

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2161 of 2013
Date of Decision : 17.11.2015

Sarabjit Singh

....Appellant

Versus

Salamat Masih and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Jain, Senior Advocate
with Mr. Chetan Slathia, Advocate
for the appellant.

Surinder Gupta, J.

This Regular Second Appeal has been filed by plaintiff-Sarabjit Singh against the judgment and decree passed by Additional Civil Judge (Senior Division), Jalandhar whereby his suit seeking specific performance of agreement dated 13.03.1992 concerning land measuring 61 *kanals* 2 *marlas* was dismissed.

2. Briefly stated, the case of plaintiff is that on 13.03.1992, defendant no. 1-Salamat Masih had agreed to sell his land measuring 61 *kanals* 2 *marlas* for a total consideration of ₹ 3,51,000/- and received a total sum of ₹ 3 lacs on different dates i.e. ₹ 1 lac on 21.01.1992, ₹ 1 lac on 28.01.1992 and ₹ 1 lac on 13.03.1992. The balance sale consideration of ₹ 51,000/- was to be paid at the time of execution of sale deed. Some litigation with regard to suit land with third party was pending, as such, it was agreed that sale deed will be executed after decision of that case. Possession of the suit land was already with the plaintiff who digged the earth for manufacturing of bricks, installed two tube-wells and constructed two tube-well rooms thereon. On

decision of pending litigation, the plaintiff contacted defendant no. 1 for execution of sale deed and was informed that he had already sold the land to defendants no. 2 and 3 vide two sale deeds. Defendants no. 2 and 3 were aware of the agreement between the parties and have purchased the suit land despite that information.

3. In written statement defendant no. 1 denied execution of any agreement to sell the suit land in favour of the plaintiff and dubbed agreement dated 13.03.1992 as forged and fabricated document. It was alleged that Labhu Masih was original owner of the land measuring 183 *kanals* 6 *marlas*, which include the suit land. Labhu Masih had executed a Will dated 17.03.1976 in favour of his two sons Rehmat Masih and Salamat Masih. Rehmat Masih sold his $\frac{1}{2}$ share to one Joginder Singh whereas Salamat Masih sold his $\frac{1}{6}$ th share of his holding in favour of Mansimran Singh and Sarabjit Singh Makkar (plaintiff). He (Salamat Masih) sold his remaining share in his land to Itpal Singh and Gurvinder Singh, defendants no. 2 and 3 respectively vide sale deeds dated 17.03.1997 and 04.04.1997 and delivered the actual possession to them. Defendants no. 2 and 3 are in actual possession of the suit land. All the other averments of the plaintiff were contested, controverted and denied.

4. Defendants no. 2 and 3 filed separate written statement and contested claim of the plaintiff *inter alia* pleading that they are in possession of the suit land after its purchase from Salamat Masih vide two sale deeds.

5. Learned Additional Civil Judge (Senior Division),

Jalandhar discarded the version of plaintiff regarding execution of agreement dated 13.03.1992 by defendant no. 1 in favour of the plaintiff. It was observed that on 13.03.1992, the plaintiff had got sale deed executed in favour of his son. There was litigation regarding inheritance of Labhu Masih father of defendant no. 1 and the plaintiff would have avoided to entangle himself in the litigation. On perusal of agreement it was found that the same was forged document. Relevant observation to this effect are contained in para 35 of the judgment, which reads as follows:-

“35. On the strength of evidence, adduced before the Court, coupled with the testimony of PW2 and PW3 who have stated as to agreement having been executed but when the entire evidence is put to judicious scrutiny coupled with the perusal of the agreement, Ex. P1 it is worth making mention that the space covered at first page rather strengthens that the entire page has been covered by getting typed the subject matter till bottom and on the second page though there was lot of space underneath the signatures but the subject matter had been carried forward to the third page simply to bring within the ambit that the subject matter does not overlap the space where signatures have been appended and on the third page, lot of space has been left on the upper portion and that too to maintain balance qua subject matter and signatures on the said page. A person can tell lie but the events wouldn't. On stipulated date i.e. 4.4.1995 when the written statement was filed by the present plaintiff, there was no reference qua the document Ex. P1 and as per the plaintiff, Salamat Masih was the owner to the extent of 32 kanals only which he has sold by way of sale

deeds to the son of the plaintiff and the remaining land which is subject matter of the present suit, as per him, was the ownership of other co-sharers, thus, the said pleadings altogether falsifies the arguments put forth by the learned counsel for the plaintiff. Rather the agreement Ex. P1 is altogether is a suspicious document and forged document simply to defeat the rights of defendant no. 1.”

6. Learned counsel for the appellant has argued that the plaintiff examined marginal witnesses and signatures on the agreement to sell were admitted. Still both the Courts have discarded claim of the plaintiff on the ground that in the written statement filed in a subsequent suit in the year 1995, the plaintiff has not disclosed the agreement in question. The plaint of that suit was not filed, as such, averments made in the written statement were not relevant at all for deciding this case. When there is direct evidence produced by the plaintiff regarding execution of the agreement the same could not be ignored by the Court below.

7. On perusal of trial Court record it is evident that a suit was filed by defendant no. 1-Salamat Masih for permanent injunction to restrain the plaintiff from digging earth from the land in suit and other land. *Khasra* numbers of the land in suit find mentioned in the headnote of plaint of that suit. The plaintiff filed written statement wherein he took a comprehensive plea regarding all the instances relating to the suit land. Para 1 of the written statement filed by plaintiff-Sarabjit Singh in that case reads as follows:-

“1. That the plaintiff has got no locus standi to file the

*present suit as he is no longer the owner of the property in dispute. In fact, one Labhu Masih father of the plaintiff was the owner of the entire land and after his death all the legal heirs of Labhu Masih became the owner of the land to the extent of 1/6th share each, in the total land held by Labhu Masih **as per share of plaintiff in the total land, the plaintiff has become the owner to the extent of 32 kanals of land out of the total land measuring 24 killas. The plaintiff has already sold his share to one Mansimran Singh son of Sarabjit Singh vide registered sale deed dated 11.03.1992 and 13.03.1992, the son of the present defendant and after the execution and registration of sale deed, the possession of the land was also delivered. Now the plaintiff is no longer the owner in possession of the property as the remaining land has been sold by the remaining owners to different persons. The plaintiff left with no interest in the suit property, as such the present suit is liable to be dismissed on this score alone being without any merits.***

8. The perusal of plea referred above taken by the plaintiff in that written statement which was filed on 04.04.1995 shows that the plaintiff advanced all the pleas concerning the suit land. In case he had been delivered possession of the suit land under the agreement to sell dated 13.03.1992, he must have mentioned that agreement in his written statement to protect his possession and would have taken the shelter of provisions of Section 53-A of the Transfer of Property Act. It is evident that on

11.03.1992 and 13.03.1992, he had purchased part of the suit land from defendant no. 1 vide two separate sale deeds. Had the agreement in question been in existence at that time, the plaintiff would have empathetically and with full force pleaded the same and claimed possession of the suit land measuring 61 *kanals* 2 *marlas* based on the averments in the agreement. Strangely enough there was not even a whisper about this agreement in that written statement which left no suspicion in the mind of Courts below that the agreement in question is a forged and fabricated document. Another factor which led the lower Court to take this view is that this agreement was not scribed by a regular deed writer. It was also proved that the plaintiff was not in possession of the suit land. Had he been in possession under this agreement he would not have sought relief of possession in his suit for specific performance.

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

Dismissed.

November 17, 2015
jk

(SURINDER GUPTA)
JUDGE