

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

RSA No.1828 OF 2012 (O&M)
DATE OF DECISION : 19TH AUGUST, 2015

Resham Singh

.... Appellant

Versus

Ashwani Kumar

.... Respondent

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Avnish Mittal, Advocate for the appellant.

Mr. Sandeep Jasuja, Advocate for the respondent.

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SURINDER GUPTA, J. (ORAL)

1. Plaintiff-appellant-Resham Singh filed suit for specific performance of agreement to sell dated 09.05.1989 alleged to have been executed by Jagmohan Lal husband of Savitri Devi-defendant-respondent No.1, since deceased, and father of Ashwani Kumar-defendant-respondent No.2.

2. The case of the plaintiff in brief was that Jagmohan Lal son of Bawa Baijnath was owner in possession of the land measuring 44 kanals situated in the area of village Ojhanwali Tehsil Fazilka, comprising of rectangle number 28//21 (8-0), 22 (8-0), 29//22/2 (4-0), 23 (8-0), 24 (8-0), 25(8-0) as per the entry in the Jamabandi for the year 1983-84. He executed agreement to sell dated 09.05.1989 for a sum of ₹55,000/- in favour of plaintiff and received ₹20,000/- as earnest money. The date for

execution and registration of sale deed was decided to be 15th Maghar, Samvat 2046 (i.e.30.11.1989) after receiving the balance consideration. It was further agreed that the sale deed will be executed in favour of plaintiff-appellant within one month from the decision of surplus case in favour of said Jagmohan Lal which was pending at the time of agreement. The possession of the land was delivered to the plaintiff and since then he was in cultivating possession of the same. Surplus case was decided on 31.05.2005, as a result of which Jagmohan Lal became the owner of the suit land and after his death his legal heirs were liable to execute the sale deed as per the terms of agreement dated 09.05.1989. It was averred that the plaintiff had always been ready and willing to perform his part of the contract and entitled to relief of specific performance or in the alternative recovery of ₹58,800/- i.e. ₹20,000/- as earnest money and ₹38,800/- towards interest @ 1% per month from the date of agreement till the date of filing of the suit.

3. The respondent contested the claim of plaintiff inter alia pleading that the impugned agreement is result of conspiracy hatched by plaintiff in connivance with attesting witnesses and document writer and is a false, forged and fabricated document which do not bear signatures of Jagmohan Lal. No such agreement was ever executed by Jagmohan Lal predecessor-in-interest of the defendants. The plaintiff is in illegal possession over the suit land and in order to retain his illegal possession he has fabricated the agreement in question. The prices of the land in the year 1989 was ₹1,00,000/- per acre and sale consideration mentioned in

agreement as ₹55,000/- for 44 kanals is nominal one. The defendants also came up with counter claim seeking possession of land in suit measuring 44 kanals and also sought relief of permanent injunction restraining the plaintiff from cutting, lifting or removing 93 trees from the suit land and also to give account of uprooting/removing of 2 *tahli* and one *kikkar* tree to the defendants. It was alleged that the plaintiff under the guise of agreement has illegally and criminally trespassed over the suit land and his possession over the suit land is illegal.

4. The plaintiff-appellant in replication reiterated his averments made in the plaint and contested the counter-claim filed by the defendants-respondent.

5. The pleadings of the parties led to the framing of issues as follows:

1. Whether, Jagmohan Bawa, predecessor-in-interest of the defendant executed agreement to sell dated 9.5.1989 in favour of the plaintiff after receiving Rs.20,000/- as earnest money ?
OPP
2. Whether plaintiff is entitled to the relief of specific performance of the agreement to sell dated 09.05.1989? OPP
3. Whether suit of the plaintiff is bad for non joinder of parties ?
OPD
4. Whether agreement to sell in question is forged and fabricated document ? OPD

5. Whether suit of the plaintiff is barred by law of limitation ?

OPD

6. Whether suit of the plaintiff is not maintainable in the present form ? OPD

7. Whether plaintiff has got no cause of action to file the present suit ? OPD

8. Whether defendant is entitled to relief of possession by way of counter claim ? OPD

9. Relief.

6. Learned Civil Judge, Fazilka vide judgment dated 15.09.2011 discarded the plea of plaintiff-appellant regarding agreement dated 09.05.1989, observing that plaintiff has miserably failed to prove the execution of agreement by Jagmohan Lal. While plaintiff-appellant examined document writer Bagicha Singh as PW-1, Satnam Singh PW-2 son of Surjan Singh marginal witness who identified the signatures of his father on agreement and the plaintiff himself appeared as PW-3 in support of its case, the defendant-respondent examined Anil Kumar Gupta, Handwriting and Finger Print Expert, as DW-3, who on examination of standard signatures of deceased on the copies of the sale deed produced on record, opined that the signatures of Jagmohan Lal on the agreement are result of impersonation and not similar in their writing characteristics with standard signatures of Jagmohan Lal. Gurdeep Singh marginal witness of agreement also appeared as DW-4 and deposed against the case of the plaintiff.

7. An FIR No.152 dated 11.10.2006 for offence punishable under Sections 420, 467 and 471 IPC was registered at Police Station City Fazilka against Resham Singh-plaintiff-appellant, Surjan Singh and Gurdeep Singh attesting witnesses of the agreement in which the police presented challan Ex.D-5. The court also opined that the order of the Collector (Agrarian), Fazilka Ex. P-7, whereby the surplus case was decided in favour of the defendants, pertains to the land measuring 66 kanals 11 marlas but the same could not be connected with the agreement Ex.P-1.

8. The appellant and one Kundan Singh son of Chatter Singh had filed a civil suit seeking the relief of specific performance based on agreement to sell dated 27.02.1981 pertaining to land measuring 152 kanal 14 marla, which included 44 kanal land in suit and was decreed in favour of Resham Singh and Kundan Singh by the Court of the then Additional Senior Sub Judge, Fazilka vide judgment and decree dated 22.09.1987. However that decree was set aside in appeal and the suit filed by Kundan Singh and appellant was dismissed. The above litigation was concealed by the appellant while filing the instant suit. The agreement dated 09.05.1989 was found to be forged document and the suit of the plaintiff was dismissed.

9. Not satisfied the appellant filed first appeal before the District Judge, Ferozepur which was also dismissed vide judgment dated 10.02.2012. This regular second appeal has been filed against the concurrent findings of the Courts below.

10. Learned counsel for the appellant has argued that in order to prove the agreement to sell dated 09.05.1989, the appellant himself appeared as PW-3 and examined scribe of the agreement PW-1, Satnam Singh, son of marginal witness Surjan Singh PW-2, who identified signatures of his father on the agreement. The courts below have taken note of the report of expert examined by defendants-respondents that signatures of Jagmohan Lal on the agreement are forged one. The expert had compared signatures with photocopy of the sale deeds and first appellate court has rightly observed that photographs of the signatures cannot be taken as standard signatures. The defendants have failed to establish on record that the plaintiff was in possession of the suit land in an illegal and forcible manner.

11. In view of the above findings the counter claim of the respondents seeking possession of the suit land could not be allowed as the possession of the appellant over the suit land was since the year 1981 under earlier agreement and is not forcible. It is proved on record that possession of the appellant over the suit land was as tenant and his tenancy could only be terminated under the provisions of Punjab Tenancy Act. Even the Collector (Agrarian) has observed that the plaintiff is in possession of the suit land as tenant at will. In view of the above facts and circumstances and the evidence on record, the judgment and decree passed by the courts below directing the appellant to handover the possession of the suit land to defendant is liable to be set aside.

12. Learned counsel for the respondent argues that the facts and circumstances of the case reflect that the appellant is a shrewd person who fabricated one agreement after the other to usurp the land of the respondents. Firstly, he came up with an agreement of the year 1981 with regard to the suit land and other land of respondents but that suit was dismissed. During the pendency of that suit he created the instant agreement and both the Courts below, on the basis of the evidence on record, have reached the conclusion that the agreement is the forged one. In order to prove that signatures of Jagmohan Lal were forged on the agreement, the defendants have examined the expert who compared the standard signatures on the copy of the sale deed with the signatures of Jagmohan Lal on agreement dated 09.05.1989 and reached the conclusion that the signatures on the agreement of Jagmohan Lal are forged one. Even the first appellate court after looking at the signatures of Jagmohan Lal reached the conclusion to this effect. The marginal witness of the agreement namely Gurdeep Singh (DW-4) has also deposed in favour of defendants. No substantial question of law requiring determination, arises in this appeal. The findings of facts recorded by the courts below, are based on proper appreciation of the evidence and call for no interference.

13. I have heard learned counsel for the parties and perused the case file with their assistance.

14. The courts, while appreciating the evidence, do not sit with blind eyes and always look into the facts and circumstances of each case while evaluating the evidence produced by the parties. In this case the

appellant examined scribe of the agreement and son of a marginal witness besides making own statement to prove that Jagmohan Lal executed agreement dated 09.05.1989. The first very strong circumstance, which weighs against the appellant, is the alleged date of execution of the agreement Ex.P-1. Admittedly, the appellant and one Kundan Singh have earlier propounded an agreement to sell dated 27.02.1981 with regard to land measuring 152 kanals 14 marlas alleged to have been executed by Jagmohan Lal, Anup Singh, Gurcharan Singh, Karam Singh and Brij Mohan. The land measuring 44 kanals, which is subject matter of this suit, was also part of land measuring 152 kanal 14 marla. That suit based on agreement dated 27.02.1981 was decreed in favour of appellant Kundan Singh vide judgment and decree dated 22.09.1987. That judgment and decree was valid till it was set aside in appeal vide judgment dated 23.12.1989. A very vital question which the learned counsel for the appellant has found difficult to answer is as to why the appellant would enter into an agreement when he already had a decree of specific performance of agreement against Jagmohan Lal regarding the suit land measuring 44 kanals. Another vital question which further creates doubt about the entire transaction is that the litigation between appellant and Jagmohan Lal was going on regarding the suit land and it is not expected that during the pendency of that litigation Jagmohan Lal will enter into another agreement with the appellant. Thirdly, the agreement Ex.P-1 nowhere recites or refers the earlier agreement or the litigation pending between the parties regarding the suit land. The above facts and

circumstances have been weighed against the appellant and rightly led the courts below to draw the conclusion that agreement dated 09.05.1989 was a forged one.

15. Much emphasis has been laid on the statement of document writer who has stated that he scribed the agreement executed by Jagmohan Lal. His register having entry of the agreement was having loose papers. It is quite strange that even after about two decades of the scribing of the agreement Ex.P-1, the register of scribe was in a condition that a page could be inserted or removed from it. The scribe had admitted that the spacing in the lines of the agreement is different. The perusal of agreement Ex.P-1 itself shows that the spacing in some lines at bottom was reduced to bring the subject matter within the space above alleged signatures of Jagmohan Lal. There is a lot of space between last line of the text of agreement and signatures of Jagmohan Lal and other witnesses. This witness has further stated that he was not knowing Jagmohan Lal. Another important factor which was noticed by the courts below is that on comparing the signatures of Jagmohan Lal on the agreement Ex.P-1 and in register of deed writer, both were found dissimilar and not appended by same person. It appears that somebody tried to copy the signatures of Jagmohan Lal in register of the deed writer as well as on the agreement but could not succeed. The first appellate Court has rightly discarded the statement of the deed writer as well as son of the marginal witness, who overenthusiastically tried to support the case of the appellant stating that his father had disclosed him about the details of the agreement executed by

Jagmohan Lal. It was observed that Satnam Singh, at the time of execution of the agreement, was 22 years of age and it is unusual that a father will discuss the terms and conditions of the documents attested by him with his family members, particularly when he is not a beneficiary under the said document. The appellate Court below was skeptic in accepting the report of the document and handwriting expert with the observation that the standard signatures were taken from a photocopy of document but at the same time felt no hesitation in concluding that the signatures on the agreement in question do not tally with the signatures of Jagmohan Lal on the document Mark A and Exs.D-1 to D-3, even when compared with naked eyes.

16. The silence of appellant, while appearing as PW-3 on the aspect of his readiness and willingness to perform his part of the contract, has led the courts below to reach the conclusion that the plaintiff has also not been able to prove his readiness and willingness to perform his part of the agreement. In para 5 of the affidavit tendered by the appellant a hand written line was added that the appellant was still ready to execute the sale deed. In the absence of any evidence, the courts below have committed no error while concluding that the appellant has failed to prove his readiness and willingness to perform his part of contract.

17. Admittedly, the appellant is in possession of the suit land. He alleged his possession over the suit land on the basis of the earlier agreement of the year 1981, regarding which suit filed by the appellant and Kundan Singh was dismissed. The appellant has nowhere alleged that he

was in possession of the suit land as 'tenant at will'. Learned counsel for the appellant has referred to the entries in the *Jamabandi* Exs.P-8, P-9, P-10 and P-12 and has argued that the possession of the plaintiff-appellant is recorded as '*Gair Morusi*' since the year 1993 onwards and even in the order passed by Collector (Agrarian) and Commissioner, Ferozepur the status of possession of the plaintiff over the suit land is mentioned as that of a tenant. The above contention requires outright rejection, firstly, in view of the fact that plaintiff has nowhere pleaded that his possession over the suit land is as a tenant. Secondly, in the *Jamabandi*, in column No.9, the possession of the appellant over the suit land is described as unauthorized possession. In view of the above, the courts below have committed no error while observing that the appellant is not in possession of the suit land as tenant and have rightly decreed the counter claim filed by the respondent seeking possession of the suit land.

18. The facts and circumstances of this case are clear reflection of the lust of the appellant who by hook and crook wanted to continue his possession over the suit land. He has been continuing in possession of the suit land since the year 1981. It appears that when he lost his earlier suit, he fabricated agreement dated 09.05.1989 just to continue with the possession over the suit land. Respondent has been deprived of the possession of the suit land for the last 35 years, as such, the direction is issued to the executing Court to expedite the process of execution of the decree of delivery of possession to respondent and dispose of the same within six months of the receipt of certified copy of this order.

19. No substantial question of law, requiring determination, arises in this appeal, which has no merits and is accordingly dismissed.

19th August, 2015
‘raj’

(SURINDER GUPTA)
JUDGE