

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

R.S.A. No. 3194 of 2015 (O&M)

Date of decision:- 10.07.2015

Gurmail Singh and another

...Appellants

Versus

Gurnam Singh

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Randeep Singh, Advocate
for the applicants/appellants

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

RITU BAHRI J.

C.M. No. 7708-C of 2015

For the reasons mentioned in the application, delay of 17 days in re-filing the present appeal is condoned.

The application stands disposed of accordingly.

R.S.A. No. 3194 of 2015

This regular second appeal is directed against the concurrent findings of facts recorded by both the Courts below whereby the suit of the plaintiff-respondent (herein after to be referred as 'the respondent') was decreed.

Brief facts of the case put forth by the respondent is that

vide agreement dated 28.05.2002, the defendants/appellants (herein after to be referred as 'the appellants') agreed to sell their agricultural land measuring 5 bighas 12 biswas being 2/3 share in the total land measuring 8 bighas 8 biswas comprised in khewat/khatoni No. 13/26 to 28, comprising in khasra No. 22//24/2(2-0), 23//21/1(3-8) and 22//25/2(3-0), situated in the revenue estate of village Nandgarh Tehsil Rajpura, District Patiala for a total sale consideration of Rs.3,10,000/- with the respondent and received a sum of Rs.1,80,000/- as earnest money and the final date for execution and registration of the sale deed was fixed as 28.05.2003. The respondent remained present in the office of the Sub Registrar, Rajpura on 28.05.2003 along with balance sale consideration but the appellants failed to do the needful. They did not get the copy of jamabandi in respect of the suit land from the Halqa Patwari, thus with mutual consent the date of execution and registration of the sale deed was extended from 28.05.2003 to 27.06.2003, vide separate writing dated 28.05.2003 duly signed by the appellants in the presence of the witnesses. On that day, the appellants received additional amount of Rs.1000/-. The respondent again remained present in the office of the Sub Registrar, Rapura on 27.06.2003 along with balance sale consideration but the appellants failed to turn up. Thus, the respondent got his presence marked by getting his affidavit attested in that regard. When the respondent

approached the appellants for execution and registration of the sale deed, they put off the matter on one pretext or the other and ultimately agreed to execute the sale deed in favour of the respondent on the condition that the respondent had purchase the agricultural land situated at village Gharaman Khurd and village Nanhera. The respondent left with no option and on 23.09.2003, an agreement was entered between the respondent and the appellants vide which the appellants agreed to sell their agricultural land measuring 5 bighas 18 biswas situated at village Nandgarh Tehsil Rajpura as detailed in point I of head note of the plaint and also agreed to sell their agricultural land measuring 1 bigha 12 biswas situated at village Gharama Khurd Tehsil Rajpura detailed at point II of headnote of the plaint and agricultural land measuring 3 bighas 13 biswas situated at village Nanhera as detailed at Point III of the headnote of the plaintiff total land measuring 11 bighas 03 biswas fully detailed at points I, II and III of the headnote of the plaint, the three separate villages had been agreed to be sold by the appellants at the rate of Rs.2,50,000/- per killa and thereafter, the appellants received an additional amount of Rs.4,19,000/- as earnest money from the respondent in addition to the amount already paid by the respondent i.e Rs.1,81,000/-, vide written agreement dated 28.05.2002 and 28.05.2003. Now the appellants had agreed to execute the sale deed in favour of the respondent on or

before 23.06.2004 on receiving the balance sale consideration. The respondent remained present in the office of the Sub Registrar, Rajpura on 23.09.2003 along with balance sale consideration but the appellants failed to turn up. Thus, the respondent got his presence marked by getting his affidavit attested from Notary Public.

On notice, the appellants appeared and filed joint written statement and admitted that they had agreed to sell their land mentioned in para No. 1 of the plaint with the respondent on 28.05.2002 but it is denied that the sale price was settled at the rate of Rs.3,10,000/-. It has been stated that the respondent has played fraud with them and got the signatures of the appellants on the alleged agreement dated 28.05.2002.

From the pleading of the parties, the trial Court framed the following issues:-

“1. Whether the plaintiff is entitled for possession by way of specific performance of contract for sale dated 23.09.2003?

OPP

2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

3. Whether the plaintiff is entitled for alternative relief of recovery of Rs.7 lacs (Rs. 6 lacs given as earnest money and Rs.1

lacs as damages suffered by the plaintiff) from defendants? OPP

4. *Whether the plaintiff has always been ready and willing to get the sale deed executed and registration in his favour as per terms and conditions of the agreement to sell dated 28.05.2002 and is still ready to do so? OPP*

4A. *Whether the agreement to sell dated 23.09.2003 and writing dated 28.05.2003 are forged and fabricated documents and the signatures of the defendants have been forged by the plaintiff? OPD*

5 *Whether the plaintiff has not come to the Court with clean hands? OPD*

5A *Whether the proper Court fee has been paid by the plaintiff or not? OPD*

6. *Whether the plaintiff has no locus standi to file the present sui? OPD*

7. *Relief.”*

P.W.1 Jasbir Singh stamp vendor stated that Gurmail Singh had purchased a stamp paper of Rs.300/- from him on 23.09.2003 for getting the agreement prepared thereon and he made an entry in the register at Sr. No. 5538 by getting signatures of Gurmail Singh. He proved copy of register (Ex P1).

P.W.2 Swaran Singh scribe had brought the summoned register containing entry of the relevant agreement.

P.W.3 Kamlesh Kumari stamp vendor stated that the agreement dated 28.05.2002 is scribed on stamp paper sold by her, same being Ex P4.. The stamp paper was purchased by Gurmail Singh and proved his endorsement Ex P5 stating that she made entry in her register at Sr. 5358 dated 28.05.2002 by obtaining signatures of Gurmail Singh.

P.W.4 Santokh Singh had submitted his affidavit Ex PW4/A in which he contended that he knew the parties to the suit personally and Gurmail Singh and Chetan Singh had agreed to sell their land measuring 5 bighas 12 biswas situated at village Nandgarh Tehsil Rajpura District Patiala to the respondent for a total sale consideration of Rs.3,10,000/- and the original agreement had been scribed between the parties on 28.05.2002 by Swaran Singh, deed writer, Rajpura. After reading the contents of the agreement, the parties put their respective signatures. The appellants received Rs.1,80,000/- in cash paid by Gurnam Singh as earnest money at the time of original agreement to sell dated 28.05.2002. The appellants agreed to receive the remaining sale consideration and to hand over the actual physical possession of the suit land on or before 28.05.2003 by extending a registered sale deed in favour of the respondent. Gurmel Singh had also made endorsement in his own hand regarding the receipt of Rs.1,80,000/- in cash from the respondent putting his signatures thereon, alongwith

signatures of Chetan Singh. He proved the agreement as Ex P7. Gurmel Singh had also endorsed in the register regarding receipt of Rs.1,80,000/- as earnest money. This witness could not be shattered in his cross examination.

P.W.5 Balbir Singh in his affidavit ExPW5/A has also categorically stated so. It has been stated that the agreement to sell had been executed between the parties and the same was scribed by Deed Writer Swaran Singh. The contents of the agreement had been read over to the parties in their presence and thereafter they put their signatures in Punjabi over each page of agreement to sell.

P.W.6 Kulwant Singh marginal witness of the agreement to sell dated 23.09.2003 has deposed by way of his affidavit that on 23.09.2003 Gurmail Singh executed an agreement to sell in favour of Gurnam Singh and received Rs.4,19,000/- as earnest money and the appellants had already received Rs.1,81,000/- from the respondent and the date of registration of the sale deed was fixed for 23.06.2004. After scribing, the contents of the agreement dated 23.09.2003 had been read over to the parties in his presence and thereafter they put their signatures in Punjabi on agreement to sell. This witness proved agreement to sell dated 23.09.2003 (Ex PW2/a).

P.W.7 Bhupinder Singh Deed Writer by way of his affidavit Ex PW7/A deposed that vide entry No. 1086 dated 23.06.2004, he

scribed an affidavit executed by Gurnam Singh. He has proved Ex P10.

P.W.12 Handwriting and Finger Print Expert has proved photographic enlargements of the dispute and standard signatures of Gurmail Singh as Ex PW12/2 to Ex PW12/23 pasted on five photographic charts, photographic enlargements of the dispute and standard signatures of Chattan Singh as Ex PW12/24 to Ex PW12/41 and the negatives PW12/42 to Ex PW12/81. He has opined that the disputed signatures marked as D1 to D10, D6/A of Chtain Singh have been written by the same person who wrote the standard signatures Mark A1 to A7.

On the other hand, appellants examined DW1 Bhupinder Singh who deposed that Kulwant Singh, Santokh Singh and Balbir Singh Numberdar have played fraud upon the appellants by manipulating agreement to sell dated 23.09.2003. D.W.2 Document Expert proved her report Ex DW2/1, photographic enlargements enclosed in the photocharts Ex DW2/2 to Ex DW2/35 and the negatives PW12/42 to Ex PW12/81. D.W.5 Surinder Singh Halqa Patwari proved Ex DW5/B.

The trial Court after going through the entire evidence led by the parties, decided issue No. 1, 2, 4, 5 and 6 in favour of the respondent and decreed his suit, as the appellants led no evidence and it was proved on record that the respondent was ready and willing to

perform his part of contract as he marked his presence before the Notary Public but the transaction could not be completed since the appellants did not come forward to execute the sale deed and get its registration after receipt of the remaining sale consideration.

On appeal, the lower Appellate Court affirmed the finding given by the learned trial Court. However, the lower Appellate Court observed that the trial Court has skipped the findings on issue No. 4-A and 5A. Issue No. 4A was held to be covered by issue No. 1 and it was held that agreement to sell dated 23.09.2003 and writing dated 28.05.2003 are genuine documents bearing signatures of the appellants and are not forged and fabricated documents. So this issue was decided in favour of the respondent and as far as issue No. 5A is concerned, the respondent was held to be paid ad valorem court fee at the value of the suit fixing the Court fee on Rs.7 lacs. This issue was also decided in favour of the respondent and against the appellants.

The detailed judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

10.07.2015

G Arora

(RITU BAHRI)**JUDGE**

GAURAV
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I attest to the accuracy and
integrity of this document