

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 1774 of 2012

Date of decision : March 09, 2015

Janak Devi

... Appellant

vs.

Jagjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Karan Garg, Advocate
for the appellant.

Mr. P.S. Hundal, Sr. Advocate with
Mr. Jashandeep Singh, Advocate
for respondents No.1 and 2.

Surinder Gupta, J

1. This regular second appeal has been filed against the judgment and decree dated 29.3.2012 passed by the appellate court whereby the judgment and decree dated 24.4.2010 passed by the Civil Judge (Sr. Division), Ambala was set aside and the suit of the plaintiff-respondents for specific performance of agreement to sell dated 27.9.2004 with regard to 61 Bigha 16 Biswas of land situated in village Saha, Tehsil and District Ambala, was decreed.

2. Plaintiffs Jagjit Singh and Gurmeet Singh (respondents No.1 and 2 herein) filed the suit seeking specific performance of agreement to sell dated 27.9.2004 alleged to have been executed by Janak Devi appellant in their favour for the sale of her 61 Bigha 16 Biswa of land for a sum of Rs.54,84,000/-. **It was alleged that she received a sum of ₹10 lacs under the agreement from the plaintiffs-respondents in the presence of her son and witnesses.** The defendant No.2-respondent No.3 the only son of appellant had also signed the agreement in presence of her mother. The sale deed was to be executed on or before 30.6.2005 and the balance sale consideration was payable before the Joint Sub Registrar, Saha at the time of execution and registration of sale deed. Defendant No.1 had taken loan

of ₹4.00 lacs from Indian Bank, Boh Branch, Ambala as security created equitable mortgage of land measuring 16 Bigha 0 Biswa in favour of the Bank and this amount along with interest was to be adjusted in the sale consideration payable at the time of registration of the sale deed.

3. Plaintiffs-respondents No.1 and 2 were always ready and willing to perform their part of contract and also served legal notice dated 25.5.2005 and 16.6.2005 requesting the appellant to execute and register sale deed in their favour on 28.6.2005 and 1.7.2005, the days fixed for attestation and registration of sale deed by the Joint Sub Registrar Saha, as 30.6.2005 was not a working day for this purpose. The appellant, however, failed to perform her part of contract and did not execute the sale deed despite the fact that respondents No.1 and 2 appeared before the Joint Sub Registrar on 28.6.2005 and 1.7.2005 along with balance sale consideration and other expenses. They moved application along with affidavit before the Joint Sub Registrar for marking their presence on these days. Thereafter a legal notice through counsel was served on appellant on 4.7.2005 and she was asked to execute the sale deed failing which suit for specific performance shall be filed against her. She was also requested orally to perform her part of contract but she threatened to alienate the land in dispute at higher price to someone else, which led to the filing of instant suit for specific performance of agreement.

4. The appellant contested the claim of plaintiffs in the written statement and denied the execution of the agreement dated 27.9.2004 alleging the same as false and fabricated document created by plaintiff/respondents in collusion with defendant No.2-respondent No.3.

It was pleaded that the appellant was an old, illiterate and rustic lady who cannot read or write Hindi or Punjabi. The land in dispute is a very fertile land situated near to the Industrial Growth Centre, Saha and is just 2 kms away from the main road having very good approach road which is 22 feet wide. The value of land had further increased due to its proximity with Engineering College established in the year 2002. There was no occasion for the appellant to sell this valuable land measuring 15.5 killa for a paltry sum of ₹54.80 lacs. She also denied the receipt of ₹10 lacs as alleged in the agreement to sell and pleaded that her son Gulshan Chauhan is spendthrift and drunkard person and plaintiffs usually visit his shop at Saha. The appellant had weak eye sight and she did not visit Ambala on 27.9.2004 to execute the agreement. She also denied the receipt of alleged legal notice dated 25.5.2005 and 16.6.2005 or any other notice thereafter.

5. In replication, the plaintiffs-respondents No.1 and 2 reiterated their case and their plea that the amount of ₹10,00,000/- was paid as an earnest money to the appellant.

6. Pleadings of the parties led to the framing of issues as follows :-

1. *Whether the defendant No.1 agreed to sell the suit property in favour of the plaintiffs vide agreement to sell dated 27.9.2004 for Rs.54,80,000/-?OPP*
2. *Whether a sum of Rs.10,00,000/- has already been paid as earnest money?OPP*
3. *Whether plaintiffs have always been ready and willing to get the sale deed executed and the defendant No.1*

failed to perform her part of the agreement?OPP

4. *Whether proper court fee has not been affixed by the plaintiffs for the purposes of valuation and jurisdiction?OPD*

5. *Whether plaintiffs have concealed true and material facts from the court, if so to what effect?OPD*

6. *Relief.*

7. Learned Civil Judge (Sr. Division), Ambala dismissed the suit. The execution of agreement dated 27.9.2004 by the appellant was held as not proved with observations as follows :-

(i) *Darshan Kumar Jindal, the Deed Writer, who allegedly drafted the agreement was not examined to prove that the agreement was scribed by him.*

(ii) *The agreement was not entered in his register by the Deed Writer and he did not put his signatures or any mark in proof of the fact that it was scribed by regular deed writer.*

(iii) *The plaintiff- respondents came up with the plea that ₹10,00,000/- were paid as earnest money. However, while appearing as PW-1 Parshotam Lal marginal witness of agreement Ex.P1 and Gurmeet Singh plaintiff PW-5 have stated that ₹10,000/- had already been paid as token money to the appellant at her residence and remaining amount of ₹9,90,000/- was transferred in the account of Gulshan Chauhan son of the appellant, but this fact was no where mentioned in*

the pleading or in the agreement. The appellant had denied the receipt of any earnest money or giving of any instructions for transfer of the amount of ₹9,90,000/- in the account of her son Gulshan Chauhan. The above evidence was found irrelevant being beyond pleadings.

- (iv) No receipt of payment of ₹10,000/- to Janak Devi at her residence was obtained. Gulshan Chauhan, in whose account amount of ₹9,90,000/- was transferred on alleged verbal instructions of Janak Devi, was not examined, as such agreement even if held as proved was without consideration. The appellant while appearing as PW-1 has stated that she had no relations with her son for the last 5-6 years.*
- (v) The land is situated at Saha which has office of Tehsildar-cum-Joint Sub Registrar and Deed Writer were also available in that office, as such, there was no logic behind execution of agreement at Ambala.*
- (vi) Both the parties examined Documents and Hand Writing Expert in support of their contention that the agreement dated 27.9.2004 bear/do not bear signatures of the appellant. In this regard, learned Civil Judge (Sr. Division), Ambala found the report of expert examined by the appellant as more reliable and reached the conclusion that the signatures of appellant on the agreement dated 27.9.2004 are the*

result of copied forgery.

(vii) The appellant had denied the receipt of notices alleged to have been sent by plaintiff-respondents No.1 and 2 from time to time. Despite denial of receipt of notices by the appellants, no evidence was produced by plaintiff-respondents No.1 and 2 to prove those notices.

8. In appeal, first appellate court set aside the findings recorded by Civil Judge (Sr. Division), Ambala with the observations as follows :-

(i) The reports of the Expert were not acceptable as usually the expert toe the line of parties engaging them. The court found signatures of appellant on written statement as similar to one on agreement. It was observed that the appellant had signed in a different manner on her affidavit and statement recorded in court. The onus shift on the defendant to show that she did not execute agreement which bear her signatures.

(ii) The plea of appellant that she was an old, rustic and illiterate lady could not be accepted as she appeared in the witness box and her cross-examination showed that she had lot of knowledge about many things which even literate person may not have, like how the land is cultivated and effect of rain on crop. She

owned a tractor and knew the price of paddy crop during the period immediately before her examination. She was also aware of boundary of her land and amount spent on cultivation of paddy crop. She had been maintaining regular account of income and expenditure from the crop.

- (iii) The plea of plaintiff respondent that the amount of earnest money was deposited in the account of her son at the instance of appellant was accepted, while discarding the plea of appellant that she was not living with her son.*
- (iv) Non-examination of Deed Writer was of no avail as the law does not require examination of the deed writer. If the defendant-appellant was feeling necessity of scribe of agreement to be examined she could have summoned the record from him.*
- (v) The plaintiff had pleaded that the amount of earnest money was deposited in the account of Gulshan Chauhan on the asking of defendant No.1 and they had no reason to think as to whether son of defendant No.1 he was honest or dishonest person.*

(The above observations of the learned appellate court are contrary to pleadings of plaintiff/respondents that amount of ₹10 lacs was paid to the appellant at the time of execution of agreement.)

(vi) *As the amount was deposited in the bank account no receipt of ₹9,90,000/- was required. The receipt of meager amount of ₹10,000/- could be denied by the vendor at any time.*

9. I have heard learned counsel for parties perused the paper book and lower court record with their assistance.

10. Learned counsel for the appellant has argued that it is a case where the fraud in execution of document writ large on perusal of agreement itself and the pleadings of parties. The specific case of plaintiff-respondents no.1 and 2 was that earnest money of ₹10 lacs was paid to Janak Devi. It was only in evidence that respondents No.1 and 2 deviated from their pleadings and stated that ₹9,90,000/- out of earnest money was deposited in the account of son of appellant and ₹10,000/- was paid to her at her residence. It was nowhere pleaded that ₹9,90,000 were deposited in account book of son of appellant on her oral or written instructions. The appellate court has made a wrong observations, against the facts on record, that plaintiff-respondents No.1 and 2 have pleaded that they have deposited ₹9,90,000/- in the account of son of appellant on her asking. The specific case of appellant is that her son is a spendthrift and a drug addict. The first appellate court made sweeping observation not based on record while setting aside the well reasoned judgment of the court below. All the facts and circumstances appearing in evidence against the appellant like non-examination of the Deed Writer, variance of evidence and pleadings regarding payment of earnest money, report of the expert examined by the appellant were ignored with the observations

that the statement of expert examined by the appellant was not reliable and law does not require that the scribe of document be examined. In the facts and circumstances as pleaded in this case, non examination of Deed Writer and depositing of the earnest money in the account of son of appellant, just to create evidence to show payment of earnest money and evidence contrary to the plea that payment of earnest money was made to the appellant, are the factors which go to the root of the case. Even the stamp paper of agreement was not purchased by the appellant and do not bear her signatures at the time of its purchase. In case she had gone to the Deed Writer for getting the agreement Ex.P1 scribed, the Deed Writer must have entered the same in his register and obtained her signatures in register as well. Absence of evidence to this effect and the non-payment of earnest money to appellant clearly shows that agreement Ex.P1 is a false, forged and fabricated document and son of appellant has connived with respondents No.1 and 2 in this deal.

11. Learned counsel for the respondents has argued that the appellate court below has looked into all the above arguments and has reached a well reasoned conclusion that execution of agreement Ex.P1 by the appellant is duly proved. The payment of ₹9,90,000/- in the account of son of the appellant does not make any difference as it was deposited at her instance. Now she has resiled for obvious reasons. The appellate court has rightly rejected the report of Expert examined by the parties with the observations that the Expert tend to give report in favour of parties engaging them. The respondents No.1 and 2 have also proved their readiness and willingness to perform their part of agreement and they were present in the office of Joint Sub Registrar on the relevant date

and notices were also served on appellant calling upon her to perform her part of agreement. The execution of agreement at Ambala is not a factor which could be given any unnecessary importance because it is for the parties to decide as to where they intend to get a particular document scribed.

12. From the submissions made by learned counsel for parties and on perusal of paper book and lower court record, the following substantial question of law arise for determination :-

(i) *Whether the findings of first appellate court are based proper appreciation of facts and evidence or record or it has committed grave error of law and fact while setting aside the judgment of lower court for the reasons which are neither plausible nor borne out of record?*

13. The transaction in this case was of land measuring 15.5. *killa* and it is quite surprising that vendee instead of getting agreement executed at Saha which has the office of Tehsildar-cum-Joint Sub Registrar and also having the Deed Writer there, went all the way to Ambala to get agreement scribed from a Deed Writer there. Plaintiffs themselves are resident of village Saha and no reason is disclosed for the parties to go to Ambala.

14. Even if it be believed that due to one reason or the other it was thought prudent to go to Ambala to get the agreement scribed from a regular Deed Writer Darshan Kumar Jindal, perusal of agreement shows

that Darshan Kumar Jindal has nowhere mentioned the serial number at which this agreement was entered in his register or had appended his signatures as scribe of the agreement. It is highly improbable and unbelievable that for such a high value deal worth ₹54.80 lacs any party will take risk of getting scribed the agreement in such a manner. In these facts and circumstances, non examination of the scribe of agreement leads to draw an inference that the agreement was not got scribed from a regular deed writer and this leads to very serious consequences to seal the fate of the case of the plaintiff. If this plea of plaintiff respondent that the agreement was scribed by regular Deed Writer Darshan Kumar Jindal, be believed, the fact that regular Deed Writer did not enter the agreement in his register makes the case of appellant worse, improbable and unreliable.

15. The other factor which weighs heavily against the appellant is that the evidence of payment of earnest money is beyond pleadings. **The specific case of the plaintiff-respondent in the pleadings is that the entire earnest money was paid to the appellant at the time of execution of the agreement Ex.P1.** However, in evidence it has been projected that the appellant was paid only ₹10,000/- as token money at her residence and the remaining sale consideration of ₹9,90,000/- was deposited in the account of her son Gulshan Chauhan on her asking. While appearing as DW-1, the appellant has stated that she never received amount of ₹10,000/- and a story has been coined in this regard in connivance with her son. The discussion of above facts and circumstances affects adversely on the genuineness and authenticity of the agreement dated 27.9.2004. The factor that this agreement is not

proved to have been got scribed from a regular deed writer; non-examination of scribe of the agreement; no explanation for getting the agreement scribed at Ambala instead of Saha; payment of ₹9,90,000/- to the son instead of the appellant; no receipt of alleged payment of ₹10,000/- corroborate the drawing of above conclusion.

16. It is alleged that amount of ₹9,90,000/- was credited to the account of son of appellant on the day of agreement. In that event, the respondents No.1 and 2 either must have recorded this fact in the agreement that payment of ₹9,90,000/- shall be deposited in the account of son of appellant or had taken receipt from appellant of the payment of this amount with direction to deposit the same in the account of her son. Absence of any evidence on this score strengthen the plea of appellant that she never executed the agreement and it was in collusion with her son that forged and fabricated document was created. The amount of ₹9,90,000/- was deposited in the account of son of the appellant just to create evidence of payment of this amount. The first appellate court has ignored this vital fact without any reasonable explanation coming forth from the side of respondents No.1 and 2.

17. All the above discussed facts and circumstances when taken together support, corroborate and prove the plea taken by the appellant that the agreement in question is a forged and fabricated document.

18. In this case two version regarding payment of earnest money have come on record. First version is of payment of entire sale consideration at the time of agreement and it was also so pleaded and mentioned in the agreement. The second version has cropped up in evidence that earnest money was not paid at the time of agreement rather

₹10,000/- were paid to the appellant at her residence and remaining amount of ₹9,90,000/- were credited in the account of son of the appellant. There is no recital to this effect even in the agreement dated 27.9.2004. It is settled principle of law that no evidence or arguments beyond pleadings can be looked into or considered and reference can be made to the observations in the cases of *Anathula Sudhakar vs. P. Buchi Reddy (Dead) By L.Rs & Ors. (2008) 4 SCC 594*; *Siddu Venkappa Devadiga vs. Smt. Rangu S. Devadiga and Others, AIR 1977 Supreme Court 890*.

19. Respondents No.1 and 2 have not been able to explain as to under what circumstances it was mentioned in the agreement that ₹10 lacs were received by the appellant and why it was pleaded that the entire amount of ₹10.00 lacs was paid to the appellant. Certainly, the payment of ₹9,90,000/- to the son of the appellant, who had no authority to receive this amount on behalf of appellant, was not a payment either to the appellant or in her account particularly when it is not proved to have been made under the directions of the appellant.

20. Keeping all the above facts in view, the trial court for the reasons mentioned in para No.6 above had rightly observed that the agreement was without consideration and its execution is not proved. Learned first appellate court while differing with the observations of the lower court has not come out with any reasons supported by evidence in support of its observations. The view taken by the first appellate court is perverse and not based on proper appreciation of facts and law on the point. The observations, that the earnest money i.e. ₹9,90,000 was deposited in the account of son of appellant on her asking and this fact

has also been so pleaded is apparently a wrong observations.

21. As a sequel of my above discussion, the substantial question of law as framed in this case is answered in favour of appellant.

22. Before parting with the judgment, it will be relevant to note that a sum of ₹9,90,000/- was deposited in the account of defendant No.2-respondent No.3. He has used this amount of appellant and has not dared to come up with any plea regarding receipt of this amount. Respondents No.1 and 2, who have made the above payment to respondent No.3-Gulshan Chauhan are entitled to recover this amount from him with interest. Learned Civil Judge (Sr. Division), Ambala has ignored the above facts while dismissing the suit of respondents No.1 and 2.

23. This appeal has merits and is allowed with costs. The judgment and decree passed by the first appellate court is set aside and that of Civil Judge (Sr. Division), Ambala is restored with the modification that respondents No.1 and 2 (plaintiffs) shall be entitled to recover the amount of ₹9,90,000/- from respondent No.3-Gulshan Chauhan with interest @ 9% per annum from the date of deposit of this amount in his account till the date of filing of the suit and from the date of filing of the suit till actual realization.

March 09, 2015

deepak

(Surinder Gupta)
Judge