

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1627 of 2011(O&M)
Date of decision :February 26th, 2015

Karnail Singh and others

..... Appellants

Versus

Chaman Singh Bhatoa and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Chetan Salathia, Advocate
for the appellants.

Mr. Sanjay Majithia, Senior Advocate with
Mr. Rajesh Kumar, Advocate
for respondent No.1.

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?

Amit Rawal, J.

This Regular Second Appeal at the instance of the appellants-defendants Nos. 1 to 8 is directed against the judgments and decrees of the trial court whereby the suit for possession by way of specific performance of agreement to sell dated 31.1.1992 in respect of land measuring 79 Kanals 2 Marlas has been decreed and sale deed dated 1.4.98 bearing document No.13 and second sale deed dated 2.4.98 bearing document No.16 in favour of defendant No.8 have been held to be illegal and wrong and defendant Nos.1 to 7 being the legal representatives of deceased Rattan Singh-vendor have been directed to execute sale deed in favour of the plaintiff and

plaintiff has been directed to incur the charges of sale deed as he has already made payment of entire sale consideration. Defendant No.8-subsequent vendee has also been directed to join hands with defendant Nos. 1 to 8 for executing the sale in favour of plaintiff within a period of three months from the date of order failing which the plaintiffs have been given liberty to execute the sale deed through the process of the court. The appeal filed by the appellants against the aforementioned judgment and decree has also been dismissed. Therefore the present Regular Second Appeal has been filed on various grounds.

Mr. Arun Jain, learned Senior counsel appearing on behalf of the appellants-defendants submitted that the courts below have committed illegality and perversity in recording the finding that no suggestion had been put to PW-1 and PW-4 i.e. one of the scribe and other of attesting witness of the agreement to sell that Rattan Singh had never thumb marked any document or he used to append his signatures only.

In support of his arguments he has referred to cross examination of the aforementioned witnesses by urging that the said witnesses were put the suggestion as to whether the agreement to sell was forged and fabricated.

i) He further submitted that the agreement to sell dated 31.1.1992 pertaining to land measuring 79 Kanals 2 Marlas did not bear the signatures of witnesses on all the pages.

ii) He further submitted that prior to the execution of the agreement to sell dated 31.1.1992 there was an entry dated

31.7.1991 in respect of land measuring 47 Kanals 11 Marlas. In both the agreements to sell two witnesses Bhajna Ram Dadra and Gurbachan Singh have appended their signatures but they have not been examined. Even on some pages there are no signatures of the vendee except thumb impression of the vendor. Even on the endorsement wherein alleged payment of money from time to time have been made by Surinder but none of the witnesses has come on record and even on the last page in the agreement to sell only one witness has appended his signatures.

iii) He further submitted that at page 92 the lower appellate court in the concluding paragraph 21 has erroneously observed that it was the duty of the defendant to examine Bhajna Ram Dadra, Gurbachan Singh the witnesses of the agreement to sell. He further submitted that the onus was on the plaintiff to prove and not on the appellant-defendant.

iv) He further submitted that in view of the fact that the appellant-defendant denied execution of the agreement to sell, much less receipt and has stated that the agreement to sell was forged and fabricated and defendant No.8-appellant is a bona fide purchaser for a valuable consideration said to have been purchased the suit property vide sale deed dated 1.4.1998 and 2.4.1998 Ex. P-53 and P-54. He further submitted that lower appellate court has committed illegality and perversity in dismissing the application filed under Order 41 Rule 27 wherein the appellants-defendants had sought the indulgence of the court to summon the record from the cooperative bank to show and prove the signatures of Rattan Singh,

vendor been appending his signatures and not thumb impression as the said evidence would have helped the lower appellate court in adjudicating the matter in a most fair and reasonable manner.

Mr. Sanjya Majithia, learned Senior counsel appearing on behalf of the respondent submitted that since the appellant-defendant had averred in the plaint that the agreement to sell was an outcome of fraud and forgery but they failed to prove the said ingredients by leading a direct and cogent evidence. In essence he submitted that provisions of Order 6 Rule 4 CPC have not been proved. He further submitted that Rattan Singh was allotted a land under the Punjab Package Deal Property Act and all the installments were paid by the respondent-plaintiff and when the installments were paid, Rattan Singh had been acknowledging, aforementioned receipts, on the agreement to sell.

He further submitted that there is no illegality and perversity in the findings rendered by both the courts below. No substantial question of law arise.

As per Section 68 of the Indian Evidence Act, one of the attesting witnesses is required to be examined to prove execution of the document which has been examined i.e. PW-4-R. D. Badhan, Advocate and and PW-1-Rajinder Nath have been examined in this regard.

No hand writing expert had been examined by the defendant to show that Rattan Singh had not appended his thumb impression on the agreement to sell nor any evidence has been led to contradict the factum that Rattan Singh used to append his

signatures and not thumb impression. No such documents have been placed on record in order to enable the lower courts to form an opinion as to whether the additional evidence sought to lead at an appellate stage was essential and necessary for the adjudication of the *lis* between the parties.

Mr. Arun Jain, learned counsel appearing on behalf of the appellants-defendants in rebuttal submitted that the suit had been filed in the year 1998 i.e. on 16.7.1998 whereas Rattan Singh died in the year 1994. Therefore the respondents-plaintiffs were not ready and willing to perform their part of the agreement and urged this court that following substantial questions of law arise for adjudication by this Court:-

i) Whether in the facts and circumstances of the instant case the alleged agreements/ attorney which have not been proved in accordance with law, could be made the basis by the learned courts below in decreeing the suit for specific performance filed by the plaintiff/ respondent?

ii). Whether the plaintiff/ respondent has failed to lead cogent affirmative evidence to prove his alleged documents, the suit for specific performance filed by the plaintiff respondent could be decreed?

lii). Whether in the facts and circumstances of the instant case, the sale in favour of Rattan Singh being a restricted sale and there was a specific

bar against sale for 20 years, the alleged agreement to sell could be held enforceable?

iv) Whether in the facts and circumstances of the instant case the inaction and silence on the part of the plaintiff/ respondent at all material times, is not sufficient to dismiss the suit for specific performance?

v) Whether the suit for specific performance filed by the plaintiff/ respondent could be decreed in view of the overwhelming evidence on record to show that the alleged documents were manipulated documents?

vi) Whether in the facts and circumstances of the instant case the appellant, Dr. Shashi Bala, being a bona fide purchaser for valuable consideration without notice/ knowledge of the alleged agreement, is entitled to the protection u/s 41 of the Transfer of Property Act?

I have heard learned counsel for the parties, appraised the impugned judgments and decrees and as well as examined the record with their able assistance and am of the view that the appeal is liable to be dismissed for the following reasons.

The respondent-plaintiff in order to prove execution of the agreement to sell dated 3.7.1989 Ex. P-1 for land measuring 47 Kanals 11 Marlas and examined Avtar Singh-PW-1 who deposed that the said agreement was scribed by him at the instance of Rattan

Singh in favour of respondent-plaintiff and he entered the agreement in his register at S.No.291 dated 3.7.1989. An amount of ₹10,000/- was paid as earnest money in his presence. The entry bearing No.291 has been proved vide Ex.P-2. Rajinder Singh-PW-2 proved the receipt of ₹50,000/- acknowledged by Rattan Singh. He further submitted that ₹10,000/- was paid by respondent-plaintiff and the same was entered in his register at S.No.47 Ex.P-18. The trial court has given a reference of endorsement and thumb impression put by Rattan Singh on various documents/endorsement. For the sake of brevity para 12 wherein the trial court has given reference to all the aforementioned evidence. For the sake of brevity para 12 is extracted hereinbelow:-

In order to prove the execution of the agreement to sell plaintiff examined Avtar Singh PW1 deed writer who deposed that agreement dated 03.07.1989 was scribed by him at the instance of Rattan Singh in favour of Chaman Singh Bhatoa. He entered into agreement in his register at Sr.No.291 dated 03.07.1989. The agreement was regarding the sale of land measuring 47 kanals 11 mls and an amount of Rs.10000/- was paid as earnest money to Rattan Singh in his presence. He proved the agreement to sell Ex.P1 and entry of his register Ex.P2. Rajinder Nath deed writer PW2 has stated that endorsement Ex.P17 was scribed by him at the instance of Rattan Singh in favour of plaintiff, Ram Ji Dass Badhan was the attesting witness of this endorsement. In his presence Rs.10,000/- was paid by Chaman Singh to Rattan Singh. He entered the same in his register at Sr.No.471 and

the same is Ex.P18. He further proved the endorsement dated 07.11.1989 which has been scribed by him at the instance of Rattan Singh in favour of plaintiff. Rattan Singh received Rs.2300/- in his presence and the endorsement is Ex.P19, Ram Ji Dass, Advocate was the attesting witness of the same and proved the entry of his register Ex.P20. Sh. R.D. Badhan, Advocate PW4 deposed that he is attesting witness of the agreement to sell. The bargain was struck for Rs.92,000/- regarding the land measuring 47 kanals 11 mls and Rs.10,000/- were paid as an earnest money. Rattan Singh put his thumb impression after receiving the amount of Rs.10,000/-. He further proved the endorsement Ex.P3. Rattan Singh received Rs.2200/- from plaintiff in his presence and he is attesting witness of that endorsement Ex.P19. Rattan Singh further received Rs.2300/- from the plaintiff at the time of putting his thumb impressions. Manmohan Singh PW7 deposed that the endorsement dated 21.06.1991 on the back side of the agreement Es.P1 was scribed by him. The same was read over and explained to the parties. Rattan Singh received Rs.2500/- from Chaman Singh at the time of this endorsement the same is Ex.P23. He proved the entry of his register Ex.P24. Harbhajan Dass PW11 has deposed that he has seen the original agreement dated 27.05.1991 which is Ex.P7 on the record. The contents of Es.P7 were read over and explained to the vendor Rattan Singh and vendee Chaman Singh. Rs.7500/- were paid by Chaman Singh to Rattan Singh in his presence. The cutting in the agreement was got attested at the end of

agreement by inserting the word that the same be read. Chaman Singh Bhatia plaintiff when appeared into the witness box as PW17 has deposed that Rattan Singh was the owner of 79 kanals 2 marlas of land in village Kantian. The said property was earlier package deal property. Rattan Singh purchased the same in restricted auction from the Central Govt. under the property deal Act. Rattan Singh was not competent to alienate the land for a period of 20 years of non scheduled caste from the date of purchase. He could only alienate the suit land to a person belonging to scheduled caste community. Rattan Singh executed an agreement to sell dated 03.07.1989 in his favour. This agreement was for land measuring 47 kanals 11 mls with a sale consideration of Rs.92,000/-. It was also agreed that Rattan Singh will sell the Safeda and Khair trees in the suit property at the time of execution of the agreement to sell Ex.P1. He paid Rs.10,000/- to Rattan Singh on account of earnest money. The due date for execution of agreement to sell was fixed as 31.07.1990. Said Rattan Singh also agreed to execute the exchange of 4 killas of land the exchange deed was also executed on the same date in the shape of agreement. Ram Ji Dass Badhan and Bhajana Ram Dadra Advocate were the attesting witnesses of the agreement to sell. Agreement Ex.P9 was also executed by Rattan Singh. This agreement of exchange was required because the land was to be exchanged was near the village and land of Rattan Singh was away from the village. He was to make payment @ Rs.2300/- to Rattan Singh at the time of execution of endorsement Ex.P19. Again on

04.04.1990 he paid Rs.2200/- to Rattan Singh and endorsement Ex.P3 was scribed by Avtar Singh which bears his signatures. He paid Rs.5000/- to Rattan Singh through Ex.P5 and the same was scribed by Avtar Singh Kapoor deed writer. Up till 30.07.1990 Rattan Singh received Rs.19,500/- from him and the date was extended up till 31.07.1990. It was decided that he will purchase the entire land measuring 10 acres as per terms and conditions of the agreement dated 3.7.89. He has seen the agreement Ex.P7 dated 27.05.1991. On 27.05.1991 Rattan Singh received Rs.7500/- from him and after acknowledge the received(?) of Rs.19,500/- received earlier. Rattan Singh admitted the receipt of Rs.27,000/- in total. The corresponding entry of this agreement was duly made by the deed writer in his register which is Ex.P8 on the record. He was to pay the balance sale consideration up to 18.06.1991 and date was extended up to 31.12.1991. On 17.06.1991 he paid Rs.10,000/- through receipt Ex.P18 and Rattan Singh acknowledged the receipt of Rs.37,000/-. He again paid Rs.2500/- on 21.06.1991 through receipt Ex.P23. He also paid Rs.1000/- on 16.08.1991 through receipt Ex.P45 and again paid Rs.2000/- on 16.09.1991 through receipt Ex.P46. In this way Rattan Singh received total amount of Rs.42,500/- from him. On 31.01.1992 Rattan Singh executed another agreement to sell in pursuance of the agreement to sell dated 03.07.1991. he paid already Rs.42,500/- to Rattan Singh and thus Rattan Singh received Rs.1,09,000/- from him. It was agreed that he will make the payment of Rs.15,000/- on account of land leveling to Soil

Conservation Department. He is not liable to pay anything more.

From the evidence discussed by the trial court it leaves no manner of doubt that Rattan Singh had appended his thumb impression on all the endorsements and he executed the agreement to sell in dispute pursuance to the previous agreement to sell on 31.1.1992 and in total Rattan Singh has received a sum of ₹1,90,000/-.

The defendants made a faint attempt to dislodge the evidence lead by respondent-plaintiff by stating that Rattan Singh could not alienate the land within a period of 20 years there was a ban not to mortgage or execute any agreement to sell of the land and after the death of Rattan Singh the property was mutated in the name of Karnail Singh s/o Rattan Singh, widow and daughter who had sold it to defendant No.8 after taking the sale consideration. However it has come on record that respondent-plaintiff also belong to the same very community i.e.Scheduled caste to which Rattan Singh belonged. There was no entry regarding the sale of land between persons not belonging to the same community. No evidence has been lead either of an expert or on any other point to dissuade the courts to render a finding in favour of the appellants-defendants. Had Rattan Singh not appended the thumb impression and as alleged, used to append signatures the appellant should have asked a specific question in this regard to PW-1 and PW-4 i.e. scribe and one of the attesting witnesses to the agreement to sell to suggest that the document was forged and fabricated as it would

envisage the suggestion of appending of thumb impression. Even appellants-defendants failed to lead evidence by summoning the record which they sought to prove at an appellate stage by moving application under Order 41 Rule 27 CPC to prove that Rattan Singh used to append his signatures not thumb impression.

The plaintiffs on the other hand proved Ex.P-1 to Ex.P-18 the endorsement on the agreement to sell which have been scribed by regular deed writer and all the endorsements are thumb marked by Rattan Singh. Rattan Singh had executed a irrevocable General Power of Attorney in favour of the brother of plaintiff namely Kashmira-Singh and had there been any fraud committed on Rattan Singh he would not have executed the Power of Attorney and would have made complaint to police. The appellants-defendants have failed to prove the ingredients of Order 6 Rule 4 i.e. no evidence in support of the averments that the agreement, aforementioned, were result of fraud and forgery had been lead or brought on record.

The lower appellate court rightly dismissed the application for additional evidence on the ground that the court did not require such document for pronouncement of the judgment or for any substantial cause. No plea has ever been raised that Rattan Singh never thumb marked but he used to append signatures. The said plea came only for the first time. The plea that defendant No.8 to be a bona fide purchaser do not have any substance and the said plea was also negatived by lower appellate court while rendering finding in paragraph 29 of the judgment and decree. For the sake of brevity para 29 of the judgment of lower

appellate court is extracted hereinafter:-

Once deceased Rattan Singh entered into agreements to sell the suit land in favour of plaintiff and received entire sale consideration, the legal heirs of deceased Rattan Singh had no right to execute the sale deeds in favour of Dr. Shashi wife of Dr. Gurdial Singh. Plaintiff was also put in possession of the suit land. Besides agreements to sell, there are various other documents which show that it was plaintiff, who was put in possession of the suit land. Plaintiff had moved an application for construction of Khala of Mengarwal Dam for irrigation of his land including land in dispute. The Executive Engineer, Kandi Area Dam, Hoshiarpur informed plaintiff vide letter Ex.P26 that watercourse outlet RD.1350-L of Kantian Distributory was sanctioned for a length of 3500 meters but same has been constructed upto length of 3295 meters and plaintiff could do irrigation of his fields from this watercourse by making a katcha water course at his own expenses. Copy of application given by the plaintiff is Ex.P27, which is dated 09.08.1996 . It appears that plaintiff was dispossessed after execution of two sale deeds in favour of defendant No.8. Plaintiff has also purchased 5000 pieces of eucalyptus trees from the Forest Department on 15.07.1995, vide receipt Ex.P61. As per plaintiff, he had planted those plants in the land in dispute. In this case, Shri Naveen Jairth Advocate was appointed as Local Commissioner. He visited the spot on 18.06.1998 and found plaintiff with some other persons present in the land in dispute. There were three labourers working at the spot. The local Commissioner counted the trees. He found 11 khair trees, two beri trees standing there besides 40-45 eucalypts trees which were about 2-3 years old. The

report is dated 16.07.1998, which has been proved on record as Exhibit P42. Shri Naveen Jairth Advocate appeared as a witness on behalf of plaintiff as PW15. It is the case of the plaintiff that labourers were of defendant No.8 who got the trees illegally cut and removed from the suit land. Shir Naveen Jairth Advocate again visited the spot on 19.11.1998 in pursuance to order dated 14.11.1998 passed by the court. He reported that there was not even a single tree standing the suit land and instead crops has been sown. Shri Rakesh Marwaha Advocate inspected the spot as Local Commissioner on 06.11.2000 and found work of boring of tubewell going on in the land in dispute, which work was being done at the instance of Dr. Gurdial Singh. Plaintiff during this period made complaints Exhibit P57 to Exhibit P60 alleging interference in his possession over suit land by defendant No.8 and her husband.

30.Plaintiff being purchaser of the suit land vide agreements to sell Ex.P1 and Ex.P13 and having paid entire sale consideration to deceased Rattan Singh and also having been put in possession of land in dispute and due to his inimical relations with Dr. Gurdial Singh, defendant No.8 Dr. Shashi cannot be said to be bona fide purchaser of suit land. From the evidence led on file, it can be said that defendant No.8 and her husband had knowledge of the agreements in favour of the plaintiff. Dr. Gurdial Singh appeared as a witness and also furnished surety bonds on behalf of Manmohan Singh Sukhiji in a suit, which was filed by the plaintiff. He was proceeded under Section 107/151 Cr.P.C. Plaintiff made so many complaints against Dr. Gurdial Singh to the Sr. Supdt. Of Police. All these circumstances go to prove that the defendant No.8

deliberately got executed the sale deeds in order to cause wrongful loss to the plaintiff and to deprive him of his rights in the suit property. Plaintiff was put in possession of the suit land he planted safeda trees. Plaintiff had been prosecuting the suit claiming his possession and got appointed local Commissioner from time to time. The reports of the local Commissioner go to show that defendants dispossessed the plaintiff during pendency of the suit land also cut various trees standing in the suit land forcibly, against the order passed by the court directing the parties to maintain status quo. Plaintiff had also paid leveling charges to Soil Conservation Department and also paid 'taqavi loan' vode receipts Ex.P31 to Ex.P36 and had applied for barabandi and construction of a Khala leading to his land.

Avtar Singh had deposed that Rattan Singh was known to him for 10 years and this fact has also been proved through the testimony of plaintiff who stated that Ex.P-13 and Power of Attorney Ex.P-16 were scribed at the instance of Rattan Singh were read over to him and on understanding he admitted contents of both the documents and thereafter thumb marked the same.

In view of the cumulative reading of the aforementioned observations, it is concluded that the appellant-defendants have miserably failed to prove the ingredients of fraud by leading any direct and cogent evidence, whereas, on the contrary the respondents-plaintiffs have discharged the burden by examining the witnesses and thus the onus was shifted, on the defendants, who failed to rebut the same.

As per Section 68 of the Indian Evidence Act one of

the attesting witness is sufficient to prove the agreement. In the instant case PW-4 one of the attesting witnesses had proved the execution of the agreement to sell Ex.P-1 and Ex.P-13.

Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 26th , 2015
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