IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 2213 of 2012 (O/M)
Date of decision : 23.9.2015

Jagjit Singh ..... Appellant

Versus

Jagtar Singh and Amrinder Singh ...... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sandeep Khunger, Advocate, for the appellant.

Mr. G.S. Punia, Senior Advocate, with,
Mr. P.S. Punia, Advocate, for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-.- -.-

KULDIP SINGH, J. (ORAL)

Defendant Jagjit Singh (appellant herein) has filed this regular second appeal against the judgment and decree dated 16.1.2012, passed by the learned Additional District Judge, Ludhiana, whereby in an appeal and cross objections, the cross objections filed by defendant/appellant were dismissed and the appeal filed by the plaintiffs (respondents herein) was allowed. Learned Additional Civil Judge (Senior Division), Ludhiana, vide judgment and decree dated 16.5.2005, had partly decreed the suit for recovery of Rs. 50,000/- alongwith proportionate costs and interest at the rate of 6% per annum from the date when the amount became due till its realization.

Briefly stated, the plaintiffs/respondents had filed a suit for joint possession of land measuring 23 kanals 1½ marlas being 1/4th share of the land measuring 92 kanals 3 marlas, fully detailed in the headnote of the plaint, situated in village Burj Hakima, Tehsil Raikot, District Ludhiana, by way of specific performance of the agreement dated 2.2.1994, executed by defendant/appellant in favour of the plaintiffs/respondents. In the alternative, the prayer was made for recovery of Rs. 6,50,000/-, out of which Rs. 6,00,000/- is the principal money and Rs. 50,000/- is interest.

The case of the plaintiffs/respondents before the lower Court was that the defendant/appellant is the owner of the suit land. He (defendant) was working as a travel agent and offered to send the plaintiffs/respondents to United States of America (USA). For this purpose, he (defendant) received a sum of rupees seven lacs from the plaintiffs/respondents, as per details given below:-

A. Rs. Two lakh was received by the defendant on 17-7-92 from Jagtar Singh plaintiff.

B. Rs. Two lakh was received by defendant on 9-8-92 from plaintiff Amrinder Singh.

C. Rs. 1,50,000/- was received by defendant on 10-8-92 from Amrinder Singh plaintiff vide a cheque drawn on Bank of India, Branch Raikot.

D. Rs. 95,000/- was received by defendant on 25.8.92 from Mohinder Singh, brother of Jagtar Singh, plaintiff on his behalf.

E. Again on 31.8.92, Rs. 55,000/- was received by the defendant from Mohinder Singh, brother of Jagtar Singh, plaintiff, on his behalf.

As the defendant/appellant could not send the plaintiffs/respondents to USA, he returned an amount of rupees one lac to the plaintiffs/respondents and agreed to return remaining amount of rupees six lacs on or before 15.6.1994. He further agreed that in case, he failed to return the remaining amount of rupees six lacs by 15.6.1994, he would transfer his land by way of executing the sale deed in favour of the plaintiffs/respondents at the rate of Rs. 2,25,000/- per acre with a stipulation that remaining amount would be adjusted towards the sale price, while the registration and stamp charges would be borne equally and the balance of sale consideration will be paid. The terms of agreement dated 2.2.1994 were reduced into writing. The defendant/appellant was bound to return rupees six lacs before the stipulated date i.e. 15.6.1994. However, the defendant/appellant turned dishonest and threatened to alienate the suit land. Therefore, on 7.2.1994, the plaintiffs/respondents filed a suit for permanent injunction, restraining the defendant/appellant from alienating the suit land. In the said suit, interim injunction was granted. At the time of filing the suit for permanent injunction, the stipulated date of specific performance had not arrived. It is claimed that the plaintiffs/respondents had been ready and willing to perform their part of contract and ready to pay the balance consideration amount of Rs. 48,985/-.

The defendant/appellant took the preliminary objection that the suit is barred under Order 2 Rule 2 CPC. The defendant/appellant claimed that he never worked as a travel agent. He further stated that the plaintiffs/respondents had purchased a tractor from the defendant/appellant for Rs. 1,50,000/-, the payment of which was made by Amrinder Singh (plaintiff) to the defendant through cheque. The balance of Rs. 20,000/- was to be paid when the tractor in question was to be transferred in his name. This deal happened in summer of 1992. After one month of the deal, Amrinder Singh (plaintiff) returned the tractor to the defendant/appellant and backed out from the sale, on which the defendant/appellant returned rupees one lac to him and retained rupees fifty thousand as compensation. Many times, the plaintiffs/respondents demanded the said money back. Defendant/appellant denied the execution of agreement dated 2.2.1994. It is stated that the said document has been fabricated by plaintiffs/respondents with the help of police and a deed writer by keeping him in illegal confinement and torturing him. He claimed that FIR No. 36, dated 26.9.1993, was registered at Police Station Raikot, District Ludhiana, under Section 420 IPC on the basis of the alleged payment made to the defendant/appellant as a travel agent. The defendant/appellant moved an application for anticipatory bail before this Court, which was granted on 13.10.1993. Despite the grant of anticipatory bail, Inspector Darshan Singh of CIA Staff, Jagraon, illegally picked up the defendant/appellant on 31.1.1994 in the presence of Amarjit Singh, Dharam Singh Rajwinder SIngh, Kulwant Kaur and Darshan Singh. He was detained in CIA Staff, where he was badly tortured. He was stripped naked and hanged upside down with ceiling fan. Heavy logs were rolled on his legs and his legs were torn apart. DSP Ragvir SIngh asked the junior officers to take the signatures of the defendant/appellant forcibly. A deed writer was summoned in police station and his signatures were also obtained in his register. However, the defendant/appellant never intended to execute any document. As there were injuries on the body of the defendant/appellant, therefore, he was kept in CIA Staff, Jagraon and was released only on 8.2.1994 when the injuries healed to some extent. After his release, the defendant/appellant was admitted to Civil Hospital, Jagraon, where he remained under treatment till 12.2.1994. The defendant/appellant had sent a telegram to the Chief Minister, Punjab, complaining about the mis-conduct, torture, illegal confinement and obtaining of signatures by the police. Similar telegrams were sent to DGP, Punjab, Prime Minister and also to this Court and when his relations failed to locate him, his cousin brothers Amrinder Singh and Amarjit Singh had also sent telegrams to this Court on 4.2.1994, complaining that their brother has been kidnapped by the police at the instance of Jagtar Singh (plaintiff).

From the pleadings, following issues were framed :-

"1. Whether the defendant executed the agreement dt. 2.2.94 in favour of plaintiffs ? OPP
2. Whether the agreement dt. 2.2.94 is the result of coercion ? OPD
3. Whether the suit is barred U/o 2 Rule 2 CPC ? OPD
4. Whether suit for specific performance is not maintainable? OPD
5. If issue No. 1 is not proved whether the plaintiffs have always been ready and willing to perform their part of the contract ?OPP
6. Whether plaintiff is entitled for specific performance of the agreement ? OPP
7. Whether the plaintiff is entitled for recovery of Rs. 6,50,000/- in the alternative ? OPP
8. Relief."

The lower Court took up issues No. 1, 2, 4, 5, 6 and 7 together and came to the conclusion that the agreement dated 2.2.1994 was not genuine. The story of the defendant/appellant was believed. However, he was directed to refund rupees fifty thousand, retained by him as admitted by him in the written statement. Therefore, issue No. 3 was determined in favour of the plaintiffs/respondents. Accordingly, the suit was partly decreed for recovery of rupees fifty thousand. Against the said judgment and decree, the plaintiffs/respondents filed an appeal, whereas the defendant/appellant preferred cross objections. The appeal was allowed. The cross objections were dismissed and the suit was decreed for specific performance, as discussed above.

I have heard the learned counsel for the parties and have also carefully gone through the file.

To decide the said issue, following substantial question of law is framed :-

"Whether the findings recorded by the lower appellate Court are perverse and against the record ?"

I am of the view that the story of the defendant/appellant, as set out in the written statement, is fully proved from the documents placed on file as well as the statement of witnesses. The first appellate Court erred in interfering in the findings of facts recorded by the lower Court. The lower Court has given strong reasoning to hold that the story of the defendant/appellant is genuine and thus proved. The lower Court has observed that as per the plaintiffs/respondents themselves, a sum of rupees seven lacs was given in four-five instalments in the presence of different persons. An FIR was also registered against the defendant/appellant for obtaining the said money for sending the plaintiffs/respondents abroad, but the defendant/appellant had been acquitted in the said case by the competent court. The lower Court also found that all the witnesses examined by the plaintiffs/respondents had stated that defendant/appellant never worked as a travel agent. The lower Court also examined the contents of the agreement and observed that though Naresh Kumar, Scribe, has been examined, but the wording of the agreement is unusual. Here, the name of the witness, in whose presence different payments were made, is mentioned and it was also admitted by the defendant/appellant in the agreement that he had taken the money for sending the plaintiffs/respondents abroad and now, he is using delaying tactics to send the plaintiffs/respondents abroad. The defendant/appellant has denied that he ever obtained the money as a travel agent to send the plaintiffs/respondents abroad. Normally, in such type of cases when the criminal case is pending against the defendant/appellant, he (defendant) will not make such admission for agreement of sale, which could lead to his conviction in the criminal case. It goes to show that the plaintiffs/respondents dictated the terms of the agreement. Therefore, the signatures of defendant on the agreement might have been obtained by force or coercion. The copy of FIR (Ex.D1) was produced before the lower Court, which was registered on 26.6.1993. Since the defendant/appellant was being tried by a criminal court, therefore, he will be the last person to enter into such agreement, particularly when he was released on anticipatory bail by this Court, vide order dated 13.10.1993, passed in CRM No. 12502-M of 1993. Surprisingly, no reference was made in the agreement as to what will happen to the criminal case. The defendant/appellant will be the last person to enter into such type of agreement even by way of compromise if the said criminal case is to continue. Had it been the story that by way of compromise, this agreement was executed and the plaintiffs/respondents undertook to get the FIR quashed or undertook not to support the said case, then the things would have been different. As a prudent man, the defendant/appellant will not agree to face the trial by making the admission that he had obtained the money for sending the plaintiffs/respondents abroad, so as to invite his conviction in the criminal case and also agree to transfer his land, as Amrinder Singh (plaintiff) had admitted that no talk took place regarding the withdrawal of the criminal case at the time of execution of agreement dated 2.2.1994. Therefore, when the defendant/appellant was not working as a travel agent, there is no question of receiving payments in instalments for sending the plaintiffs/respondents abroad. There is no documentary proof that the defendant/appellant had agreed to send the plaintiffs/respondents abroad. The matter has already been tested before the criminal court, wherein such charges have not been proved beyond all reasonable doubts and the defendant/appellant has been acquitted. The first appellate Court has relied upon the statement of scribe and upon the fact that stamp paper was purchased by the plaintiff.

I am of the view that when the police procure the signatures of someone, while he is in police custody, they can also summon some scribe and may also get the stamp paper purchased in the name of the defendant/appellant. This fact cannot be given undue importance. There are several other substantial facts, which show that the agreement was got signed from the defendant/appellant under coercion and threat. The medical certificate of the defendant/appellant (Ex.DW1/B) was proved by examining pharmacist Gopal Krishan, who proved the signatures of Dr. Varinder Singh on the said document. However, the said document was never objected to. Therefore, the first appellate Court erred in holding that the non-examination of doctor in this case is fatal to the defence of the defendant/appellant. Gopal Krishan, Pharmacist, had brought the record of the hospital and proved that the defendant/appellant Jagjit Singh was admitted in Civil Hospital, Jagraon, vide CR No. 186/94, dated 9.2.1994. He was suffering from old multiple soft tissue injuries alongwith depression. He was discharged on 12.2.1994. The soft tissue injuries are always inflicted when something heavy is rolled on the body of a person and such injuries are generally attributed by torture by the police. He was also suffering from depression, which indicates that recently the defendant/appellant had undergone some trauma. Therefore, the hospital record could not be disbelieved. Moreover, the agreement was dated 2.2.1994 and immediately thereafter, the plaintiffs/respondents filed a suit for permanent injunction i.e. on 7.2.1994, meaning thereby that the dispute had erupted immediately after the said agreement.

According to the defendant/appellant, he was released by the police on 8.2.1994 only when the plaintiffs/respondents filed a suit for injunction and got injunction order. The copy of the contempt petition dated 18.2.1994 would show that the defendant/appellant had also filed a contempt petition before this Court on the ground that despite the bail orders, he was picked up by the police and was tortured. Various copies of telegrams sent to various authorities on 15.2.1994 are also placed on file as Ex.DW5/A to Ex.DW5/E. The copy of the telegram dated 9.2.1994 (Ex.DX) would show that a complaint was made to the Chief Justice of this Court that despite the bail orders, he had been picked up by the police at the instance of Jagtar Singh (present plaintiff) on 31.1.1994, at about 5:30 PM. The combined effect of the documents goes to show that the defence of the defendant/appellant is correct that he was picked up by the police and the agreement dated 2.2.1994 was procured under coercion and threat and use of force. Therefore, the statement of the scribe cannot be believed that the agreement was voluntarily executed. Similarly, the fact that the stamp paper was purchased in the name of the defendant/appellant also cannot be given undue importance. It is to be noted that the plaintiff's claim that he paid the money in instalments to the defendant not for purchase of land, but he had paid the money for sending them abroad. Since it is found that agreement of sale was obtained by force and coercion, therefore, the same is not binding upon the defendant/appellant. However, since the defendant/appellant had admitted that he owed rupees fifty thousand to the plaintiffs, the lower Court rightly ordered the defendant/appellant to refund rupees fifty thousand to the plaintiff.

In view of what has been discussed above, I am of the view that the findings recorded by the Additional District Judge, Ludhiana, are perverse, against record and are liable to be reversed. Hence, the impugned judgment and decree dated 16.1.2012, passed by the learned Additional District Judge, Ludhiana, is set aside. The judgment and decree dated 16.5.2005, passed by the learned Additional Civil Judge (Senior Division), Ludhiana, is restored.

The present appeal is accordingly allowed.

(KULDIP SINGH)
JUDGE

23.9.2015
sjks