

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

**Regular Second Appeal No.1179 of 2013 (O&M)
Date of Decision: April 08, 2015.**

Balwinder Singh

.....APPELLANT(s).

VERSUS

Harkirat Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Sanjeev Pandit, Advocate with
Mr. Balvir Kumar Saini, Advocate
for the appellant (s).

Mr. R.S. Chauhan, Advocate
for the respondent.

SURINDER GUPTA, J.

This regular second appeal has been filed against the concurrent judgments of Courts below, whereby suit filed by respondent-plaintiff Harkirat Singh seeking relief of specific performance of agreement to sell dated 28.06.2002 pertaining to land measuring 11 kanals 6 marlas situated in village Khanoor District Hoshiarpur as fully described in the head note of the plaint, was decreed.

2. The case of the respondent-plaintiff, in brief, is that on 28.06.2002 appellant-defendant agreed to sell his 11 kanals 6 marlas of land situated at village Khanoor for a sum of ₹5 lacs and received ₹4 lacs as earnest money. The date for execution of the sale deed was fixed as 26.12.2002. The suit seeking specific performance of the agreement was filed on 30.12.2002 with the averment that the appellant-defendant had

started threatening 2-3 days prior to the filing of suit to alienate the suit land or part of it to someone else. Respondent-plaintiff was always ready and willing to perform his part of agreement and is still ready and willing to do so. He had also sent a telegram to the appellant-defendant on 24.12.2002 asking him to reach the Tehsil Complex, Hoshiarpur on 26.12.2002 for execution of the sale deed after receiving the balance sale consideration. On 26.12.2002, respondent-plaintiff remained present in the Tehsil Complex with balance sale consideration along with other expenditure but the appellant-defendant did not turn up. As a token of his presence in Tehsil Complex the respondent-plaintiff got attested his affidavit. He sought relief of specific performance of agreement to sell dated 28.06.2002 and called upon the appellant-defendant to execute the sale deed of the suit land in his favour and in the alternate for recovery of ₹8 lacs i.e. ₹4 lacs paid as earnest money and ₹4 lacs as damages suffered by the respondent-plaintiff.

3. Appellant-defendant contested and controverted the averments in the plaint, inter-alia pleading that the agreement dated 28.06.2002 was a forged and fabricated document, not binding on him; the stamp paper was purchased in the name of one Balvir Singh and it was scribed in the name of Balwinder Singh; there was also cutting on the second and third page of the stamp paper which shows that there was no agreement between the parties; the price of the land in the vicinity was ₹8 lacs; the recital in agreement that the appellant-defendant had agreed to sell the same for ₹5 lacs confirms the plea of appellant-defendant that fraud has been played upon him; no sale consideration was paid to appellant-defendant; the alleged agreement dated 28.06.2002 was not got scribed from a regular deed writer.

4. Narrating the real facts about obtaining of his signatures on

blank stamp papers, the appellant-defendant has alleged as follows:-

“There are bank in the building of the plaintiff at village Bakapur Guru, Teh. Garhshankar, District. Hoshiarpur. The plaintiff has asked the defendant that he will arrange the loan for the defendant from that bank and gave him some documents of any property and signed on the stamp papers. The defendant gave original sale deed of his land to the plaintiff and his signatures were taken on blank stamp papers by the plaintiff. After some times, no loan was given to the defendant nor his documents were returned by the plaintiff. The plaintiff prepared a forged agreement with fraud. The agreement alleged by the plaintiff is forged and fabricated document. No payment was given to the defendant. The agreement and payment alleged by the plaintiff (sic is) false and concocted story.”

5. The appellant has alleged that he himself had been purchasing the land in the village, as such, there was no question for him to sell his land.

6. Learned Civil Judge (Junior Division), Hoshiarpur vide judgment and decree dated 16.12.2008 decreed the suit and allowed the relief of specific performance of the agreement dated 28.06.2002 on payment of balance sale consideration by the respondent-plaintiff. The appellant-defendant was also restrained from alienating the suit land to any other person except the respondent-plaintiff. The execution of the agreement dated 28.06.2002 by the appellant-defendant and receipt of ₹4 lacs was held as duly proved. It was also observed that the respondent-plaintiff was always ready and willing to perform his part of the agreement.

7. Not satisfied, defendant Balwinder Singh filed appeal, which was dismissed by the Additional District Judge, Hoshiarpur. The first Appellate Court discarded the averment of the appellant-defendant that

agreement dated 28.06.2002 (Ex.P2) was a forged and fabricated document with the observation in para 11 of the judgment, which reads as follows:-

“11. In the instant case, signatures of the appellant/defendant are admitted. The defendant while appearing in the witness box as DW1 admitted in his cross-examination that Ex.P2 bears his signatures on all the three papers. Then it is not proved on file that how the agreement to sell is a forged and fabricated document. It is not the case of the defendant that he does not know Punjabi script. The agreement Ex.P2 is scribed in Punjabi script and it was duly signed by the defendant after admitting its contents thereof. The learned counsel for the respondent has relied upon **1999 Civil Court Cases, 693(P&H) in case titled as Durlabh Singh Vs. Nahar Singh & Others**, in which it has been held by the Hon’ble High Court that once the signatures are accepted, the onus to prove that the agreement of sale was got executed by deception and fraud, shifts on the defendant. The defendant has failed to prove on record that how the agreement to sell is a forged and fabricated document.”

8. I have heard learned counsel for the parties and have perused the record of the Courts below with their assistance.

9. Learned counsel for the appellant-defendant has argued that the agreement to sell was scribed on the stamp papers which were not purchased in the name of appellant Balwinder Singh, rather the stamp paper purchased in the name of Balvir Singh were used to create this document.

10. This plea of the appellant was considered and rejected by the first Appellate Court with the observations in para 12 of the judgment as follows:-

“12. The only contention of the learned counsel for

the appellant/defendant to prove the alleged fraud and fabrication, is that on the back of first stamp paper, his name was written as Balvir Singh and there is cutting on the remaining stamp papers. This contention is devoid of any merits. Admittedly, first stamp paper is bearing the name of Balvir Singh. The stamp vendor from whom the defendant had purchased the stamp papers, while appearing in the witness box as PW3 deposed on oath that he has brought the summoned record. **On 27.6.2002, stamp papers were purchased by Balwinder Singh son of Nagina Singh, resident of Khanoor, for executing an agreement. The entry was made in his register at Sr. No.1798 and photocopy of same is Ex.PW3/A on the file. He further made it clarified that inadvertently instead of Balwinder Singh on the back of stamp paper, it is written as Balvir Singh, whereas in the register maintained by him, it is mentioned as Balwinder Singh son of Nagina Singh and the defendant had signed in the register in his presence. He has clarified about the name mentioned as Balvir Singh and made it clear that these stamp papers were purchased by Balwinder Singh only. Had it been so that these papers were not purchased by defendant, then what was the occasion that he had signed in the register maintained by stamp vendor and copy of same is Ex.PW3/A. It is not the case of the defendant/appellant that his signatures were obtained forcibly and illegally by stamp vendor in his register.”**

11. The above observations duly deal with and rightly answer the plea raised by the appellant. Learned counsel for appellant-defendant could not explain as to what had prompted the appellant-defendant to sign in stamp vendor's register against relevant entry of purchase of stamp paper, if he had not purchased it. The appellant-defendant, very cleverly, has tried to take

advantage of an inadvertent mistake by stamp vendor while writing the name of purchaser of stamp paper as Balvir Singh instead of Balwinder Singh. The appellant-defendant has not denied his signatures on the agreement dated 28.06.2002 (Ex.P2). While deposing as DW1, the appellant-defendant had taken the plea that he was Director of Pioneer Forest Limited and one Rajinder Kumar was his agent, through whom respondent-plaintiff had deposited some amount in his company and the appellant being Director of the said company, had given copy of the sale deed of his property and signatures on blank papers only to satisfy the respondent-plaintiff for depositing his money in the company. The facts so stated by appellant-defendant in his testimony were beyond pleading and inadmissible. The plea taken in para 2 of the written statement as discussed in para 4 above, appears to have been abandoned by appellant-defendant while deposing as DW1. He, however, admitted receipt of telegram from the respondent-plaintiff on 24.12.2002 asking him to reach Tehsil Complex to execute sale deed, but he neither reached Tehsil Complex on 26.12.2002 for executing the sale deed nor initiated any action against the respondent-plaintiff after receipt of telegram. The above conduct of appellant and his silence after receipt of telegram refutes his contention that he gave signed stamp paper on assurance of respondent-plaintiff that he will arrange loan for him from the bank, which was functioning in his (respondent's) building.

12. The reasons stated by appellant-defendant while appearing as DW1 that he signed blank stamp papers, has been rightly rejected by Courts below as it cannot be believed that appellant who was a Director of a company, will give his signatures on blank stamp papers or sign in the register of stamp vendor. In case, he had to give some security to the

depositor of money in his company, the same could be in the shape of some guarantee or written document, but in no case by giving signatures on blank papers.

13. On perusal of the record and judgments of the Courts below, I find no factual or legal infirmity therein calling for interference. No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

April 08, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE