

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

Regular Second Appeal No.2098 of 2013 (O&M)

Date of decision: 20.5.2015

Gurbax Singh alias Gurbaksh Singh

... Appellant

Versus

Ranjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Vijay Lath, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

CM No.5736-C-2015

CM is allowed. LRs are brought on record subject to just exceptions and for them to maintain and press the appeal. Amended memo of parties is taken on record.

RSA No.2098 of 2013 (O&M)

2. This is the plaintiff's (dead) by LRs' second appeal having partially lost in the trial Court and completely before the first appellate court. In a suit for specific performance of an agreement to sell, the lower courts have declined the main relief but have granted the alternative relief of refund of earnest money of ₹ 500/- Ex.P4. Defendant 1-Ranjit Singh agreed

to sell the suit property by a contract dated 29th January, 2002 in favour of

the plaintiff. In the suit, alternative relief of recovery of money was also prayed for.

3. Defendant 1 contested the suit and pleaded that the agreement was a forged document. The receipt which evidenced passing of earnest money was denied. Defendants 2 to 4 were proceeded *ex parte*. Parties went to trial. The plaintiff produced evidence to prove that the agreement was a genuine document and other evidence in support of a decree. However, the defendant examined Gurmit Kaur, a Handwriting and Finger Print Expert to prove to the contrary and after which he appeared as his own witness in support of his case and closed his evidence. The alleged receipt of a sum of ₹ 1,09,500/- dated 9th October, 2002 Ex.P5 has been disbelieved. What became the moot point in the suit was that in para. 2 of the preliminary objections, the defendant pleaded that the agreement was a false, forged and bogus document which has no force in the eyes of law and is not binding on his rights. However, in para. 1 of the written statement on merits, the defendant admitted that he had entered into an agreement to sell his property to his elder brother, i.e., the plaintiff and received a sum of ₹ 500/- as earnest money. It is argued that the defendant could not blow hot and cold at the same time on the same paper. The material question was dependant for its answer on the receipts Ex.P4 in the sum of ₹ 500/- and Ex.P5 representing balance amount of sale consideration in the sum of ₹1,09,500/-.

4. In order to prove their correctness much depended on the opinion of the hand writing expert Gurmit Kaur who spoke in favour of the defendant and against the plaintiff casting serious doubt on the authenticity of the receipt of ₹ 1,09,500/-. Gurmit Kaur was in turn cross-examined by a

contra hand writing and finger print expert, namely, Arvind Sood for the plaintiff and the appellant argues that when he appeared as witness for the plaintiff his testimony was shattered in the cross-examination. A cursory look at the receipt representing balance sale consideration Ex.P5 reveals two places where Ranjit Singh Saini-defendant 1 has signed on the agreement twice which are about an inch apart, one across the fate of revenue stamp and the other below. Both the signatures to the naked eye appear to match. The question was where was the need to sign twice over at the foot of the document. The plaintiff produced the Deed Writer who had scribed the receipt Ex.P5 who deposed that he read over its contents to defendant 1 and defendant No.1 had signed the same in token of its correctness. Both he and one Santokh Singh were the scribe and attesting witnesses to the sale agreement. The Deed Writer who scribed the agreement to sell was a licensed Deed Writer who deposed was written at the instance of defendant 1 in favour of his brother, the plaintiff. The questioned signatures of Ranjit Singh were marked on the judicial file as Q1 and Q2 on the receipt dated 9th October, 2002 Ex.P5. In fact, expert-Gurmit Kaur compared the signatures of Ranjit Singh Saini with his standard specimen signatures marked S1 to S10 from the case file papers including vakalatnamas etc. The opinion of the expert was that the standard signatures marked S1 to S10 were not those of the questioned signatures marked Q1 and Q2. Rather, the questioned signatures marked Q1 and Q2 are copies and, therefore, forged. However, what was not disputed was an agreement to sell dated 29th January, 2002 and such a contract had come into existence. Receipt of ₹ 500/- as earnest money was taken to be an admitted fact.

5. The question remained whether balance amount of ₹ 1,09,500/- had passed into the hands of the alleged vendor and whether there was sufficient proof of transfer of money. Defendant 1 denied receiving this amount and pleaded that his signatures were forged on the receipt in question. The plaintiff did not enter the witness box. He entered it through power of attorney to act on his behalf. Therefore, the question whether the balance sale consideration had passed to the plaintiff could not be deposed to by a power of attorney but by the person who would have personal knowledge. It is settled proposition of law that an attorney holder can depose in respect of the acts performed by him as attorney but he could not depose for the acts done by the principal and not by him. The attorney cannot depose for the principal in respect of matters which only the principal can have personal knowledge and in respect of which principal is liable for cross-examination. Therefore, the facts on which a power of attorney can depose on behalf of the principal are limited as is well recognized rule of commonsense and rule of evidence. In the absence of the personal testimony of Gurbax Singh plaintiff, the learned lower Court was correct in reasoning that the plaintiff can be taken to press a case as a case of evidence except to be seen as a case of no evidence of money changing hands when the money was not handed over in his presence or money excepted by POA holder on behalf of the principal in discharge of obligation to pay. Even if it is a case of no evidence with respect to passing of balance sale consideration, even then it cannot be assumed that the plaintiff was ready and willing to perform his part of the contract which is the essential ingredient in a suit for specific performance in absence of proof of which the suit must fail. If the entire money passed through receipt

Ex.P5 dated 9th October, 2002 and the agreement stipulated the date of execution till 31th October, 2002, then the sale deed could have been registered before the date fixed but was not, as reasoned by the courts *a quo*. Moreso, the Court did not rely entirely on the handwriting experts and compared the signatures of Ranjit Singh and formed its opinion and held that even to the naked eye, the signatures appear to be forged on the receipt of the larger amount. The formation of the letters, the courts thought is quite different in the questioned signatures from those of the specimen signatures. The alignment/slant, skill and line quality are different in the questioned signatures from that of the specimens. It is, in these circumstances, that the report of Gurmit Kaur DW2 was accepted as the correct opinion as against the other. Learned Civil Judge (Senior Division), SBS Nagar declined the relief of specific performance of the agreement and partly decreed the suit qua alternative relief of ₹ 500/- as costs with an order of refund of the amount with interest @ 6% per annum from the date of decree till its actual realisation.

6. Aggrieved by the judgment and decree of the learned trial Court, the plaintiff carried an appeal to the Additional District Judge, SBS Nagar who came to hold the same view as expressed by the learned trial Judge. He correctly thought that the entire case revolved around one document i.e. Ex.P5. Two things were sure that the agreement to sell dated 29th January, 2002 and receipt of earnest money of ₹ 500/- were facts which are not disputed. When blind reliance is not placed on an opinion of an expert witness and the Court itself examines the signatures as the final arbiter of justice, then it cannot be said that the reasoning of the Court of appeal or the one below suffer from any material irregularity or lack of

appreciating the expert and other evidence. If the receipt was prepared on 9th October, 2002 and the date for agreement was fixed as 30th October, 2002 for execution and registration of the sale deed, then it is rather a suspicious and doubtful circumstance as to why the vendee would pass on the entire sale consideration of ₹ 1,10,000/- before executing and registering the sale deed as no prudent person may do.

7. Learned counsel submits that the parties were brothers and they must have had sufficient faith in each other and among family members such a thing can happen. The argument in the first flush appears attractive but still ordinary prudence would not yield the result of money having actually passed without clear and concrete evidence or a preponderance of probabilities drawn from other supportive facts, while there is presence of none of the kind on the file. What was alleged was obviously a cash transaction which was not documented except by alleged receipt Ex.P5 the truth of which has been disbelieved. If the receipt is forged or doctored, then the filial relationship between the parties is of little consequence. Fraud and deceit is not unknown and is capable of being practiced within the family. I am, therefore, unable to persuade myself to the view.

8. Learned counsel then presses before me a judgment rendered in RSA No. 3224 of 2011 in *Bhajan Singh @ Harbhajan Singh and another v. Mohan Lal* decided on 8th May, 2015 that in cases where issue-wise findings are not returned in the first appeal, that would alone constitute ground enough for interference and one which gives rise to a substantial question of law by itself. While I said that, I relied on an earlier decision of this Court rendered in **Harjit Grewal and others v. Dr.Vinod Kumar Batra and others**; 2010 (5) RCR (Civil) 340 : 2010 (2) PLR 235 where a similar

opinion was expressed. The argument is that in the present case, the appellate court has not returned findings issue-wise and this is a fatal flaw. That is quite true to return issue-wise findings as the best thing to do. However, in cases, which rest on a simple fact or facts, upon which a case can turn, say, just as in this case, where everything depended on the receipt Ex.P5 and whether it was a genuine or forged document, it would be too much to expect from the first appellate court to mechanically decide the appeal by recording reasons issue-wise and not on a cumulative basis, so long as what weighed in the mind of the court is clearly discernable to take one view or the other. The appellate judgment could have been reduced to a paragraph by affirming the reasoning of the lower court in discarding receipt Ex.P5 and such facts alone would be relevant which revolve around the questioned document on which the entire case depended for its decision. Therefore, I do not find any grave infirmity in what the appellate court has done in this case so long as reasoning is forthcoming on the moot point decided and on facts of which it is the last court. I would, therefore, carve out an exception from the aforesaid two cases and expect that the first appeal court should mostly decide appeals issue-wise as is the requirement in more complex and out of ordinary cases where issues are intermingled, inter-twined and one process of reasoning or line of thinking runs through the thread of the entire case, one depending on the other or in cases where wholly disparate elements decided separately make for the whole case as to what relief is capable of decree in the totality of facts and circumstances, in the case in hand. Therefore, the principle laid down in the ruling cited are to my mind today not to be mechanically applied in cases of the present kind which are simple in nature and content. But I would still say that it is better

to follow the format but departure alone would not be reason to set aside a good order or to remand the case to the court of first appeal to record reasons issue-wise by setting aside the judgment and decree in appeal. This is not a case for remand as suggested by learned counsel for the appellant as a last resort. The case being purely fact based, does not give rise to any substantial questions of law and I would, therefore, dismiss the appeal in limine as not worth further consideration in admission for regular hearing.

(RAJIV NARAIN RAINA)
JUDGE

May 20, 2015
Paritosh Kumar