

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4801 of 2012 (O&M)

Date of Decision.02.11.2015

Tarsem Singh

.....Appellant

Versus

Gurnam Singh

.....Respondent

Present: Mr. Anil Chawla, Advocate
for the appellant.

Mr. Angel Sharma, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The defendant is the appellant. The suit for specific performance was filed by the plaintiff on an agreement of sale executed in favour of the plaintiff on 31.10.2003 at the rate of ₹2,40,000/- per acre for a total extent of 39 kanals 2 marlas. The document stipulated a time for performance for payment of balance within a period of one year ending with 30.10.2004. The plaintiff got his presence noted before the Sub Registrar on 2.11.2004 and complained that the plaintiff had been at all times ready and willing but the defendant was not prepared to execute the sale deed and he did not turn up at the Registrar's office as promised. The plaintiff had served notice on 26.03.2005 reiterating his readiness and willingness for execution the sale deed. Since the defendant did not comply with the demand, suit came to be instituted on 5.8.2005.

2. The defendant was taking up a plea that the document was forged and fabricated and the plaintiff had used some blank signatures taken on stamp papers on a representation that they were required for IT purposes. It was a contention that the defendant used to be selling crops to the plaintiff's brother but the plaintiff's brother was not giving J Forms for the sale of crops and when the defendant was insisting for issuance of such Form, the plaintiff had fabricated an agreement of sale. The defendant also contended the setting up the following five circumstances as not proving the document. One, the total value of the property was recited at grossly low price. The property was worth actually ₹50 lacs and the defendant could never have undertaken to sell the property for ₹2,40,000/- per acre. Two, the stamps papers had been purchased by the defendant and normally, it should have been the purchaser who must have purchased the stamps as well. Three, the document had stipulated for a period of one year which was most unusual and if the plaintiff had paid substantial consideration of ₹4 lacs on the date of agreement, there was no reason for securing such a long period for completion of the sale deed. Four, the defendant had borrowed ₹1,23,000/- from a bank on the security of the property and the title deed had also been submitted with the bank. There was no reference to existence of the mortgage or the outstandings due by the defendant to the bank which was most unusual. Five, the Court was holding that the defendant had not proved the sale of crops to the plaintiff's brother by production of J Forms and this reasoning is clearly wrong, for the fraud was complained by the defendant which gave rise to the document being fabricated.

3. The trial Court decreed the suit only for return of the advance being paid by the plaintiff to the defendant but in appeal filed by the plaintiff, the trial court's decision was modified and decree for specific performance itself has been granted. The counsel appearing on behalf of the defendant-appellant reiterates the contentions and points which I have outlined above as his main line of defence. I find no merit in any of the contentions raised. If the property was worth ₹50 lacs and the plaintiff was bargaining for a low price that showed the fabricated nature of the document, the defendant ought to have produced some documentary evidence to show that the property was worth much more than what was agreed to be sold. There was no document at all filed by the defendant. The fact that the stamp paper had been purchased in the name of the defendant was not a point in favour of the defendant. On the other hand, it made evident the bluff of the defendant that he was signing on the blank papers without intending to sell the property and unless there was really an undertaking to sell, there could have been no purchase of stamp papers in his own name. I do not think even the period stipulated was too long to doubt the nature of transaction as an agreement of sale. If the property which was agreed to be sold was for an extent of about five acres of land and the consideration stipulated was ₹2,40,000/- per care, the payment of ₹4 lacs constituted to about 1/3th of the total consideration and if the parties were bargaining for a period of one year, there was nothing very artificial. Existence of loan by the defendant to bank cannot also be a circumstance in favour of the defendant. If the plaintiff was bargaining for purchase of property subject to the mortgage, the defendant was

actually securing the benefit of allowing the sale to take place without in any way being obligated to repay the amount to the bank. If the plaintiff was himself not making an issue for a direction for discharge of the mortgage by the defendant himself and was not asking for abatement of sale consideration for the outstanding due to the bank, the defendant must only take the transaction as beneficial to him, for he has been relieved from obligation to repay to the bank. On reasoning adopted by the Court below that the plaintiff had not even produced J Forms, the counsel would offer to produce documentary proof now at this stage to say that there had been a transaction between him and the plaintiff's brother. I cannot allow the defendant's lapse to be taken advantage by him and come up with plea that the document can be produced now. The defendant ought to have known that there was duty for him to prove what he has been contending for. If he was trying to say that the document was not really a genuine document and that it had been brought up by deceit by the plaintiff by stating that it was necessary for some IT purposes, the non-production of the document would have vindicated his stand.

4. The genuineness of document itself cannot doubted for several other reasons as well. If there was a notice issued on 25.06.2004, there must be good enough reason for the defendant not to respond. If the document was not a genuine document, he ought to take the first opportunity to deny the document. It is understandable as to how a plaintiff could have secured the signature of the defendant on blank papers when there was no transaction between plaintiff and the defendant earlier in point of time to the agreement to

show that there was any compulsion for the defendant to give signatures in any stamp paper for the plaintiff to use. There could have been no occasion for the plaintiff to secure any such document for IT purposes. An agriculturist does not pay income tax nor could there be any reason for the plaintiff to use any such document containing the signature of the defendant for the plaintiff's own purpose.

5. The defendant was coming up with a cock and bull story and the Court was rightly rejecting the defence and allowing for decree for specific performance at the Appellate Court. I find no justification for modification of the same. The second appeal is without merit and it is dismissed.

(K. KANNAN)
JUDGE

November 02, 2015
Pankaj*