

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM Nos.6068-69-C of 2015 in/and
RSA No.1517 of 2011 (O&M)
Date of Decision: 27.05.2015**

Chamkaur Singh

..... Appellant

Versus

Jagir Singh and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vipin Mahajan, Advocate,
for the applicant-appellant.

Mr. A.S. Manaise, Advocate,
for the caveator.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

CM No.6069-C of 2015

For the reasons stated in the application, the same is allowed and the order dated 23.03.2015 is recalled and the appeal is restored to its original number.

RSA No.1517 of 2011 (O&M)

By consent, the matter is taken on board for final disposal.

This is defendant's second appeal in a suit for possession by way of specific performance based on an agreement dated June 14, 2000 to sell agricultural land measuring 48 K 12 M. The date fixed for execution of sale deed was August 03, 2000. While the plaintiffs pressed for execution and were ready and willing to perform their part of the contract, the defendant

backed out of the deal which led to filing of the suit. After backing out of the deal defendant-1 vendor who entered into a sale transaction of suit property with defendants 2 to 8 and got a sale deed registered in the latter's favour on August 07, 2000 of the same property. This sale deed was challenged in the suit in addition claiming specific performance of contract. It was prayed that the sale deed be declared illegal and null and void and not pleading any title on the vendees. These defendants are bound to join defendant-1 to get the sale deed executed in favour of plaintiffs in terms of the sale agreement dated June 14, 2000. The trial court framed five issues including relief. Parties went to trial and led their evidence both oral and documentary to prove the agreement to sale. The presence of the plaintiffs was duly marked in the office of the Sub Registrar by scribing affidavit which was attested by the Executive Magistrate but the defendant-1 failed to show up or get his presence marked. Defendant-1 set up a story that he was present in the office of the Sub Registrar, Kalanaur on the target date August 03, 2000 and in support he produced Ex.PW-8/B relevant extract from the register maintained by the office when an entry has been made at 4.30 PM, however, in the remaining entries on the register time of entry is not recorded which creates doubt regarding its genuineness. To the contrary, the entry of the plaintiffs on the same day is without recording of time. The court disbelieved the correctness of the entry. The only issue that was hotly debated was to readiness and willingness of the plaintiffs to perform their part of the contract. To prove this, plaintiffs examined three witnesses that the sale agreement was valid. They proved that they were ready and willing to perform their part of the contract and had sufficient money to pay the

balance sale consideration.

Both the courts have agreed with the case of the plaintiffs that there was a valid contract voluntarily signed by both the parties but the defendant had backed out of the deal even though the plaintiffs were ready and willing to execute and register the sale deed and pay the balance sale consideration. They remained throughout ready and willing to perform their part of the contract till the date of filing of the suit and are prepared still to do so since they have sufficient funds. It may be noted that land was agreed to be sold at Rs.50,000/- per killa in the year 2000 and for which an amount of Rs.1,10,000/- was paid in advance as part performance. Concurrent findings of fact have been recorded that the suit was eminently fit to decree and I have no reason to take a different view after the courts *a quo* have appreciated the evidence on record and returned proper findings thereon, the re-look of which also confirms the view of this Court that there is no error of law or fact in the judgments and decrees of the courts below.

Mr. Vipin Mahajan appearing for the appellant argues that the court of first appeal exercised jurisdiction with material irregularity in not deciding the application under Order 41 Rule 27 CPC for leading additional evidence. When asked what was the nature of the evidence sought to be produced in appeal, he submits that it was an affidavit from which his client wished to show that he was present in the office of the Sub Registrar on the covenanted day and, therefore, it cannot be said that there was no due part performance of the contract by him. Though it is proper exercise of the jurisdiction in the court of first appeal to first decide the application under Order 41 Rule 27 CPC before it proceeds to decide the main appeal but

looking to the fact that the additional evidence was only an affidavit which appeared to have been relied upon to fill up a lacuna and the trial court proceedings, I would not take this to be a case for interference only on account of the fact that the application was not decided. The affidavits filed in courts for self-serving purposes which have no presence in public records are of no consequence unless they are set out in defence to the suit for the first time in the written statement. All that was said in sub para.(b) of para.1 on merits defendant-1 has asserted that he was present and proof was an affidavit which is attached with the written statement but they did not plead that their presence was marked in the register maintained by the Sub Registrar, Kalanaur. This was a very material omission of relevant fact if it were true. The best evidence was not produced before the trial court by defendant-1 which could have established that he was present on the target date.

It is now turn to examine the application under Order 41 Rule 27 CPC filed by Chamkaur Singh defendant-1 for leading additional evidence being a sworn affidavit dated August 03, 2000 which was attested by the Executive Magistrate, Kalanaur on August 03, 2000 by which he got his presence marked in the office of Sub Registrar, Kalanaur. This affidavit was not produced before the trial court or at the time of filing of the appeal and it was pleaded that the affidavit was misplaced and despite due diligence the original affidavit could not be produced. The entry bears no.521 dated August 03, 2000 and its photocopy was attached with the written statement which affidavit was exhibited as Mark 'A' and did not qualify as legally admissible evidence. Mere production of a document does not obviate mode

of proof. Before the Registrar the presence of Chamkaur Singh was identified by Ranjit Singh who is stated to have expired on August 31, 2005. To my mind, there was no need to have allowed the application since the entry was examined by both the courts *a quo* and have been found to be suspicious and have been disbelieved and not a document which inspires faith. The timing on the entry was manipulated. When the presence of the plaintiffs is established in the Sub Registrar's office then it is more likely than not that defendant-1 was not present as they would have in normal circumstances met and seen each other. Moreover, the suit was filed on August 27, 2000 and the link evidence i.e. Ranjit Singh passed away in 2005. In any case, when the disputed entry of Chamkaur Singh has been examined by the courts below and found not to be genuine the question of leading additional evidence of its original is beside the point.

I have no reason to interfere on the second appeal side of this court with the findings of fact recorded by the courts below with respect to the disputed entry in the register maintained in the office of Sub Registrar, Kalanaur that it was a suspicious document as only the disputed entry had time recorded on the register. The timing of the document was apparently doctored to wriggle out of the contract. When this is the position the subsequent sale deed has no legal value and will not affect the rights of the plaintiffs and deserves to be ignored. Defendants 2 to 8 cannot claim to be bona fide purchasers in view of the findings of fact recorded by both the courts below that they have knowledge of the execution of the sale agreement in favour of the plaintiffs and, therefore, the genuineness of the sale deed has been doubted as not being a valid document. Moreover,

defendant-1 fraudulently executed power of attorney on August 04, 2000 one day after the target date in favour of Sardul Singh who sold the property in favour of defendants 2 to 8 to cause undue harm to the rights of the plaintiffs. This finding adverse to the defendant-1 has been recorded by both courts and it would not lie within section 100 of the CPC to take a different view on the question of knowledge attributed to the vendees after the courts have appreciated both the oral and documentary evidence on the file. No legal issue is involved in the appeal, much less a substantial question of law.

For the foregoing reasons, the appeal is dismissed.

**(RAJIV NARAIN RAINA)
JUDGE**

27.05.2015
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