

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

**R.S.A.No.2923 of 2011 (O&M)**

**Date of Decision: September 11<sup>th</sup>, 2015**

**Nirmal Singh & another**

**...Appellants**

**Versus**

**Sarup Singh & others**

**...Respondents**

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

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?

**Present:** Mr.M.L.Sarin, Senior Advocate with  
Ms.Alka Sarin, Advocate,  
for the appellants.

Mr.Arun Jain, Senior Advocate with  
Mr.Arjun Veer Sharma, Advocate,  
for the respondents.

**\*\*\*\*\***

**AMIT RAWAL, J.**

The appellant-defendants are in Regular Second Appeal against the judgment and decree dated 17.2.2011, whereby the Lower Appellate Court set-aside the judgment and decree dated 6.5.1996 passed by the Civil Judge (Senior Division), Patiala, wherein the relief vis-à-vis specific performance of the agreement to sell dated 13.12.1990 was rejected and refund of earnest money was ordered. In essence, the Lower Appellate Court exercised the discretion under Section 20 of the Specific Relief Act, 1963 and granted the decree for specific performance of agreement to sell by calling upon the appellant-defendants to execute and register the sale

deed on receipt of the balance sale consideration.

Mr.M.L.Sarin, learned Senior Advocate assisted by Ms.Alka Sarin, Advocate appearing on behalf of the appellant-defendants submitted that the agreement to sell dated 13.12.1990 (Ex.PW4/1) was surrounded by suspicious circumstances as it was a forged and fabricated document for the reason that on bare perusal of the same, it clearly reveals that there is a spacing between the body writing and typed lines. In essence, the spacing was not in uniform. In support of the aforementioned submission, he has relied upon the report (Ex.PW6/A) submitted by Dewan K.S.Puri Handwriting Expert, who, in his report stated that in the last line, the spacing was minimum and that could only be due to restriction of space which compelled the typist to reduce the same. However, the Lower Appellate Court, without noticing the aforementioned fact, decreed the suit for specific performance. In essence, the Lower Appellate Court has not taken into consideration the complete report given by Dewan K.S.Puri.

He further submitted that the agreement to sell, aforementioned, was not typed by the registered Deed Writer. The ink had blotted in case of signatures of both the witnesses, i.e., Mohinder Singh and Sukhdev Singh. The spacing between the lines of the main body of Ex.PW4/1 was not equal. The area mentioned in the agreement to sell is half share of 115 Bighas 10 Biswas, whereas the suit is for half share of 114 Bighas 10 Biswas. The aforementioned discrepancies heavily weighed in the mind of the Lower Court and the Lower Court found that the agreement to sell was surrounded by suspicious circumstances, but ordered for refund of the earnest money instead of granting decree for specific performance. He further submitted

that the Lower Appellate Court has failed to take into consideration jamabandi for the year 1985-86 (Ex.PW4/2), which has not been proved in accordance with law, as the same is forged and fabricated as it is stated to have been issued on 12.12.1990. The respondent-plaintiffs have miserably failed to prove the readiness and willingness as they claimed to have gone to the office of the Sub Registrar on 18.6.1991, though the last date for execution of the sale deed was 15.6.1991. The plaintiffs filed a suit for permanent injunction in December, 1990, but thereafter with the leave of the Court, sought the amendment of the plaint by incorporating the relief of specific performance. He further submitted that though as per the agreement to sell, the appellant-defendants are alleged to have received a sum of ₹50,000/- in respect of the land, aforementioned, which is agreed to be sold at the rate of ₹83,000/- per killa and killa has been described as 6 Bighas and 5 Biswas, which, as per the provisions of the Punjab Land Revenue Act is not the correct description, whereas the killa in the village is equal to 4 Bighas 15 Biswas.

As regards the signatures on the agreement to sell, it is a categorical stand of the defendants that they wanted to get an electricity connection for the tubewell in their land and for this purpose deputed Ajaib Singh son of Hari Singh to contact the Punjab State Electricity Board authorities to submit an application in this regard and since the PSEB department wanted a duly signed stamp paper, the defendants signed the blank stamp papers and handed over the same to Ajaib Singh, who had put the aforementioned stamp papers in the bag, but subsequently lost the bag along with the duly signed stamp papers and somehow the stamp papers

reached the hands of the plaintiffs, which have been converted into agreement to sell. He further submitted that the appeal involves the following substantial questions of law:-

- 1) Whether the Lower Appellate Court could have interfered with the discretion exercised by the Trial Court in not granting Specific Performance without coming to the conclusion that the findings of the Trial Court were perverse?
- 2) Whether on the basis of probabilities the Lower Appellate Court could have granted the discretionary relief of specific performance?
- 3) Whether the judgment and decree passed by the Lower Appellate Court is perverse and hence liable to be set-aside.”

In support of his submissions, Mr.Sarin has cited the judgment rendered in **Sarju Pershad Ramdeo Sahu Versus Jwaleshwari Pratap Narain Singh and others**, AIR 1951 SC 120 to contend that the Lower Appellate Court, though being the last Court of law and fact, ought to have kept in mind, that it did not have the advantage which the trial Judge, had in having the witnesses before him and of observing the manner in which they deposed in the Court. The rule is that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped from the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, then the Lower Appellate Court should interfere with the findings otherwise it should not and then on the

same line, cited another judgment rendered by this Court in **Parkash Devi Versus Vidya Sagar, 1961 PLR 904**. Vis-à-vis the grant of discretion by the Lower Appellate Court, Mr.Sarin has referred the judgment of the Hon'ble Supreme Court rendered in **A.C.Arulappan Versus Smt.Ahalya Naik, JT 2001 (6) SC 394** to substantiate that the discretion has to be exercised in a rarest of rare case, much less, with circumspection.

He has further argued that since the agreement to sell was executed in 1990 and now the same has been sought to be performed in 2015, therefore, in case discretion has to be exercised, then as per the dictum laid down by the Hon'ble Supreme Court in **Rattan Lal (since deceased) through his legal representatives Versus S.N.Bhalla and others, (2012) 8 Supreme Court Cases 659**, the purchaser should be called upon to pay the market price.

Mr.Arun Jain, learned Senior Advocate assisted by Mr.Arjun Veer Sharma, Advocate appearing on behalf of the respondent-plaintiffs submitted that even the Handwriting Expert N.K.Jain examined by the appellant-defendants as DW-3, in cross-examination, admitted that the interlining spacing depends upon the typewriter and on the habits of the typist and after examining the specimen typing of the agreement to sell, he did not examine any other specimen typing or type written material of this typist and to a specific question in cross-examination, he further stated that he had not taken the **micro photographs** of the portion of signatures Q1/A, therefore, on juxtaposition of both the reports, with the one given by Dewan K.S.Puri and of N.K.Jain. Dewan K.S.Puri in his penultimate paragraphs of his report opined that if the ink strokes are over the typed material, then the

document was typed first and then signed and initialed. He further submitted that the argument of the appellants that the blank stamp papers have been converted into agreement to sell, thus, falls flat on their face. He has drawn the attention of this Court to the agreement to sell to submit that had the blank signed stamp papers been used to convert the same into agreement to sell, then the signatures would not have been on the end of the stamp paper, but would have been much above the end of the page and the typing would have been over the signatures.

He further submitted that as per jamabandi (Ex.PH) for the year 1990-91, the total area of the land has been mentioned as 114 Bighas 10 Biswas in column No.12 and one killa has been described as 6 Bighas 5 Biswas and prior to filing of the suit, a legal notice dated 21.6.1991 (Ex.PW8/1) was also sent to the appellant-defendants and they, in their cross-examination, admitted the address to be correct, but they did not opt to reply the same and the story of losing of the blank stamp papers, has been coined for the first time, in the written statement, which is an afterthought. The register (Ex.PW2/2) of the Stamp Vendor has been proved on record, which also bears the signatures of the vendor and, thus, it cannot be believed that the stamp papers were not used for the purpose of taking electricity connection. Even no witness from the Electricity Department has been examined in this regard, much less, any application accompanied by an affidavit purported to have been filed for obtaining electricity connection has been proved or brought on record.

He further submitted that the Lower Appellate Court has exercised the discretion under Section 20 of the Specific Relief Act and

submitted that there is no illegality and perversity in the impugned judgment and decree, much less, no substantial question of law arises for determination by this Court.

Mr.Sarin, in rebuttal, submitted that jamabandi (Ex.PH) has been obtained in the year 1995. The same has not been proved in accordance with law, inasmuch that the suit has been filed on 5.1.1991 and the document has been, thus, procured much later and not even pleaded. Had it been so, the defendants would have a right to rebut the same in their written statement and moreover the same has been produced in rebuttal evidence, whereas they have closed the evidence in affirmative much earlier and the execution of the document was seriously objected to, but the same has not been removed and, therefore, the document cannot be looked into for the adjudication of the lis between the parties.

I have heard the learned counsel for the parties and appraised the paper book.

The trial Court, after noticing the agreement to sell, found that the agreement to sell was suffering from some suspicious circumstances, granted relief of earnest money, but also rendered a finding on issue No.2 with regard to the readiness and willingness in favour of the respondent-plaintiffs and the said findings have not been assailed by the appellant-defendants either by filing appeal or cross-objections. Nirmal Singh in examination-in-chief had admitted that one killa of land is comprised of 4 Bighas, but in cross-examination he stated that one killa is equal to 6 Bighas 5 Biswas and this fact has also been admitted by Ajaib Singh.

On perusal of the agreement to sell, it is found that there is no

discrepancy regarding the khasra numbers mentioned in the agreement to sell, but in my view, there is a clerical error regarding the total area of khasra numbers and as such it cannot be a substantial ground to disbelieve the authenticity and genuineness of the agreement to sell. Even otherwise, as per Ex.PA to Ex.PG, it has been proved on record that the sale deed executed in the same village at the same rate has been mentioned in the agreement to sell. The story of losing of the stamp papers kept in a bag by Ajaib Singh is not believable and in my view, lacks bonafides for the reason that no witness from the electricity department has been examined to show that actually the defendants had intended to apply for the electricity connection. Neither any application in this regard alleged to have been submitted or prepared has seen the light of the day. The agreement to sell has been proved through the testimony of PW-5 Sukhdev Singh, marginal witness and even of the Stamp Vendor PW-3 Ajit Singh. Ajit Singh has also been examined to prove the register Ex.PW2/2. Vis-à-vis the availability of the balance sale consideration, the plaintiffs have examined PW-2 B.K.Goel, Branch Manager, Oriental Bank of Commerce, Patiala, PW-3 Ashok Kumar, Manager, State Bank of Patiala and PW-7 S.N.Batra, Officer, Punjab National Bank. The appellant-defendants have not been able to cause any dent in the statement of Sarup Singh and as well as Stamp Vendor, who have deposed on the lines to the one stated in the examination-in-chief/affidavit.

The trial Court, while arriving at a finding that the agreement to sell was surrounded by suspicious circumstances, was completely oblivious of the report of the expert, much less, even did not ponder upon the defence

taken in the written statement with regard to the losing of the signed stamp papers. Sukhdev Singh unequivocally stated that he had accompanied the defendants to the seat of Ajit Singh Stamp Vendor at that time. The aforementioned statement has gone un-rebutted in the cross-examination, which leaves no manner of doubt, that the stamp papers were actually prepared for execution of the agreement to sell and not for the purpose of taking electricity connection. Even no DDR has been lodged with regard to the loss of the bag containing the blank stamp papers. The Lower Appellate Court, in my view, being the last Court of law and fact, has rightly re-appreciated the evidence, for the reason, that the trial Court did not advert to the report of Dewan K.S.Puri in its correct perspective. In essence, it has lost the sight of the report, while rendering a finding that the agreement to sell was suffering from suspicious circumstances. The relevant portion of the judgment rendered by the Lower Appellate Court reads thus:-

*“23. PW6 Dewan K.S.Puri has been examined as document expert by the plaintiff. He has enlarged the photographs and also given his opinion on the similar lines. The relevant portion of his report Ex.PW6/A is as under:-*

*“We have examined the crossing of the signatures and the initial allegedly by SS Cheema on the typed material to find out if the strokes of the signatures or initial are over the typed material or beneath.*

*If the inked strokes are over the typed material, then it is ample proof that the document was typed first and then signed and initialed and if these portions are beneath*

*the typed material then the signatures were already there when typed.*

*We have carefully examined the sequence and the links of the signatures and the initials to find out the correct position. Magnified photographs have also been prepared for impartial examination and demonstration to show the sequence of the links strokes and the type written material.*

*We have noted that the linked strokes are over the typed material and thus it shows that the document was typed first and then signed. And that the lack of the spacing is due restricted space for typing the names of the parties and witnesses show less space in typed lines for the reason submitted above. The signature is crossing the letter 'Sassa' for 'Sardar' and the letter just below 'Sassa'.*

*At the crossing points, it is clear that the strokes of 'Cheema' of the signatures at Q1/A is over the typed letters and, therefore, it is reasonable to believe that the document was signed after it was typed. Otherwise, if the document was signed first and then typed, the typed material would have been over the signature and not beneath it."*

24. *The photographs Ex.PW6/D1 to Ex.PW6/D6 also show that the disputed signature is written on the type material text.*

25. *There is no explanation to the said observation and by no stretch of imagination, it can be concluded that the document was later on prepared/typed and it was signed when blank. As such, the plea of the respondents is highly improbable.”*

Keeping in view the aforementioned observations, I do not find any illegality and perversity in the judgment and decree rendered by the Lower Appellate Court. Thus, the substantial questions of law, noticed above, are answered against the appellant-defendants and in favour of the respondent-plaintiffs.

The appeal is accordingly dismissed.

**September 11<sup>th</sup>, 2015**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**