IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1245 of 2007 (O&M)
Date of Decision: 18.09.2015

Ajmer Singh ......Appellant

Versus

Gurdial Singh .....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate
for the appellant.

Mr. Jasmail Singh Brar, Advocate
for the respondent.

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1. Whether Reporters of local papers 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?

RAJ MOHAN SINGH, J.

[1]. Defendant Ajmer Singh is in second appeal against the judgment and decree dated 26.07.2006 passed by District Judge, Fatehgarh Sahib whereby judgment and decree dated 13.12.2005 passed by Civil Judge (Senior Division), Fatehgarh Sahib have been upheld.

[2]. Plaintiff filed suit for possession by way of specific performance of agreement to sell dated 28.04.1999 and in alternative prayed for recovery of Rs. 3 lacs and for permanent injunction. It is pleaded in the plaint that defendant executed agreement to sell dated 28.04.1999 in

favour of plaintiff in respect of 14 kanals 4 marlas of land for a total sale consideration of Rs.3 lacs. Amount of Rs.2 lacs was paid as earnest amount and sale deed was decided to be executed and registered upto 30.11.1999 on receiving balance amount of consideration. The default clause was also added in the agreement to sell to the effect that plaintiff shall have a right to get the sale deed executed and registered through process of the Court and also to recover damages. It has been alleged that the plaintiff informed the defendant personally on 30.11.1999 and remained present in the office of Sub Registrar, Khamanon to perform his part of contract but the defendant did not turn up. Plaintiff pleaded that he remained ready and willing throughout to perform his part of contract and is still willing to do so. Plaintiff issued legal notice dated 18.05.2001 and thereafter, filed the suit.

[3]. On put to notice, defendant contested the suit by filing written statement raising preliminary objections that suit is not maintainable. It has been alleged that the agreement to sell dated 28.04.1999 was the result of fraud and misrepresentation played by the plaintiff upon the defendant. Defendant denied execution of agreement to sell dated 28.04.1999 and also denied having received the earnest amount in any manner. The suit has been contested in all customary pleas. It has been replied on merits that defendant neither executed the alleged agreement

to sell nor received the earnest money. The agreement to sell is the result of fraud and misrepresentation. Plaintiff is doing the business of commission agent under the name and style of Bhangu Traders, Khamanon for the last 20 years. Defendant is an agriculturist. Defendant sold his crops at the shop of commission agent i.e. plaintiff for three years. During the last four years, he stopped selling the crops at the shop of commission agent. Defendant was ailing and has undergone heart surgery and other operations. During the selling of crops at the shop of the plaintiff, defendant borrowed some amount from him and the same was adjusted at the time of selling of the crop. When the defendant stopped selling the crops at the shop of the plaintiff, no amount was due against him. It has been further alleged by the defendant that on 27.04.1999, Mohal Lal, Sub Inspector of Police Station, Khamanon came to the house of the defendant and took him to the office of Sant Singh, DSP, Khamanon in connection with an application filed by the plaintiff. The said Sub Inspector left the defendant when he came to know that the son of the defendant is also in the police department. On 28.04.1999, a Home Guard from the office of DSP, Khamanon came to the house of defendant and asked him to appear before the said office. Thereupon defendant and his son Jasdev Singh went to the office of DSP, Khamanon at 9.30 AM and they were asked to stay in the office till arrival of the plaintiff. At 1.30 PM, plaintiff along with Amar Nath Nanda, Stamp Vendor and Mangat Rai Wadhera came there. They were also having their professional registers. Then DSP, Sant Singh obtained signatures of the defendant on two places i.e. one at the back of the blank stamp paper and another in the register of Mangat Rai Wadhera illegally and forcibly at the instance of the plaintiff. Defendant was made to sign and he signed in English. Defendant and his son requested the DSP and Gurdial Singh to explain as to why they have pressurized to sign the paper. On threat being given by DSP to implicate them in a false case under NDPS, they kept mum. Thereafter, they were dropped by the plaintiff at the bus stand in his car. The defendant and his son came back and kept mum due to fear of DSP. Defendant further contended that when he received summons of this case, he was shocked to know that plaintiff has forged and fabricated the alleged agreement on the said blank stamp paper which was got signed by defendant on 28.04.1999. In this way, the agreement to sell has been claimed to be fraudulent.

[4]. After filing replication, trial Court framed the following issues:-

> *"1. Whether the defendant on 28.04.1999 executed an agreement to sell the suit land in favour of the plaintiff and received Rs.2 lacs as earnest money? OPP*
>
> *2. Whether the plaintiff was still ready to perform*

his part of contract? OPP

3. Whether the plaintiff is entitled to possession by way of specific performance of the agreement? OPP

4. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

5. If issue No.3 is not proved then whether the plaintiff is entitled to the alternative relief of recovery as prayed for? OPP

6. Whether the suit maintainable? OPP

7. Whether the suit is properly valued for the purpose of Court fee and jurisdiction? OPP

8. Whether the Court has jurisdiction to try the present suit? OPD

9. Whether the agreement dated 28.04.1999 is result of fraud and misrepresentation and is forged and fabricated document? OPD

10. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD

11. Relief."

[5]. Both the parties have led their respective evidence on the aforesaid issues and after appraisal of the same, trial court found agreement to sell to be voluntarily executed. PW 1 Avtar Singh and PW 2 Devinder Singh attesting witnesses to agreement to sell Ex.P1 deposed

in concurrence with plaintiff who appeared as PW-3.

[6]. Issue No.1 was decided by the trial Court in favour of the plaintiff and against the defendant holding that execution of agreement to sell is proved. Issue No.9 was decided against the defendant on the ground that defendant could not prove that agreement to sell is the result of fraud and misrepresentation. Under issue No.2 trial Court observed that the plaintiff always remained ready and willing to perform his part of contract. Issues No.6, 7, 8 and 10 were not pressed by the defendant during course of arguments. Trial Court decreed the suit for possession by way of specific performance of agreement to sell dated 28.04.1999 on deposit of balance sale consideration to the tune of Rs.1 lac by the plaintiff within a period of one month and thereafter, defendant was required to execute the sale deed and registered the same in favour of plaintiff within a period of one month. Defendant was also restrained from alienating the suit land in favour of anyone else except the plaintiff.

[7]. Feeling aggrieved against the judgment and decree dated 13.12.2005, defendant filed appeal before the District Judge, Fatehgarh Sahib. Lower Appellate Court also dismissed the appeal on the basis of evidence on record vide judgment and decree dated 26.07.2006.

[8]. In the present appeal filed by the defendant-appellant, once the

appeal was decided by this Court vide judgment dated 11.12.2008. Against that judgment, defendant went in Special Leave Petition (SLP) and the case been remanded back to this Court for fresh decision.

[9]. In the grounds of appeal, following substantial questions of law have been formulated:-

> *"1. Whether the agreement to sell in question is obtained by way of fraud or under the influence of police?*
>
> *2. Whether the present respondent is running the business of commission agent?*
>
> *3. Whether the both courts below mislead the evidence on record.*
>
> *4. Whether the findings of issue No.1 to 9 are illegal, wrong and against facts as well as law?*
>
> *5. Whether findings of issue No.6, 7, 8 and 9 are against law as well as facts?"*

[10]. Prior to amendment of Section 100 CPC, a second appeal could have been filed before this Court on the grounds set out in Clauses (a) to (c) of Section 100 (1) CPC. Now the interference in the second appeal could only be made if substantial question of law arises in the case. Therefore, the interference cannot be only,because the order is contrary to law, but the disputed issues raised a substantial question of

law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim '*interest reipublicae ut sit finis litium'*.

[11]. The Hon'ble Apex Court has remanded the case to this Court for fresh consideration and disposal in accordance with law after giving opportunities to both the counsel.

[12]. I have considered the arguments of both the sides.

[13]. Learned Senior Counsel for the appellant has argued that there is sufficient material on record to show that signatures of the defendants were obtained forcibly at the instance of DSP, Sant Singh on the asking of the plaintiff. Defendant and his son were threatened by DSP of false implication in some NDPS case. Plaintiff accompanied with Amar Nath Nanda, Stamp Vendor and Mangat Rai Wadhera to the office of DSP, where the defendant and his son were detained. The agreement to sell is claimed to be fraudulent and the witnesses examined by the plaintiff were not known to the appellant. Question No.1 formulated by the appellant has to be decided on the basis of material available on record. Apparently, the appellant has admitted his signatures on the agreement to sell but in the different context i.e. having obtained forcibly. It has been alleged by the appellant that he was called by DSP, Sant Singh and his signatures were obtained on the blank papers under threat and on these

signed papers agreement to sell and other documents have been prepared. Signatures of the defendant appeared in English.

[14]. Learned counsel for the defendant-appellant has contended that plaintiff is proved to be a commission agent. Plaintiff has not seen the suit land because according to plaintiff it is comprised in one tak but actually it comprised in two taks. By evidence on record in the form of PW 1-Avtar Singh, the factum of plaintiff-Gurdial Singh being a commission agent having commission agency/shop under the name and style of Bhangu Traders and having agricultural land to the extent of 35 acres, is an admitted fact. As per PW-1 Avtar Singh, plaintiff-Gurdial Singh was earlier doing agriculture work and now he has rented out the land about 30-32 acres. PW-2 Devinder Singh has also stated in his cross examination that plaintiff-Gurdial Singh is running a commission agent shop under the name and style of Bhangu Traders. The execution of agreement to sell has been proved by the marginal witnesses PW-1 Avtar Singh and PW-2 Devinder Singh. The stand of the defendant is that he never intended to sell the land in favour of plaintiff nor executed the alleged agreement to sell, as the agreement to sell is claimed to be forged and fabricated document having prepared on blank stamp papers and forcibly got signed by the plaintiff. Apparently, plaintiff Gurdial Singh has stated that defendant was known to him and he agreed to sell his land measuring 14

kanals 4 marlas in his favour vide agreement to sell dated 28.04.1999 for a total consideration of Rs.3 lacs. The earnest money to the tune of Rs.2 lacs was paid and sale deed was to be executed upto 30.11.1999 on receiving balance amount of sale consideration of Rs.1 lac. The examination of both the marginal witnesses to the execution of agreement to sell dated 28.04.1999 Ex.P-1 has been proved on record. The plea taken by the defendant that his signatures were obtained forcibly at the instance of DSP, Sant Singh on 28.04.1999 has not been proved with authentic evidence on record. In order to prove aforesaid fact, defendant got examined his son Jasdev Singh as DW-2 who has corroborated the version of defendant to the effect that he accompanied him at the time when his signatures were obtained on blank stamp papers by DSP, Khamanon. The defendant has pointed out that plaintiff did not see the land, as some discrepancy emerged on record on account of availability of 1 tak and 2 taks. So far as the plaintiff being agriculturist as well as the proprietor of commission agency/shop is concerned, sufficient evidence is available on record that plaintiff is owner of about 30-32 acres of land. Earlier he used to cultivate the land but now the land has been given on lease. The witnesses have deposed that he is running a commission agency/shop under the name and style of Bhangu Traders. Suit land being under the ownership of defendant is proved with reference to Ex.P-

5 i.e. copy of jamabandi for the year 1995-96 on record. Land measuring 14 kanals 4 marlas is proved to be owned and possessed by the defendant. Defendant has not proved on record that after obtaining his signatures on blank stamp papers forcibly by DSP, any complaint was ever made by him in police or any competent authority. Rather, DW-2 Jasdev Singh son of defendant is also a police official, therefore, it does not appear probable that son of defendant being a police official would keep silent even after giving signatures by force on the blank stamp papers under police pressure. The story appears to be man-made and afterthought. It also appears that story has been cooked up so as to escape liability under agreement to sell. Even if it is proved that plaintiff is owner of the landed property as well as running a commission agent shop, defendant could not prove that he had been selling agriculture produce on the shop of commission agent of the plaintiff nor any material has been adduced on record in the form of any receipt, J Form etc. to corroborate the plea that the defendant has ever sold any yield on the shop of the plaintiff. The discrepancy vis-a-vis existence of land in one tak or two taks has nothing to do with the controversy in question because it is wholly inconsequential whether the plaintiff has visited the site in question or not. There is no legal impediment in executing agreement to sell even without seeing the land in question on the site. Existence of land

in two taks instead of one tak is not such a material discrepancy which would lead to disbelieve the existence of agreement to sell between the parties. The trial Court disbelieved the stand taken by the defendant and held that the agreement to sell Ex.P-1 has been proved with reference to material on record. It is not forged and fabricated and the same is not result of any fraud and misrepresentation on the part of the plaintiff. Similarly issue No.9 has been decided against the defendant which is a connected issue with issue No.1.

[15]. Similarly, the plea of readiness and willingness has been found proved at the instance of the plaintiff. Plaintiff attended the office of Sub Registrar, Khamanon along with balance sale consideration and was ready and willing to perform his part of contract but defendant did not turn up. Plaintiff remained present in the office of Sub Registrar upto 5 PM and thereafter, he served legal notice dated 18.05.2001 Ex.P-3 upon the defendant, requiring him to perform his part of contract. Issue No.2 has been found to be duly proved. Issue No.3 is dependent upon the findings recorded under issue No.1. Accordingly, the same was answered in favour of plaintiff. Resultantly, after recording findings under different issues, the suit of the plaintiff was decreed. The issue of fraud has not been proved on record for want of any evidence. The question No.1 formulated in grounds of appeal could not be proved by the appellant with

reference to any cogent evidence on record. It is a settled principle of law that plea of fraud has to be pleaded and proved on record. Since fraud vitiates all solemnities, therefore, material particulars of fraud have to be pleaded and proved by way of cogent evidence. No evidence has come on record to show that the fraud has been proved, rather, son of the defendant being himself a police official was not found warranting in terms of taking prompt action when alleged signatures of the defendant were obtained forcibly by the DSP, Khamanon. No complaint whatsoever was moved by the defendant to any police or to any competent authority. Therefore, substantial question of law No.1 does not arise. Question No.2 is a question of fact. It has been proved on record that plaintiff besides being agriculturist is running a commission agent shop also but the evidence on record is not warranting in terms of selling of crop by the defendant at the shop of plaintiff at any point of time. No evidence has been made by the defendant that he had ever sold any crop at the shop of the plaintiff. Therefore, even if a factual issue is not proved on record, question No.3 has to be answered in negative. There is no misreading of evidence on record, rather the findings have been recorded by the Courts below on the basis of material available on record. Question No.4 relates to findings recorded under Issues No.1 to 9. Execution of agreement to sell has been found as a matter of fact. The execution of agreement to sell has been proved by the attesting witnesses and other linked witnesses on record. No evidence to the contrary has been led by the defendant to show that the agreement to sell is the result of fraud or any fabrication. The evidence led by the defendant found just short of the requirement and is not sufficient to dislodge the execution of agreement to sell by any possible means. Question No.5 is also question of fact and the findings recorded under Issues No.6, 7, 8 and 9 are lawful and cannot be termed to be illegal by any imagination.

[16]. Both the Courts have decreed the suit of the plaintiff after appreciating the evidence on record in its correct perspective. Learned counsel for the appellant has also contended that the plaintiff was in fiduciary relationship, therefore, onus is always on the opposite side in order to show transaction to be bona fide. Learned counsel makes reference to ***Subhash Chander and others Vs. M/s Active Promoters Pvt. Ltd. 2015 (1) RCR (Civil) 62***. By relying upon the aforesaid judgment, learned counsel tried to suggest that in a case of fraud when defendant specifically alleged that agreement is result of fraud and misrepresentation, normally burden is on the defendant to prove such fraud, misrepresentation but when specific allegations are there, then burden is on the plaintiff to prove that document is genuine and is to the knowledge of defendant. This is more so in case of fiduciary relationship

with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is always on the person who is in the domination position. After the cited judgment is tested in the light of material available on record, the same has been answered in negative.

[17]. Word '*Fiduciary*' has been defined in number of contexts. In ***Marcel Martins Vs. M.Printer and others 2012 (2) RCR (Civil) 922,*** Hon'ble Supreme Court referred the definition of '*fiduciary*' explained in number of dictionaries and relied upon the definition given in ***Central Board of Secondary Education and another Vs. Aditya Bandopadhyay and others 2011 (3) RCR (Civil) 914,*** wherein the Court explained the term '*fiduciary*' and 'fiduciary relationship' in the following manner:-

> *"The term fiduciary refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term fiduciary relationship is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The*

> *fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party."*

[18]. The fiduciary relationship is not exhausted by few well known patterns of relationship. Any relationship in which one party enjoys the 'active confidence' of another party who is lean on him and is inclined to repose implicit confidence in him is enough to approximate to the kind of relationship. In the instant case, there is no such evidence on record to even presume such a relationship between the parties. Even if it is proved that the plaintiff was running a commission agent shop but there is no evidence on record to suggest that defendant had ever sold his agriculture produce on the shop of the plaintiff. For want of such evidence, presumption qua fiduciary relationship cannot be attracted, rather, the circumstances as enumerated above in the context of definition of fiduciary relationship, nothing can be attracted to bring the alleged act within the four corners of any fiduciary relationship between the parties.

[19]. Once the agreement to sell is proved, equity demands its enforcement, rather than to grant alternate relief of refund of earnest money and payment of damage. Equity has to be balanced. Even the whole prayer made by the plaintiff in a suit cannot be construed to be a waiver or abandonment of his main claim and an erring person who is violated the terms and conditions of the agreement cannot be permitted to seek advantage of the other person in equity. In ***M.L. Devender Singh and others Vs. Syed Khaja AIR 1973 SC 2447***, the Hon'ble Apex Court held that the jurisdiction of the Court to grant decree of specific relief is discretionary and must be exercised on sound and reasonable grounds "Guided by Judicial principles and capable of correction by a Court of appeal". The jurisdiction cannot be curtailed or taken away by merely fixing a sum even as liquidated damage. The Apex Court in ***Atam Ram Mittal Vs. Ishwar Singh Punia 1988 (2) RCR (Rent) 423*** held that once execution of lawful agreement is proved and the judicial conscience of the Court is satisfied, then the equity demands that agreement should be enforced rather than to grant alternate relief of damages to the plaintiff. It needs to be reiterated that equity must give relief where equity demands. "equitas nuquam liti ancillatur ubi remedium protest clare"

[20]. Provision in terms of Section 20 of the Act is an exception to the rule of grant of relief for specific performance but the same in itself cannot

be construed to be a rule. The object of the provisions is to avoid resultant undue hardship to one party while avoiding undue gain to other. In the light of aforesaid, this Court is of the opinion that once the agreement to sell is proved on record and the defendant could not prove the plea of fraud and misrepresentation, normally result is that suit of the plaintiff has to be decreed.

[21]. The defendant while appearing as his own witness has admitted that his son Jasdev Singh is serving in police. The witness/defendant pleaded ignorance about the stay of DSP in Khamanon. His son never made any complaint to this extent to any higher official or concerned official. He has denied his signatures on Ex.P-1 or at the back of it. Had the signatures being not his signatures by all probabilities, defendant would have taken all steps to expose the willingness of the plaintiff and would have made complaint to the higher officials and even would have resorted to report of handwriting expert. The defendant has himself nullified the veracity of his claim by stating that blank stamp papers on which he was made to sign by the DSP are not on the file. These assertions coming out of the mouth of defendant himself visualised and demolished the case of the defendant in entirety. The irresistible conclusion then can be drawn by way of necessary inference that the stamp papers which were allegedly signed by the defendant are not the

same on which agreement to sell is found to have been written. Thus the plea of fraud that the agreement to sell Ex.P1 is forged and fabricated document falls on the ground. Defendant has also gone on record to the extent of denying his signature in Punjabi on the '*Vakalatnama*' furnished by him in favour of his counsel appearing in the trial Court. If the defendant has gone to this extent, then he can go to any extent to deny his signature even if lawfully done by him as a voluntary act in executing the agreement to sell. It is something beyond the comprehension of this case to visualise a situation where the defendant had to sign the blank stamp papers, even then he could not make any complaint to any authority. Even his son being a police man could not dare to do so. The story of the defendant remained a cock and bull story having no legs to stand.

[22]. Having considered matter at length, this Court does not find any substance in the appeal of the appellant. Both the Courts have exercised lawful jurisdiction vested in them. No law point worth cognizance by this Court is involved. The appeal is totally bereft of merits and the same is dismissed.

18.09.2015 **(RAJ MOHAN SINGH)**

prince **JUDGE**