

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

**RSA No.312 of 2010(O & M)
Date of Decision:10.02.2015**

Sital Singh

....appellant

Versus

Kuldeep Singh and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1. Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Vijay Lath, Advocate
for the appellant

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was decreed by the trial Court vide judgement and decree dated 04.04.2005. Appeal preferred against the said decree failed and was dismissed as back as on 27.04.2009. This is how, defendant is before this Court in this Regular Second Appeal, which is still at the motion stage, without notice. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiffs, they prayed for a decree for specific performance of the agreement qua a land measuring 07K-12M, being 1/6th share out of land comprised in khewat No.323, khatauni No.376, Rect.No.3//16/1(0-7), Rect.No.4//20/3(0-12) and khewat No.12, khatauni No.19, Rect.No.4//20/2(1-16) and khewat No.128, khatauni No.140, Rect.No.3//16/2 (4-16) and khewat No.407, Rect.No.3//15 (4-8), 16/3

(3-7), 25(8-0), Rect.4//7(4-18), 19/3(1-7), 20/1(2-16), 20/4(3-7), 21(7-10), situated in village Tehang, Tehsil Phillaur, land measuring 1 kanal 1½ marla being 1/18th share in khewat No.77, khatauni No.113, Rect.13//17/2(0-9), 23/1(4-11), 24/1(7-11), 25/1 (2-16), Rect.14//5/1 (2-16), situated in village Tarkhan Mazara, Tehsil Phillaur. And also a land measuring 8 kanal 4 marla being 1/6th share in Rect.No.20//21 (4-0), Rect.37//1(8-11), 10(4-1), Rect.36//5(east)(3-0), 6(east) (3-0), 15(east) (0-14), Rect.20//28 (2-14), Rect.21//4 (south east) (5-0), 7 (north east) (3-14), Rect.35//6 (south) (6-15), 15/1 (3-2), 27(0-3), Rect.No.36//10/2(2-16), 11/1 (1-15) situated in village Atti, Tehsil Phillaur. It was averred that the suit property was coparcenary in nature and was recorded in the name of Kesra Singh son of Thakur Singh. Kesra Singh had died leaving behind his six sons and one of them happened to be Sital Singh-defendant. Post death of Kesra Singh-defendant and his five other brothers acquired title in the suit property to the extent of 1/6th share each. An agreement to sell was executed between the parties on 20.01.2000, at village Banga qua his 1/6th share, for a consideration of ₹ 10,00,000/-. A sum of ₹ 8,00,000/- was paid by way of earnest money and the date fixed for execution and registration of the sale deed was 30.05.2000. As Kesra Singh had since died, but his estate continued to be recorded in his name. Defendant agreed to get the mutation sanctioned in his name qua his share on or before 30.05.2000. And, in case, the defendant failed to get the mutation sanctioned, for any reason, plaintiffs shall be entitled to seek specific performance of the agreement. It was maintained that the plaintiffs had always been

willing and ready to perform their part of the contract. And was duly possessed of the balance sale consideration and funds to defray the necessary expenses, on the stipulated date. The defendant did not get the mutation sanctioned qua the suit land in his favour, upto 30.05.2000 and, thus, failed to perform his part of the contract. Thus, the suit.

In defence, it was pleaded, inter alia, that Kesra Singh i.e.father of the defendant, was the owner in possession of the suit property, and that was still recorded in his name. Though, defendant happened to be a co-sharer in the suit land but his name did not figure in the record of rights. It was maintained that defendant never executed any agreement to sell in favour of the plaintiffs. It was maintained that, in fact, plaintiff No.4 i.e. Joginder Singh was a commission agent and was regulating his business under the name and style Guru Nanak Trading Company, Mukandpur. Subhash Chander, happened to be the partner in the firm of Joginder Singh and plaintiffs No.1,2 and 3, were the associates of plaintiff No.4 (Joginder Singh). As defendant would sell his crop through Joginder Singh, he might have obtained his thumb impression and signatures on certain blank papers, with mala fide intention, which he later used to fabricate the agreement in question.

On a consideration of the matter in issue and the evidence on record, the courts below found that the plaintiff to prove his claim, examined Hari Kishan Agnihotri i.e.deed writer (PW1) and one of the attesting witnesses of the agreement i.e. Amrik Singh-PW2. The deed writer Hari Kishan Agnihotri-PW1, testified in his

statement that the agreement in question was scribed on 20.01.2000, at the instance of Sital Singh, in favour of the plaintiffs as regards the land measuring 16K-16½M for a total consideration of ₹ 10,00,000/-. He further deposed that the contents of the agreement were duly read over and explained to the defendant, who after admitting and understanding the same, signed the agreement. He testified that Gurdev Singh-plaintiff son of Sunder Singh signed the agreement in question in presence of the witnesses and they also affixed their thumb impressions/signatures thereupon. Entry as regards execution of the agreement was duly entered at Sr.No.55 on 20.01.2000, and was proved on record as Ex.P2. So much so, Sital Singh-defendant had brought his photograph, which too was signed by him. And earnest money of ₹ 8,00,000/- was paid by the plaintiff to the defendant in cash as part of the sale consideration. Not just that, Sital Singh-defendant even affixed his thumb impression against the entry that was recorded in the register of the scribe. And so did the plaintiff and the attesting witnesses of the agreement. Even a separate receipt as regards the earnest money of ₹8,00,000/- was executed by the defendant, which too was scribed by Hari Kishan Agnihotri-PW1, and was signed by defendant-Sital Singh. The said document was also witnessed by Amrik Singh and Gurdev Singh. Still further, the receipt bears the photographs of Sital Singh-defendant. Even the entry qua the execution of the receipt was also reflected in the register of the scribe and was proved as Ex.P4. Likewise, one of the attesting witnesses of the agreement i.e.Amrik

Singh-PW2, also proved the claim of the plaintiffs on all fours. The plea of the defendant that the agreement in question was a forged and fabricated document, remained un-substantiated on record. Plea that Joginder Singh was running a commission agency at Mukandpur, and he had obtained the thumb impression and signatures of the defendant on certain blank papers, remained wholly un-substantiated on record. No cogent evidence was led to prove that the defendant ever sold his agricultural produce through said commission agency. As regards readiness and willingness of the plaintiff to perform his part of the contract, it was observed that the plaintiff had placed on record his affidavit dated 30.05.2000, which proved his presence in the office of Sub-Registrar, on the appointed date. The said affidavit was scribed by Manvinder Singh, deed writer, in the presence of an attesting witness i.e. Amrik Singh. The attestation of the said affidavit was got proved from the clerk, Tehsildar Office, Phillaur i.e. Jaswant Rai-PW4, who identified the signatures of Tehsildar on affidavit dated 30.05.2000 (Ex.P4). The recitals in the said affidavit revealed that the plaintiff was equipped with the balance sale consideration and requisite funds to defray the necessary expenses. In terms of the agreement in question, defendant was obliged to get the mutation sanctioned in his favour, on or before the date fixed for execution and registration of the sale deed i.e. 30.05.2000. None else than the defendant himself admitted in his cross examination that his father Kesra Singh had expired long back but he never moved the necessary application for entering mutation qua his estate. Accordingly, it was concluded that the

plaintiff had always been ready and willing to perform his part of the contract. As a result, the suit was decreed. And the appeal preferred against the said decree, by the defendant, failed and was accordingly dismissed.

I have heard learned counsel for the appellant and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. All what he has urged is that none of the plaintiffs, appeared in the witness box in support of their claim. He further contends, that an analysis of the statements made by the scribe and one of the attesting witnesses, show certain discrepancies in their deposition. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Needless to assert, for plaintiffs to succeed, they were required to prove that the agreement to sell dated 20.01.2000, was indeed executed by the defendant in favour of the plaintiffs qua the suit land. Scribe of the agreement i.e. Hari Kishan Agnihotri-PW1, testified the due and valid execution of the agreement by the defendant. It was proved that the contents of the agreement in question were duly read over and explained to the defendant, who after understanding and admitting the same signed the document in

the presence of the witnesses. He further testified that an amount of ₹ 8,00,000/- was advanced by the plaintiffs to the defendant by way of earnest money at the time of execution of the agreement. Pursuant to the execution of the agreement, an entry was duly made in the register of the scribe at Sr.No.55 and was proved as Ex.P2. Against the said entry, signatures of the parties to the lis were duly obtained in the register of the scribe. So much so, in acknowledgement of receipt of ₹ 8,00,000/-, by way of earnest money, a separate receipt was also scribed by Hari Kishan Agnihotri-PW1. Even the said document was duly signed/thumb marked by the defendant and the two attesting witnesses namely Amrik Singh and Gurdev Singh. The said receipt also bears the photographs of defendant Sital Singh and was proved on record as Ex.P3. The entry in the register of the scribe even qua the receipt was also proved as Ex.P4. One of the attesting witnesses of the agreement i.e. Amrik Singh, duly proved the execution of the agreement. The plea of the defendant that the agreement to sell dated 20.01.2000 was forged and fabricated, remained unproved on record. Nothing was brought on record to substantiate such plea. So much so, defendant even failed to adduce any evidence to show that he ever transacted any business through commission agency of plaintiff No.4-Joginder Singh. Records show that plaintiff appeared before the Sub-Registrar, on the appointed date on 30.05.2000 for execution and registration of the sale deed. The plaintiff, to prove his presence, got an affidavit scribed by Manvinder Singh, deed writer, in presence of an attesting witness i.e. Amrik Singh. The attestation of the said

affidavit (Ex.P1) was proved by examining the clerk from Tehsildar Office, Phillaur. That being so, the argument being advanced by learned counsel for the appellant, that none of the plaintiffs, appeared as a witness, completely pales into insignificance. Fact remains that plaintiffs led sufficient evidence to discharge the onus and fully proved their claim. Due and valid execution of the agreement is writ large on the face of the record. As regards, that there were certain discrepancies in the statements of the scribe and one of the attesting witnesses, the same is hardly of any consequence, once the evidence of unimpeachable character has been brought on record by the plaintiffs to prove the execution of the agreement. Ex facie, defendant set out a false defence and, therefore, his testimony lost its credibility and reliability.

Learned counsel for the appellant could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

10.02.2015

neenu

(ARUN PALLI)
JUDGE