

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

RSA No. 2162 of 2015 (O&M)

Decided on: 18.5.2015.

Kulwant Singh

... Appellant

Versus

Balwant Singh (now deceased through LRs) and others

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Umesh Kumar Kanwar, Advocate,
for the appellant.

K.C.PURI.J.

This is an appeal directed by the defendant appellant against the judgment and decree dated 23.1.2015 passed by Sh. Kuljit Pal Singh, Additional District Judge, Fazilka vide which the appeal preferred by the defendant appellant against the judgment and decree dated 12.10.2012 passed by Sh. Tarntaran Singh Bindra, PCS, Additional Civil Judge (Senior Division), Jalalabad was dismissed.

In brief, the case of the plaintiff is that defendant No.1 Kulwant Singh is owner of disputed property and he agreed for sale of disputed land in favour of plaintiff for a sum of Rs.3,50,000/-.

Defendant No.1 received earnest money to the tune of Rs.2,70,000/-

from the plaintiff and he executed an agreement to sell on 16.5.2001. The sale deed was to be executed on or before 14.5.2002. On the stipulated date, the parties extended date for execution and registration of sale deed. The plaintiff remained ready and willing to perform his part of the agreement but the same could not be completed due to failure of defendant No.1. Subsequently, defendant No.1 has sold land measuring 14 kanals 5 marlas out of suit land to defendant No.2 & 3. The defendants No.2 & 3 were having knowledge of agreement to sell dated 16.5.2001. Hence, sale deed executed by defendant No.1 in favour of defendants No.2 & 3 is not binding upon the rights of the plaintiff. The plaintiff requested the defendant for executing the sale-deed in his favour but the defendant refused. Hence, the suit.

On notice, the defendants appeared and contested the claim of the plaintiff.

The defendant No.1 filed written statement raising preliminary objections of maintainability, cause of action, estoppel and concealment of true facts. On merits, it was pleaded that the plaintiff was a commission agent. The defendant No.1 was his customer and he used to sell his agricultural produce through the agency of plaintiff. The plaintiff used to obtain signatures of defendant No.1 on blank documents and stamp papers as security. The plaintiff assured that these documents will be returned by him at the time of settlement of account. The defendant No.1 sold his agriculture produce through agency of plaintiff till October, 2004. Thereafter, he cleared accounts

of plaintiff and demanded blank signed documents/stamp papers from him. The plaintiff returned three agreements for sale deed dated 15.5.2002, 12.5.2003 and 11.5.2003 to defendant. The defendant No.1 raised objections with regard to preparing of above mentioned false agreements on blank documents which were got signed by him. The plaintiff prepared disputed agreement on blank papers of defendant in connivance with scribe and marginal witnesses. This agreement is not binding on the rights of defendant No.1 as it is forged and fabricated one.

The defendants No.2 & 3 filed separate written statement taking preliminary objections of concealment of true facts, estoppel, cause of action, maintainability of suit, forgery of agreement etc. It is pleaded that the defendants No.2 & 3 are bonafide purchasers of disputed property for valuable consideration as they have purchased this property vide sale deed dated 6.9.2004 and 12.10.2004 from defendant No.1 Agreement in dispute is nothing but a false and fabricated document. It is result of fraud, coercion with marginal witnesses and its scribe. On merits, it was pleaded that defendant No.1 neither received any earnest money from plaintiff nor he has executed agreement to sell in question in favour of the plaintiff.

The plaintiff filed replication denying the allegations of the defendants and re-iterated the stand taken in the plaint.

From the pleadings of the parties, following issues

were framed:-

1. Whether defendant No.1 executed an agreement to sell dated 16.5.2001 in favour of the plaintiff and received earnest money of Rs.2,70,000/- ?OPP
2. Whether the plaintiff was ready and willing and still ready and willing to perform his part of contract ?OPP
3. If issues No.1 & 2 proved, whether the plaintiff is entitled to specific performance of agreement to sell dated 16.5.2001 ?OPP
4. If issue No.3 is not proved, whether the plaintiff is entitled to alternative relief of recovery of Rs.3,50,000/- from defendant ?OPP
5. Whether plaintiff is entitled to recover interest ?If so, at what rate ?OPP
6. Whether suit of the plaintiffs is not maintainable ?
OPD
7. Whether the plaintiffs have got no cause of action or locus standi to file the present suit ?OPD
8. Whether the plaintiffs are entitled to permanent injunction as prayed for ?OPP
9. Relief.

In order to prove their case, Daljit Singh (legal representative of deceased Plaintiff Balwant Singh) has himself stepped

into the witness box as PW-3, plaintiffs have also examined PW-1

Harjit Singh, PW-2 Rajinder Singh, PW-4 Kulwant Singh and closed their evidence.

In rebuttal, the defendant No.1 stepped into witness box as DW-1, defendant No.2 Hardeep Singh himself stepped into witness box as DW-5. The defendants have also examined DW-2 Anil Kumar, Handwriting & Finger Prints Expert, DW-3 Gurmeet Kaur, Registration Clerk, DW-6 Harbhajan Singh, Ex. Sarpanch of village Chak Kathgarh and closed their evidence.

After appraisal of the evidence, learned trial Court decided issues No.1 & 2 in favour of the plaintiff and against the defendant No.1. However, it was held that although defendant No.1 executed agreement in question and received a sum of Rs.2,70,000/- from plaintiff but there was no intention of sale of disputed property. Issues No.3 was decided against the plaintiff. The plaintiff was not held entitled to specific performance of the agreement in question. Alternative prayer for recovery of amount was accepted and the plaintiff was held entitled to receive Rs.2,70,000/- from defendant No.1 along with pendente lite interest. Issues No.6 was decided in favour of plaintiff and against the defendant. Consequently, suit of the plaintiff for recovery of Rs.2,70,000/- was decreed. The defendant No.1 was restrained from alienating the suit property till realization of above said amount. Suit of the plaintiff against remaining defendants was dismissed vide judgment and decree dated 12.10.2012 passed by Sh.

Tarntaran Singh Bindra, PCS, Additional Civil Judge (Senior

Division), Jalalabad.

Feeling dis-satisfied with the aforesaid judgment and decree dated 12.10.2012, the defendant appellant filed appeal before the First Appellate Court. Vide judgment and decree dated 23.1.2015 passed by Sh. Kuljit Pal Singh, Additional District Judge, Fazilka, the appeal was dismissed.

Still feeling dis-satisfied with both the judgments and decrees dated 12.10.2012 and 23.1.2015, the defendant appellant has preferred the present regular second appeal.

The appellant in paragraph No.16 of the grounds of appeal has mentioned that following substantial questions of law have arisen:-

- (i) Whether the judgment and decree passed by Courts below qua the alternative relief is sustainable in the eyes of law, whereas alleged agreement to sell is itself a fabricated one?
- (ii) Whether the courts below have misread the evidence available on the record ?
- (iii) Whether the plaintiff/respondent is entitled for alternative relief ?
- (iv) Whether the judgment and decree passed by the ld. Courts below are against the evidence and pleading of the parties ?

I have heard learned counsel for the appellant and

have gone through the file.

The regular second appeal lies only if any substantial question of law arises. Although, in paragraph No. 16 of the grounds of appeal, it is mentioned that substantial questions of law have arisen but none of them have arisen. The alternative relief can be granted by the Court and there is nothing wrong in it. There is nothing on the file that the judgments of both the Courts below are the result of misinterpreting or misreading the evidence on the file. Both the Courts below reached to the conclusion that since there was no intention to execute the sale deed but was to secure payment and as such the relief of specific performance is not available. That finding of both the Courts below has not been challenged during the course of arguments. There is nothing on the record that agreement in question is the result of fraud as alleged.

Learned counsel for the appellant has argued that suit is not within limitation but in the same breath, counsel for the appellant has admitted that from the date of extension of time, the suit is within limitation. In case, the agreement had been forged one, in that case, the plaintiff would not have got the extension from defendant No.1. The findings of both the Courts below regarding execution of agreement are unassailable in view of Section 100 of CPC. There is nothing on the record that said finding is perverse or is against the principle of law.

So, I have no hesitation in holding that no question of

law much less substantial question of law is involved in the present

regular second appeal. The appeal is without any merit and the same stands dismissed.

18.5.2015.
SN

(K.C.PURI)
JUDGE