

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 1636 of 2010

Date of decision : September 14, 2015

Kamaljit Kaur

... Appellant

vs.

Pritam Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. B.S. Bhalla, Advocate
for the appellant.

Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate
for the respondents.

Surinder Gupta, J

Plaintiff-Kesar Singh (now represented by his legal heirs Pritam Kaur, Jasbir Singh, Lakhbir Singh, Palwinder Kaur, Rajwant Kaur along with Ujagar Singh and Gurdev Singh filed civil suit seeking relief of declaration and injunction as follows :-

“Suit for grant of a decree for declaration to the effect that the alleged sale deed of land measuring 9 K. 9¾M. Dated 17.7.1986 registered on 17.7.1986 is illegal, null and void and inoperative on the rights of the plaintiff No.1 as he was never a party to the sale deed nor he has executed the alleged sale deed the Mutation No.2730 on the basis of the alleged fictitious sale deed is illegal inoperative on the rights of the plaintiff and for permanent injunction restraining the defendant and her aides from interfering or causing to interfere in any manner in the peaceful possession of the plaintiff and further restraining the defendant from alienating the land under the garb of illegal sale deed dated 17.7.1986 on the basis of oral and documentary evidence.”

The case of plaintiff, in brief, is that they had purchased $\frac{1}{2}$ share of land measuring 22 kanal 9 marla situated at village Tibba from Bachittar Singh son of Phuman Singh on 22.3.1986. Kesar Singh entered into an agreement to sell 7 kanal 9- $\frac{3}{4}$ marla of land for consideration of ₹45,000/- with plaintiff no.2 Ujagar Singh. However, the sale deed as per this agreement was not executed. Defendant Kamaljit Kaur in collusion with marginal witnesses of sale deed played fraud by preparing false and fictitious sale deed of land measuring 7 kanal 9 $\frac{3}{4}$ marla belonging to plaintiff Kesar Singh. The said sale deed was not signed in favour of defendant and is illegal, null and void, without consideration and is the result of impersonation. Kesar Singh had borrowed a sum of ₹5,000/- on pro-note from Jagtar Singh son of Bakshish Singh in the month of July, 1986 and returned this amount to him after a year. The plaintiffs continued to be in possession of the suit land. The defendant without any notice and knowledge of plaintiff got sanctioned mutation no.2730 on the basis of false and factitious sale deed dated 17.7.1986. In the second week of December, 1988, the defendant with the aid of certain unwanted elements tried to forcibly and illegal cultivate the suit land owned by plaintiff having crops and the matter was reported to the Police Station Sahnewal. At this juncture the defendant alleged sale deed of suit land in his favour. Thereafter the plaintiff verified the revenue record and requested the defendant not to interfere in his peaceful possession but of no avail, hence this suit.

In the written statement, the defendant contested and controverted the claim of plaintiff, *inter alia*, pleading that she had purchased the suit land vide sale deed dated 17.7.1986. The sale

consideration was paid as follows :-

- i) ₹5,000/- were paid at the time of execution of agreement dated 19.4.1986.
- ii) ₹4,000/- were paid on 17.7.1986 as per endorsement made by Kesar Singh on the back of agreement.
- iii) ₹1,000/- was paid to Kesar Singh on 14.7.1986 and another endorsement was made on the back of agreement.
- iv) ₹5,000/- were paid vide draft no.853384/2/86 dated 16.7.1986.

Kesar Singh was in possession of suit land and after the sale deed the plaintiff is in actual and physical possession of the same. The alleged agreement dated 22.3.1986 in favour of plaintiff no.2 Ujagar Singh was a fabricated document. The defendant also claimed herself to be a *bona fide* purchaser of the suit land. The plaintiff Kesar Singh though had alleged fraud with him but has not pleaded the ingredients of fraud. It was denied that Jagtar Singh ever advanced loan of ₹5,000/- to Kesar Singh and got execute pro-note and receipt in his favour.

Pleadings of the parties led to the framing of issues as follows :-

- 1. *Whether the sale deed dated 17.7.1986 is fictitious?OPP*
- 2. *Whether the plaintiffs are entitled for the declaration and injunction as prayed for?OPP*
- 3. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD*
- 4. *Whether plaintiff Kesar Singh is estopped by his act and conduct from filing the present suit?OPD*
- 5. *Whether the suit for mere declaration is not maintainable?OPD*
- 6. *Relief.*

In support of his case, plaintiff Kesar Singh himself appeared as PW-1, his brother Dayal Singh as PW-2, Darshan Singh as PW-3, Document Expert Sardara Singh as PW-4, Harvinder Pal, Manager, Oriental Bank of Commerce as PW-5 Jasvir Singh son of plaintiff Kesar Singh as PW6 and Ujagar Singh brother of plaintiff as PW-7 (in rebuttal, wrongly mentioned as PW-1).

On the other hand, defendant examined DW-1 Malkit Singh, a witness of endorsement Ex.D1 and D2 whereby Kesar Singh was paid ₹4000/- and ₹1000/- on 11.7.1986 and 14.7.1986 respectively. This endorsement was made on the back of the agreement dated 19.4.1986 Ex.DW9/A. Bahadur Singh Scribe of endorsements Ex.D1 and D2 appeared as DW-2, Ravinder Pal, Manager, Oriental Bank of Commerce appeared as DW-3. He has stated that the suit land was mortgaged by Kesar Singh with the bank for a loan of ₹5,000/- vide mortgage deed dated 28.11.1986. Malkiat Singh marginal witness of sale deed dated 17.7.1986 appeared as DW-4 and has proved the execution of the sale deed by Kesar Singh. The other marginal witness of the sale deed K.L. Vema, Advocate, New Court Complex, Ludhiana appeared as DW7 and has stated that the sale deed dated 17.7.1986 was executed by plaintiff Kesar Singh. This sale deed was scribed by Bhajan Singh Pandher Deed Writer who appeared to prove this sale deed original of which was placed on record as Ex.DW8/1. Jagtar Singh husband of defendant Karamjit Kaur and her attorney appeared as DW-9. Gian Parkash Sharma Document Expert appeared as DW-5 and has given his report that signature on the sale deed are of plaintiff Kesar Singh. Sajjan Singh Clerk-cum-Cashier, Nandpur Branch of Punjab & Sind Bank appeared as DW-6 to prove that amount of ₹5000/- paid through draft

to Kesar Singh was deposited in his account.

The suit filed by plaintiffs was dismissed by Civil Judge (Jr. Division), Ludhiana vide judgment dated 17.8.2005. The learned Civil Judge (Jr. Division), Ludhiana on appraisal of evidence observed as follows :-

- i) *The plaintiffs did not prove on record the alleged agreement to sell dated 22.3.1986 executed by plaintiff Kesar Singh in favour of his brother plaintiff no.2 Ujagar Singh. No steps were taken to get the sale deed executed on the basis of that agreement.*
- ii) *The plaintiffs have not mentioned the ingredients of fraud as required under Order VI Rule 4 CPC and has failed to prove any fraud played upon him.*
- iii) *Plaintiff no.1 has admitted his signature on agreement to sell dated 19.4.1986 Ex.D1. His plea that these signatures were obtained on blank paper was discarded.*
- iv) *The defendant has succeeded in proving the agreement and endorsement on the back of agreement dated 11.7.1986 and 14.7.1986 vide which a sum of ₹4000/- and ₹1000/- respectively were paid to plaintiff.*
- v) *The defendant had not only proved the execution of sale deed Ex.DW8/1 by plaintiff Kesar Singh but had also proved that payment of ₹5000/- made to plaintiff vide demand draft Ex.DW6/B was credited to his account.*
- vi) *The plaintiffs have gone to the extent of denying the signatures of plaintiff no.1 on the plaint, vakalatnama etc.*
- vii) *It is plaintiff no.1-Kesar Singh who could challenge the sale deed and mutation sanctioned in favour of defendant and other plaintiffs i.e. plaintiff no.2 Ujagar Singh and plaintiff no.3 Gurdev Singh, brother of Kesar Singh had no locus standi to file the suit.*

Not satisfied with the judgment of Civil Judge (Jr. Division), Ludhiana, plaintiff Kesar Singh through his legal heirs and plaintiffs Ujagar Singh and Gurdev Singh filed appeal which was allowed by learned Additional District Judge (Fast Tract Court), Ludhiana. The sale deed Ex.DW8/A was held to be a suspicious document for the reasons as follows :-

- i) *Firstly, the agreement in question dated 19.4.1986 is in favour of Sukhjit Singh Mangat whereas the sale deed has been executed in favour of defendant Kamaljit Kaur (sic). It is not understood as to how the plaintiff no.1, who had allegedly entered into an agreement to sell his land in favour of Sukhjit Singh Mangat would execute the sale deed in favour of present respondent. It is the case of the defendant that the sale deed has been got executed as per terms and conditions of the agreement to sell dated 19.4.1986, and if it was so the sale deed would have been in favour of Sukhjit Singh and not in favour of present defendant-respondent Kamaljit Kaur. It is not the case of the defendant that the sale deed was directly executed in her favour without any agreement to sell. Even it has come in the statement of DW9 Jagtar Singh husband of the defendant respondent that the agreement in favour of Sukhjit Singh was never got cancelled before execution of the sale deed. So, this fact give strength to the version of the plaintiffs that the agreement and sale deed in question are result of fraud.*
- ii) *Secondly, the property in dispute was already under mortgage with the Oriental Bank of Commerce, Ludhiana as has come in the statement of PW5 Harvinder Pal Manager, OBC, who proved the mortgage deed Ex.PW5/A. Even DW9 Jagtar Singh stated in his cross examination that he did not known that the property in*

dispute was under mortgage could be agreed to be sold and how a person would agree to purchase such a property. So, this is also a circumstance which puts the agreement and the sale deed in question to doubt.

- iii) *Thirdly, the sale deed has been executed merely for a sum of Rs.15,000/- as the DW9 Jagtar Singh in his cross-examination has admitted to a suggestion given to him by the learned counsel for the plaintiffs-appellants regarding market value of the land, that he does not have the knowledge that the market value of the land in village Tiba (where the land in dispute is situated) is around Rs.4 lacs, meaning thereby that he has not denied this market price of the land per acre. So, the sale deed being merely for Rs.15,000/- on amount of consideration which is nominal and below the market value of the land and as such in view of the land laid down in Mahiruddin Borbhiya's case (ibid) referred to and relied upon by the learned counsel for the appellants wherein similar proposition was laid down, the present sale deed is liable to be cancelled.*
- iv) *Fourthly, neither defendant-respondent nor said Sukhjiti Singh has stepped into the witness box. DW9 Jagtar Singh in his cross examination has admitted that Kamaljit Kaur is hale and hearty and has no problem except high blood pressure. So, it cannot be said that the defendant was not in a position to come and depose in favour of her case, but she has kept herself off the witness box for which an adverse inference has to be drawn against her under Section 114 of the Indian Evidence Act as per the law laid down in Bhajan Kaur's case (ibid) referred to and relied upon by the learned counsel for the plaintiff-appellants, wherein it has been held that if a person does not enter into the witness box to make statement on oath in support of his/her*

pleadings, an adverse inference would be drawn that what he/she stated in the pleadings is not correct and as such an adverse inference has to be drawn against the conduct of the party for abstaining or keeping himself/herself off the witness box.

Against the judgment of first appellate court, defendant Kamaljit Kaur has filed this regular second appeal.

(In the later part of judgment, the parties will be referred as plaintiffs and defendant as per original civil suit and plaintiff Kesar Singh (since deceased) as plaintiff).

Learned counsel for appellant/defendant has argued that the plaintiff has alleged the sale deed dated 17.7.1986 as illegal and fabricated document on the ground that it do not bear his signatures and is without consideration. He had further alleged that a loan of ₹5000/- was taken by him on pro-note from Jagtar Singh son of Bakshish Singh in July, 1986 but no pro-note and receipt was produced or proved on record. The plaintiff also alleged himself to be in continuous possession of the suit land but his plea did not prevail in view of the documentary evidence on record.

Learned first appellate court while holding sale deed Ex.DW8/A as illegal, null and void did not rely on any of the plea raised by plaintiff and had set up altogether a new case for him. It has nowhere held that the sale deed do not bear signatures of plaintiff or any fraud was played with him. The entire stress of first appellate court was on the point that the agreement to sell dated 19.4.1986 was with one Sukhjit Singh who had not appeared as witness; secondly, the land was lying mortgaged with Oriental Bank of Commerce and could not be sold; and thirdly, the value of the land

₹15,000/-. The sale deed dated 17.7.1986 was duly proved by examining the scribe and its both the marginal witnesses. The statement of marginal witness is un-shattered. It is also proved on record that the amount of ₹5000/- paid by draft before Sub Registrar at the time of registration of the sale deed was credited to the account of plaintiff in his bank account. The plaintiff has failed to plead and prove the ingredients of fraud alleged to have been played with him and the learned first appellate court has gone astray and taken into account the extraneous circumstances not relevant to the case while dubbing the sale deed dated 17.7.1986 as suspicious document.

Learned counsel for plaintiff/respondent has argued that the sale consideration in this case was alleged to have been paid in installments. The agreement to sell dated 19.4.1986 was not in favour of defendant but it was in favour of Sukhjit Singh who did not appear as a witness to depose regarding its execution by Kesar Singh. The plaintiff has been able to prove that the sale deed was the result of fraud played with him by one Deed Writer who is husband of Kamaljit Kaur-defendant in collusion with the other Deed Writer.

The substantial questions of law which arise for determination in this case are as follows :-

1. *Whether the reasoning given by the first appellate court while holding the sale deed dated 17.7.1986 make out a case of fraud with the plaintiff and is in consonance with the pleadings?*
2. *Whether in the absence of any positive evidence fraud could be inferred by the first appellate court by raising points beyond pleadings?*

Order VI Rule 4 CPC provides that in all cases in which the party pleads fraud, the particulars of fraud with date shall be stated in the pleadings. The object of Rule 6 (4) CPC is two folds. Firstly, it offers other side intimation regarding particular facts on which the fraud is alleged so as to provide opportunity to counter the same; and secondly, it also helps the court in appraising the real issue between the parties.

Before proceeding further, it will be relevant to note that this suit has been filed by Kesar Singh, Ujagar Singh and Gurdev Singh, who are brothers while no relief has been claimed in favour of Ujagar Singh and Gurdev Singh. It is Kesar Singh who is alleging sale deed dated 17.7.1986 alleged to have been executed by him as illegal, fabricated, fictitious and result of fraud. Plaintiffs no.2 and 3 had no *locus standi* to file the instant suit and even in the plaint it has not been clarified as to why they had been associated with Kesar Singh in filing the suit.

Coming to the facts of the instant case, it transpires on perusal of the pleadings that plaintiffs firstly alleged that he had entered into an agreement to sell with his brother on 22.3.1986 for a sum of ₹45,000/- and this amount was paid to him. However, this plea was not proved on record. It remains the mystery as to why plaintiff no.2 had not got the sale deed under agreement executed from his brother Kesar Singh for a period of about three years when the instant suit was filed on 18.1.1989. This plea raised by the plaintiffs, as such, fails.

The second plea raised by the plaintiffs in the plaint is that the sale deed do not bear his signatures. Both the parties have examined the expert on this point. Even if the testimony of both the experts is not referred still there is nothing on file to suggest as to what interest or motive

the marginal witnesses of the sale deed, namely, Malkiat Singh, Numberdar and K.L. Verma, Advocate had to depose against the plaintiff. In the absence of direct and credible evidence the plaintiff has failed to prove that the sale deed dated 17.7.1986 do not bear his signatures.

The third plea raised by the plaintiffs in the plaint is that the sale deed was without consideration. In the endorsement made by the Sub-Registrar on the sale deed at the time of its registration this fact is specifically mentioned that payment of ₹5000/- has been made through draft. The number and date of draft drawn on Punjab & Sind Bank, Miller Ganj, Ludhiana finds mentioned in the sale deed itself. The testimony of DW-6 Sajjan Singh, Clerk-cum-Cashier, Nandpur Branch, Punjab & Sind Bank, Ludhiana has proved that amount of ₹5,000/- paid vide draft mentioned in the sale deed was credited to the account of plaintiff. In the agreement Ex.DW9/B, it is specifically mentioned that a sum of ₹5000/- was paid as an earnest money while ₹4000/- was paid vide endorsement Ex.D1 and ₹1000/- was paid vide endorsement Ex.D2, which were duly proved. As such, this plea of the plaintiff also fails that the sale deed was without consideration.

Fourthly, it was pleaded that plaintiff took ₹5000/- from Jagtar Singh husband of defendant Kamaljit Kaur as loan vide pro-note and receipt executed in July, 1986 but no evidence was produced to prove this plea.

Fifthly, the plaintiffs claim to be in possession of suit land but this plea was not put forth by learned counsel for plaintiff or has been believed by the court below in view of the revenue record on file showing possession of defendant over the suit land.

The lower appellate court has wrongly given weight to the fact that the agreement dated 19.4.1986 was with Sukhjit Singh Mangat and not with defendant and Sukhjit Singh Mangat had not appeared as witness. Perusal of the agreement Ex.DW9/B show that it was agreed that Sukhjit Singh could get the sale deed under agreement executed in his favour or in favour of any other person. He was also given the liberty to get more than one sale deed of the suit land executed. Even at the time of sale vide sale deed dated 17.7.1986, it was Sukhjit Singh son of Mohinder Singh who had appeared on behalf of vendee, as such, non examination of Sukhjit Singh has been wrongly taken as fact creating suspicion about the sale deed.

Reference has been made to the statement of Jagtar Singh DW9 who has stated that it was not within his knowledge that the market value of the land in village Tibba was around ₹4 lacs per acre. In the absence of any direct and credible evidence to this effect the mere suggestion given by the plaintiff is of no avail. Even otherwise, this suggestion was given regarding the value of the land which was prevailing in the year 1998 and not the year when the sale deed was executed, as such, the learned first appellate court has misdirected itself while reaching the conclusion that this is one of the suspicious circumstance surrounding the execution of the sale deed dated 17.7.1986.

Learned counsel for the plaintiff has argued that the defendant has not appeared herself as witness and has only examined her husband as her attorney and on this account adverse inference should be drawn against her.

The above argument of learned counsel for plaintiff has no merits in view of the fact that it is the plaintiff who has come forth to

challenge the sale deed executed and got registered by him alleging fraud. The onus was on him to prove his plea. Though the defendant has led evidence to prove the execution of sale deed but keeping in view the fact that it is plaintiff Kesar Singh who has not been able to allege or prove any fraud in the execution of agreement, Learned Civil Judge (Jr. Division), Ludhiana had rightly dismissed the suit filed by the plaintiff-respondent.

In view of the above facts I am of the considered opinion that findings and reasoning given by the first appellate court while dubbing the sale deed dated 17.7.1986 executed by Kesar Singh as surrounded by suspicious circumstances are not only perverse but have also resulted in grave miscarriage of justice. The reasoning given by the first appellate court while reaching this conclusion are not sustainable in the eyes of law particularly when the plaintiff has failed to produce any positive evidence of fraud alleged to have been played with him. Both the points for determination are answered in favour of appellant.

As a sequel of my above discussion, this appeal has merits and the same is accepted with costs. The judgment and decree passed by the first appellate court is set aside and that of Civil Judge (Jr. Division), Ludhiana is restored and affirmed.

September 14, 2015

deepak

(Surinder Gupta)
Judge