

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

RSA No.121 of 1998 (O&M)

Date of Decision: September 16, 2015

Jagga Singh

.... Appellant

vs.

Ghansham Lal

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. S.C. Chhabra, Advocate for the appellant.

Mr. K.B. Raheja, Advocate for the respondent.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh J.

The appellant, who was defendant before the lower court, has filed the present regular second appeal against the judgment and decree dated 04.09.1997 passed by learned Addl. District Judge, Ferozepur, wherein the judgment and decree dated 20.09.1994 passed by learned Sub Judge 1st Class, Ferozepur was reversed and thereby in place of decree for recovery of ₹7,000/- along with future interest @ 6% per annum, a decree for possession of land measuring 4 kanals, 16 marlas as comprised in Rect. No.16, Killa No.4(5-16), situated in village Chak Rumwala, Tehsil Fazilka, District Ferozepur by way of specific performance of the agreement to sell dated 16.01.1988 was granted. The defendant was directed to accept the balance amount of ₹2,000/- and get the sale deed executed and registered the same within a period of two months from

the date of passing of the decree. The expenses of the non-judicial stamp paper, fee of the scribe and registration charges were ordered to be borne by the plaintiff. It was further ordered that if the defendant failed to do so , the plaintiff shall be entitled to get the sale deed executed through the court within a further period of one month after depositing the balance sale consideration.

At the very outset, it is to be mentioned here that the defendant has not challenged the decree passed by the lower court, vide which the alternative relief for recovery of ₹7,000/- was awarded with future interest @ 6% per annum. Even during the course of arguments, the learned counsel for the appellant had stated that the defendant (appellant herein) had no objection if the decree passed by the lower court is maintained.

Brief facts of the case are that according to the plaintiff, the defendant entered into an agreement to sell with the plaintiff on 16.01.1988 for sale of the suit land measuring 4 kanals, 16 marlas for ₹7,000/-. ₹5,000/- were paid as earnest money. The sale was to be executed and registered on 10.01.1989 after receiving the balance sale consideration. On the date fixed for execution of the sale deed, the plaintiff was in jail. Therefore, he deputed his father Hans Raj to visit the office of Joint Sub Registrar, Jallalabad to get the sale deed executed and register the same in his favour, in terms of the agreement. The said Hans Raj along with the balance sale price and the requisite expenses reached in the office of Join Sub Registrar, Jallalabad on the date fixed but the defendant did not turn

up. Therefore, Hans Raj, father of the plaintiff moved an application before the Joint Sub Registrar, Jallalabad for marking his presence marked. Thereafter, the defendant was approached several times to execute the sale deed but he did not do so.

The stand of the defendant is that the suit property was also mortgaged with Phula Singh son to Tek Singh. He had already sold the half share of the same. It was further pleaded that there is only an agreement of mortgage for a sum of ₹5,000/- and defendant had returned the said amount and he is now in actual possession of the suit land. According to the defendant, the plaintiff might have fabricated the contents of the alleged agreement in connivance with the deed writer and attesting witnesses.

It was further pleaded that the time was essence of the contract and the plaintiff did not perform his part of the contract and never came present on the date fixed. Therefore, the sum of ₹5,000/- stated to have been given by the plaintiff, stood forfeited.

In replication, the plaintiff claimed that the suit land was never mortgaged with Phula Singh, co-sharer of the half of the suit property and he had sold the same to Roshan Lal and Roshan Lal sold the same to the defendant. Therefore, the defendant was absolute owner of the suit property.

From the pleadings, following issues were framed:

“1. Whether the defendant entered into an agreement to sell dated 16.1.1988 in favour of the plaintiff to sell land measuring 4 kanals 16 marlas bearing Rect. No:16 Killa No.4(5-16) for a

consideration of Rs.7000/- and received Rs.5000/- as earnest money if so whether the plaintiff entitled to possession by way of specific performance of the agreement? OPP

2. Whether the plaintiff has always been ready and willing to perform his part of the agreement? OPP

3. Whether the plaintiff is entitled to recover Rs.7000/- in the alternative? OPP

4. Whether the defendant had agreed only to mortgage the suit for a sum of Rs.5000/- and not to sell the land in favour of the plaintiff? OPP

5. Relief.”

The lower court took the view that there were two thumb impressions of Jagga Singh defendant on the concluding page of agreement one where the typing material ends and one under the name of the defendants. There is uneven spacing between the lines. The attesting witnesses belonged to the town of the plaintiff. The sale consideration is highly inadequate. There is wrong recital in the agreement regarding the delivery of possession and that the plaintiff did not have any source of agriculture and he is running a shop. Therefore, there was no possibility of purchasing of the agriculture land. On these grounds, the alternative relief was granted.

However, the first appellate court considered six points that weighed with the learned Sub Judge in recording the conclusion to the contrary which are as follows:

“1) That there were as many as two thumb impressions of Jagga Singh respondent/defendant on the concluding page no.2 of the agreement to

sell Ex.P3 for which no explanation was forthcoming.

2) That there was uneven spacing in between the lines and that there was alarmingly more space of the concluding line that allegedly was indicative of a crude attempt on the part of scribe to adjust the body writing of the document on the blank paper that already had thumb impresssions/signatures;

3) That both the attesting witnesses of the agreement to sell were from Jallalabad and none from the village of the respondent/defendant.

4) That the consideration for the sale of the suit land was highly inadequate.

5) That there was a wrong recital in the agreement to sell regarding delivery of possession and

6) That Ghansham Lal appellant/plaintiff did not have any source of agriculture and hence there was no possibility of his having gone in for the purchase of a piece of agricultural land.”

The reasoning given by the lower court was repelled and the suit was decreed for specific performance.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Some findings of the facts were recorded by the lower court mentioning six points, which weighed in the mind of the lower court to grant the alternative relief. It is to be noted that the defendant has taken a contradictory stand in the written statement. At one time, he contends that he had executed the agreement of mortgage of suit land for ₹5,000/-, which according to him have been returned and at

the same breath, he contends that the plaintiff did not perform his part of the contract. Therefore, the earnest money of ₹5,000/- stood forfeited. The defendant did not produce any receipt regarding the payment of alleged mortgage money of ₹5,000/-. If the discrepancies pointed out by the lower court are accepted that would mean that agreement is fabricated and therefore, even alternative relief could not be granted.

In order to satisfy itself, this Court has gone through the agreement. There is no uneven spacing. Only in one line there is extra spacing on page No.2, which cannot be called alarming. On the last page, one thumb impression is just after the conclusion of the writing which is apparently to signify that the written part of the agreement is over and secondly thumb impression is on the space for the signatures of the executants. Not only this, it comes out that Des Raj, scribe was examined as PW2. He produced his register, which shows that in the register of scribe also, the entry of the agreement was made, which was thumb marked by the defendant. The defendant has not explained as to how the thumb impression also appeared in the register of the scribe. The inadequate consideration, if any, is no ground to discard the agreement. It is to be noted that the agreement is for sale of 4 kanals, 16 marlas and executed in January, 1988. Therefore, it cannot be said that the price of 4 kanals 16 marlas in January 1988 in Jallalabad (the area of Ferozepur District, bordering Pakistan), which is at that time was comparatively unproductive and commanding lower price, is the

inadequate consideration. Findings of the facts have been recorded by the first appellate court and not to be interfered in regular second appeal.

Learned counsel for the appellant has argued that in this case, the date of sale was 10.01.1989 and the present suit was filed on 08.01.1992, just two days before the expiry of the limitation. The plaintiff waited for three years to file the suit. In these circumstances, the alternative relief was rightly granted by the lower court. Reliance has been placed on the authority of ***“Narinder Singh and Anr. Vs Assa Singh and Anr.”***, 2010(3) Civil Court Cases, 0429, delivered by this Court as well as the authority of Hon'ble the Supreme Court delivered in ***“Tejram vs Patirambhau”***, 1997 AIR (SC) 2702, wherein in a case where the suit was filed at the fag end of the limitation of three years, alternative relief was granted holding that the circumstances show that the plaintiff is not interested in the sale. But here the position is different. Here one of the witnesses of the defendat, namely, Labh Singh-DW2 admitted in cross-examination that the plaintiff remained in jail for 3-4 years and has been acquitted only six months prior to the recording of the statement. It goes to show that there was sufficient reason for the plaintiff being unable to file the suit for all these years and why it was filed only at the fag end of the period of limitation. Since the plaintiff was to manage all the affairs and was to file the suit and there is nothing on file to show that he had executed power of attorney in favour of any person while he was in jail, therefore, when he was released from the jail, he filed the

suit. Thus, there is a reasonable ground which shows as to why he waited for three years to file the suit. It being so, the said authorities are not applicable to the present case.

From the foregoing discussion, I came to the conclusion that no substantial question of law much less question of law arises in the present appeal. The correct findings of the facts have been recorded by the first appellate court.

Hence, the present appeal stands dismissed.

September 16, 2015
sarita

(KULDIP SINGH)
JUDGE