

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3622 of 2011 (O&M)
Date of Decision: 19.05.2015

Harbans Kaur and others

... Appellants

Versus

Joginder Singh and another

... Respondents

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

Present: Mr. G.S. Sidhu, Advocate,
for the appellants.

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

RAJIV NARAIN RAINA, J.

1. This is a second appeal arising from Civil Suit No.72 of 1998. The plaintiff/appellant was the prospective buyer of 3/40 share of land measuring 203 Kanals 5 Marlas situated in the revenue estate of village Gaggowal as per Jamabandi for the year 1988-89 bearing khasra numbers described in the plaint. The plaintiff agreed to buy the suit corpus @Rs.70,000/- per acre and earnest money of Rs.1.30 lacs was allegedly paid in advance at the time of execution of the agreement to sell as part payment of earnest money. The plaintiff entered into a sale agreement with the defendant-Jeeto a resident of village Jakhepal (Patti Dhaliwal), Tehsil Sunam District Sangrur. She died pending litigation and is represented by her sons, LRs Joginder Singh and Balwinder Singh. As per the Jamabandi with reference to the sale agreement, Jeeto was the owner of 3/20 share in her name as per the mutation entered in her name. It appears that the share

of Jeeto was litigated which resulted in cancellation of the mutation which led to her being declared as owner of reduced 3/80 share.

2. The target date fixed in the agreement to sell dated June 01, 1995 was after a year i.e. on June 01, 1996. It turned out that June 01, 1996 was a Saturday, a day when the registration office is closed. The next working day was Monday, June 03, 1996. It was the plaintiff's case that he went to the office of the Sub Registrar on June 03, 1996 with the balance sale consideration together with the expenses for registration of sale deed but the defendant did not turn up. The plaintiff sent a legal notice to the defendant on June 10, 1996 through his counsel calling upon her to execute sale deed within 15 days. Despite notice, defendant remained in default and failed to execute the sale deed. The plaintiff, despondent, instituted a suit on April 16, 1998 praying for possession by way of specific performance of the suit sale agreement claiming right by contract over 3/80 share of the defaulting seller, a figure contrary to the one in the sale agreement.

3. On notice issued in the suit, Jeeto appeared and contested the case by filing her written statement. She alleged that she had a brother namely, Harchand Singh, whose whereabouts were not known for very long as he remained without contact with the family. Defendant being the only legal heir of Harchand Singh was entitled to his share of property and mutation of land in the share of Harchand Singh to be recorded in her favour.

4. It is her pleaded case that in order to secure a mutation in her favour, she became dependent on the plaintiff to help her in sanctioning of mutation of inheritance of the estate left behind by Harchand Singh in revenue offices. The plaintiff used to visit the revenue department for

following up her case for mutation. It was her say in the written statement that she was not against mutation being sanctioned to the extent of half share of Harchand Singh in favour of the plaintiff and his wife, but on July 20, 1995 the Assistant Collector Grade II, Mansa sanctioned the mutation in favour of Harchand Singh pretending to be the illiterate Jeeto by obtaining her signatures on blank papers and subsequently converting those papers into the present suit agreement of sale. When Jeeto's LR Joginder Singh, who was her son, appeared as DW-1 he supported the version of his late mother in the witness box to deny the claim of the plaintiff for possession by way of specific performance of contract.

5. The suit was contested. The parties went to trial. Parties led their evidence, both oral and documentary on the following issues:-

- "1) Whether the plaintiff is entitled relief of Specific performance of agreement dated 1.6.95? OPP*
- 2) If issue no.1 is not proved, whether the plaintiff is entitled to Rs.1,30,000/- as alternative relief on the basis of aforesaid agreement? OPP*
- 3) Whether plaintiff is ready to perform the agreement and was always ready and willing to perform the agreement as alleged? OPP*
- 4) Whether agreement dated 01.06.95 is forged and fabricated as alleged in para 4 of the written statement? OPD*
- 5) Whether the plaintiff is estopped to file the present suit by his act and conduct? OPD*
- 6) Whether the suit is barred u/o 2 rule 2 CPC? OPD*
- 7) Whether the suit is barred u/o 23 rule 1 CPC? OPD*
- 8) Whether the suit is barred on the ground of Res-judicata? OPD*
- 9) Whether suit of the plaintiff is not maintainable in the present form? OPD*
- 10) Relief."*

6. Neither of the courts below have pointedly delved into the

relationship between the parties to the *lis* and it is only on a reading of the both the judgments that one can sketch from here and there that Jeeto had two brothers Nand Singh and Harchand Singh. Harchand Singh went missing leaving behind his estate without progeny. The record does not tell us whether Harchand Singh was married but it seems that he left home long ago never to return home again.

7. Plaintiff Gurtej Singh and his wife Harbans Kaur are the legal heirs of Nand Singh and, therefore, Jeeto's nephew and his wife Harbans Kaur are closely related to each other. If parties are related to each other it is expected that this vital fact should have been highlighted in the very beginning of the judgments of the courts below but they have been rather disinterested in this fact. It was for this reason that Jeeto admitted to sharing half share in Harchand Singh's derelict property, the other half going to the plaintiff and his wife. There was, therefore, very good reason for Gurtej Singh in accompanying Jeeto to Tehsil office as they both had interest in the estate of Harchand Singh. If Gurtej Singh abused his authority and took advantage of Jeeto's dependence on him and trust reposed to advise and help her in her worldly affairs then the picture emerges in favour of Jeeto that she was wronged by Gurtej Singh. In the absence of cogent evidence produced on file by the plaintiff it cannot be that she surrendered her rights in the land in dispute in favour of her nephew, Gurtej Singh.

8. This court is somewhat surprised that the learned trial court has mulled over the relationship and left things rather vague and sketchy as to the existence of an earlier civil suit between Gurtej Singh and Jeeto which had material bearing on the present case. It turns out that Gurtej Singh had

filed Civil Suit No.330 dated November 18, 1995, that is after the alleged agreement to sell is dated, against Jeeto where he claimed title to the corpus of the present suit on the basis of a partition allegedly effected between the parties out of the property owned by Jeeto which had become subject matter of the alleged sale agreement in this case. If he had already entered into an agreement to sell with Jeeto where was the need to file a suit five months thereafter for specific relief of the sale agreement? To say the least, something was awfully amiss in Gurtej Singh's conduct towards his aunt.

9. The exact fate of the civil suit is not known from the reading of both the judgments but it appears certain from the statement of Gurtej Singh in the present case that the earlier suit was filed, according to Gurtej Singh only to save stamp duty required to be affixed on the sale deed. Clearly, the purpose of the suit was to evade stamp duty. Therefore, on the preponderance of probabilities it can safely be accepted that Gurtej Singh, nephew of Jeeto, was using all available ways and means to deprive her of her share in the suit property and appropriate it for himself by hook or crook. This is how the share allegedly sold by Jeeto, [who by what the plaintiff says is the defaulting party] is differently described in the agreement to sell and in the suit for specific performance – 3/40 had swung to 3/80 share and that is how a refund was claimed by plaintiff Gurtej Singh in the present suit from his aunt Jeeto as earnest money.

10. The courts below have rightly concluded that the plaintiff was not sure as to subject matter property claimed. The learned trial Judge dismissed the suit on November 13, 2009 holding that there existed no real transaction or intention between the parties to buy and sell property or that valuable

consideration had passed into the hands of the alleged seller Jeeto.

11. The court of first appeal in its judgment and decree dated May 12, 2011 affirmed the findings of the trial court. The court held that if Gurtej Singh was serious in pursuit of the property through partition then he should have followed that remedy to its logical end. If he filed the suit to evade stamp duty it militates against the sale agreement and reflects poorly on his conduct disentitling him from grant of discretionary relief under the Specific Relief Act, 1963 where decrees are not to be passed for the mere asking or only because it is lawful to do so.

12. What remains to be examined, as pressed by the learned counsel for the unsuccessful plaintiff in second appeal, is that the courts *a quo* have not considered the statement of PW-4 who plaintiff says has proved the thumb impression of the defendant on the agreement to sell and she is thus bound by contract and this aspect has not been adequately dealt with by both the courts below with respect to the evidentiary value of the deposition of PW-4 in the witness box. PW-4 was the handwriting and fingerprint expert, namely, Sh. V.B. Bhatnagar. The ground set up by the plaintiff that there has been non-consideration of the deposition of Sh. V.B. Bhatnagar is wholly incorrect and to the contrary this aspect has been specifically considered by the learned District Judge, Mansa in para.18 of the judgment. The learned District Judge, Mansa has noted that Jeeto also produced a handwriting and fingerprint expert as a counter measure, namely, Dr. Vikram Raj Singh Chauhan appearing as DW-4 and both the experts have stood by their divergent opinions regarding the thumb impression of Jeeto on the sale agreement. The Judge made no mistake when he held that in a

case of divergent views expressed by experts in their depositions and handiwork it is the court ultimately which is the final expert to take the call and examine the case independently for himself in the light of the other corroborative evidence on the file and in the totality of circumstances and pleas raised by the parties, for and against the formation of contract, to take a decision as presiding judge in the cause by forming an independent opinion on the disputed thumb impressions of Jeeto. This discretion vests with the court and when exercised judicially it becomes a point of fact not ordinarily open for change of opinion in the second appeal side. This Court will go by the view of the court below when fairly and reasonably formed on the entire evidence on record and when not a drop of perversity is found present in the determination.

13. Learned counsel seeks to apply the law laid down in the ruling of this court in **Bejinder Kumar & Ors. vs. Kulbhushan Kapoor** reported in 2008 (1) Civil Court Cases 737 holding that if the courts below have formed an impression of the case in the totality of the facts and circumstances after appreciating the evidence on record and balancing out the probabilities of the case leaning in favour of the defendant and making her case more credible and probable by returning findings that the sale agreement was a product of mischief or fraud then this court would not like to, nor can or should take a view different from the one taken by the courts below after reading the oral and documentary evidence on file and to embark top do so only to change opinion which is founded on a possible and plausible view and to arrive at a different conclusion by re-appreciating evidence, which section 100 of the Code of Civil Procedure does not permit. It is not enough

to urge in jurisdiction under section 100 CPC that there has been committed an error of fact or an error of law unless such error occasions arising of a substantial question of law. If the plaintiff was present in the office of Sub-Registrar on the next working day i.e. on June 03, 1996 and defendant failed to turn up he cannot draw any mileage from this to dub the defendant in law as a defaulting party when she disputed in court the sale agreement itself being not a genuine document.

14. For the reasons recorded above, no substantial question of law arises in this appeal which is accordingly dismissed. The concurrent findings of fact of the courts below are affirmed as not warranting interference. The appeal is dismissed summarily as being bereft of merit. The suit stands dismissed with costs up to first appellate stage since notice of this appeal has not been issued to the defendant since the last four years of its pendency which speaks volumes of the lackadaisical manner in which this appeal has been pursued since October 18, 2011 when it was returned by the registry for affixing proper court fee of Rs.8850/- ordered previously by single judge in CM No.12762-C of 2011. It was then by warning issued on November 14, 2011 that court fee was deposited and the matter came to be listed again. On January 02, 2012 a prayer for an adjournment was made before the Bench to enable counsel to address arguments. Thereafter, on two successive dates up to July 11, 2012 none appeared for the appellants and thereafter the case is replete with requests for adjournments made before different Benches repeatedly.

15. There is yet another reason why the appeal should be dismissed is by reason of sheer delay in addressing arguments despite the listings of the

case for hearing. Adjournment sought in this manner cannot be appreciated by this court and no longer is it under duty to grant adjournments on the asking. No other point was pressed at the hearing. No substantial question of law is involved in this appeal from the original appellate decree. The judgments and decrees of the courts *a quo* are upheld.

16. Appeal to stand dismissed and be accordingly consigned to the record room.

(RAJIV NARAIN RAINA)
JUDGE

19.05.2015
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