas was Gair Mumkin Abadi and rest of it measuring 14 marlas was vacant.

8. Learned counsel for plaintiff/appellant has argued that this fact is not disputed that Mulkh Raj was attorney of defendant No.2 and 3. In his cross-examination a suggestion was given to him that power of attorney in his favour was cancelled. However, the same was cancelled after the execution of the agreement in question. Once the power of attorney in favour of Mulkh Raj was admitted it was not required to be proved and produced on record.

9. The above argument of learned counsel for the appellant has no substance as the onus was on the plaintiff to prove that Mulkh Raj being attorney of defendant No.2 was competent to execute the sale deed. In the event of the power of attorney having been lost, he could seek the permission to prove the same by leading secondary evidence. He could also obtain the certified copy of the power of attorney to place the same on record. In these circumstances, the lower appellate Court has committed no error of law while returning to finding on this point against the appellant.

10. Learned counsel for the plaintiff/appellant has further argued that before the sale in favour of Lekh Raj the plaintiff had appeared before

the Sub-Registrar and apprised him about the agreement in his favour regarding sale of the suit land executed by Mulkh Raj by moving application Ex.PW-5/A. Despite notice and knowledge of the agreement defendant No.1-Lekh Raj proceeded to get the sale deed executed in his favour. This shows that at the first available opportunity i.e. 05.08.1983 the plaintiff-appellant had proclaimed the agreement with regard to sale of the suit land in his favour. It is immaterial that it was not got scribed on stamp papers from a regular deed writer.

11. The fact that the plaintiff-appellant had appeared before the Sub-Registrar and informed him about the agreement executed in his favour by Mulkh Raj as attorney of defendants No.2 and 3, and his lodging protest against registration of the sale deed of the suit land in favour of defendant No.1 Lekh Raj, do not affect the genuineness and validity of the sale deed executed by defendants No.2 and 3 in favour of defendant No.1-Lekh Raj. It is evident that defendants No.2 and 3 despite protest by the plaintiff-appellant proceeded to execute the sale deed in favour of Lekh Raj. This shows that they were not recognising the agreement executed by Mulkh Raj as their attorney. In these circumstances, the onus was heavy on plaintiff-appellant to prove that Mulkh Raj was attorney of defendants No.2 and 3 and was competent to execute the agreement to sell the suit land in his favour. Whenever there is a transaction for purchase of immovable property nobody takes the risk of getting the agreement to sell scribed on a plain paper and that too from a person who is not a regular deed writer.

12. In the instant case the fact that the agreement was on plain paper and was not scribed by regular deed writer are the circumstances, which have rightly created suspicion in the mind of the first appellate court about its genuineness. The facts and circumstances of this case have rightly led the first appellate court to draw inference that agreement was a suspicious document and is not duly proved.

13. During the course of arguments learned counsel for the appellant has placed reliance on judgment in the case of ***Gajjan Singh versus Virsa Singh & ors.*** reported as ***2007(3) RCR (Civil) 3***, wherein a Single Bench of this court has observed that the appellate Court, just on the basis of presumptions, cannot set aside the findings of the lower Court. In this case the above observations are in no manner applicable to the facts of the present case. The appellate Court has referred to the pleadings and evidence on record while concluding that the agreement dated 15.08.1979 is a suspicious document. Learned counsel for the appellant has also relied on judgments in the cases of ***Chand Bee (died) by L.R. & Ors. Versus Hameedunnissa & Ors.*** reported as ***2007(5) RCR (Civil) 560 (Andhra Pradesh High Court)***; ***Bhagat Ram versus Teja Singh***, reported as ***1984 PLR, 153***; ***Santa Singh versus Binder Singh & ors.*** reported as ***2006(4) CCC 608 (P&H)*** and ***Bahadur Ram versus Lakhwinder Singh & others*** reported as ***2008(3) CCC 526 (P&H)***. I have gone through the above referred citations which are based on different set of facts and circumstances and require no detail discussion.

14. On perusal of the judgement of the first appellate Court, I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

15. Dismissed.

2nd September, 2015
'raj'

(SURINDER GUPTA)
JUDGE