

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Regular Second Appeal No.1265 of 2014(O&M)

Date of decision: 02.11.2015

Baleshwar & others

.....Appellants

versus

M/s Big Jo's Estate Limited

.....Respondent

**CORAM: Hon'ble Mr.Justice Kuldip Singh**

Present: Mr.V.K.Jindal, Senior Advocate with  
Mr.Amardip Sheoran, Advocate for the appellants  
Mr.Ashish Aggarwal, Senior Advocate with  
Mr.Manvinder Chauhan, Advocate for the respondent

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?* **Yes**
2. *To be referred to the Reporters or not ?* **Yes**
3. *Whether the judgment should be reported in the Digest?* **Yes**

**Kuldip Singh, J.**

Impugned in the present regular second appeal is the judgment and decree dated 9.9.2013, passed by the learned Additional District Judge, Sonapat, affirming the judgment and decree dated 13.6.2011, passed by the learned Additional Civil Judge, Senior Division, Gannaur, whereby the suit of the plaintiff was decreed with costs and decree for specific performance was passed, directing the defendants to get the sale deed executed and registered in favour of the plaintiff after the receipt of the balance sale consideration within the period of two months as per letter and spirit of the agreement dated 28.5.2005 (Ex.P2). It was further directed that in case of failure of the defendants, the plaintiff shall be at liberty to get the sale deed

executed and registered through the assistance of the Court.

Brief facts of the case are that the plaintiff M/s Big Jo's Estates Limited filed a suit against Lakhmi Chand through his legal heirs claiming that Lakhmi Chand entered into an agreement to sell dated 28.5.2005 in favour of the plaintiff whereby he agreed to sell the land measuring 6 Acres, 3 kanals 14 marlas fully detailed in the plaint for Rs.3,10,20,000/- @ Rs.48,00,000/- per acre. Rs.31,02,000/- was paid to the defendant as earnest money. Sale deed was agreed to be executed and registered uptill 27.2.2006. Since, defendant Lakhmi Chand expired, therefore, his legal heirs have been impleaded as defendants. Plaintiff claimed that in terms of the agreement, he appeared in the office of the Sub-registrar Ganaur along with the balance sale consideration on 27.2.2006 to perform his part of contract but the defendant did not turn up. Plaintiff got his presence marked before the Sub-registrar, Ganaur. He also met the defendants personally and requested them to execute the sale deed but the defendants kept on putting off the matter on one pretext or the other.

In the written statement, defendants, in addition to taking usual preliminary objections, claimed that the suit for specific performance of contract does not lie as there is no compliance of the requirements of forms 47 and 48 of Appendix A of Code of Civil Procedure, which is necessary for filing of the suit under Section 16 (C) of the Specific Relief Act. On merits, it was pleaded that Lakhmi Chand had died and a dead person cannot be made party to the suit.

It was claimed that the plaintiff appears to be limited company and

there is no resolution in favour of the Director to file the suit. The defendants claimed that they have become owners in possession of the disputed land as Lakhmi Chand deceased has suffered a decree through Civil Suit No.168 of 1991 decided on 23.3.1992 titled as *Baleshwar and others v. Lakhmi Chand*, passed by the then Sub Judge, 1<sup>st</sup> Class, Sonapat. Therefore, at the time of alleged agreement on 28.5.2005, Lakhmi Chand was not owner of the disputed land. Defendants further stated that mutation No.1268 has been entered and sanctioned in their names. Therefore, Lakhmi Chand had no right to alienate the disputed property in favour of the plaintiff. It was claimed that the plaintiff has prepared a fabricated document and made overwriting in the date in the 13<sup>th</sup> line at page No.6 of the agreement to grab the valuable property of the defendants. Defendants are at liberty to file a criminal complaint. It was further pleaded that the alleged agreement is not binding on the rights of the defendants and was obtained in collusion with the late Lakhmi Chand.

From the pleadings, following issues were framed:-

- i) *Whether the plaintiff is entitled to a decree for possession of the suit property by way of specific performance of the agreement to sell dated 28.5.2005?*  
OPP
- ii) *Whether the suit of the plaintiff is not maintainable in the present form?* OPPD
- iii) *Whether the agreement to sell dated 28.5.2005 is a fabricated and forged document and has been tampered by the plaintiff as alleged?* OPD
- iv) *Relief.*

Lower Court, after recording the evidence and hearing counsel for both the parties, decreed the suit as stated above. The appeal filed by the defendants was dismissed by the learned Additional District Judge vide order dated 9.9.2013.

I have heard learned counsel for the parties and have also carefully gone through the file.

Following substantial questions of law arises in the present appeal:-

- i) What is the effect of consent judgment and decree dated 23.3.1992 suffered by Lakhmi Chand in favour of his sons on the rights of the plaintiff?*
- ii) Whether the agreement dated 28.5.2005 is binding on the legal heirs of Lakhmi Chand?*

First of all, I will take up the law point regarding the effect of the consent judgment and decree dated 23.3.1992 on the rights of the plaintiff.

Copy of the judgment (Ex.D1) shows that the consent decree for declaration was passed on 23.3.1992 by the Sub Judge 1<sup>st</sup> Class, Sonapat. (Copy of the decree sheet is Ex.D2). The matter ended there. The said decree was never reported to the revenue authorities. All the plaintiffs in the said suit are shown major. The present agreement to sell is dated 28.5.2005 i.e. after more than 13 years and 2 months of the passing of the said consent judgment and decree Ex.D1 and Ex.D2. It was only thereafter that the decree was reported to the revenue authorities and mutation No.1268 (Ex.D4) was entered on 9.3.2006 i.e. after 14 years of the passing of the said

decree. In the meanwhile, Lakhmi Chand continued to be reflected in the revenue record as owner. The plaintiff relied upon the revenue record and entered into an agreement to sell dated 28.5.2005. The factum of decree was within the exclusive knowledge of Lakhmi Chand and his sons, who did not disclose the same to the plaintiff. The perusal of the agreement to sell dated 28.5.2005 shows that in addition to Lakhmi Chand, his grandson Sanjeev Kumar, who happens to be the son of Baleshwar Tyagi, one of the beneficiaries of the said decree, was the attesting witness. If Sanjeev Kumar who is the son of Baleshwar Tyagi defendant was the attesting witness of the agreement, he being the member of the family of Baleshwar Tyagi, could easily know that now they are the owners of the said property. The facts and circumstances of the present case show that the said judgment and decree dated 23.3.1992 was obtained and kept as closely guarded secret by Lakhmi Chand and his sons so as to commit fraud with 3<sup>rd</sup> party at an appropriate time by setting up the decree whenever the land is sold by Lakhmi Chand.

In the present case, at the time of agreement to sell, a sum of Rs.31,02,000/- was paid to the defendant and it is proved on record that out of the said amount, a cheque of Rs.28,52,000/- was given in favour of Lakhmi Chand (Ex.PW3/B) and that the said amount was deposited in the joint account held by Lakhmi Chand and Sanjeev Kumar Tyagi son of Baleshwar Tyagi defendant. Copy of the statement of account is Ex.PW4/D. Therefore, it is held that the judgment and decree dated 23.3.1992 was obtained with intention to commit fraud upon the prospective vendee. It was not shown light of

the day for 14 years and was reported to the revenue authorities only after the death of Lakhmi Chand, the original owner on 6.11.2005. Hence, the same is not binding on the rights of the plaintiff.

Contention of learned counsel for the appellants is that the decree could have been challenged only by the deceased Lakhmi Chand and plaintiff cannot challenge it on the ground that it requires registration and is result of fraud etc. I am of the view that when the decree was procured to commit fraud with the 3<sup>rd</sup> party, the 3<sup>rd</sup> party can always plead that the decree was procured to commit fraud upon it and therefore, could plead that the decree is not binding upon its rights.

Learned counsel for the appellants has referred to the authority of the Hon'ble Supreme Court in Gurunath Manohar Pavaskar and others v. Nagesh Siddappa Navalgund and others, 2008(1) RCR (Civil) 563 and has argued that the revenue record is not document of title. This authority is of no help to the appellants since the consent judgment and decree dated 23.3.1992 has been held to be not binding on the rights of the plaintiff.

Learned counsel for the respondent has relied upon the authority of the Hon'ble Supreme Court in Sukha Singh v. Jasvinder Singh, 2001(4) RCR (Civil) 689, Wherein it was held that when the ex-parte decree has been obtained in connivance with the last owner and was never acted upon and the registered sale deed executed for consideration, the decree is not binding on the rights of the purchasers.

Now coming to the agreement in question. It has been

vehemently argued that the agreement has not been proved in accordance with law and that the agreement (Ex.P2) is in fact a coloured photostat copy and not the original one. Plaintiff examined Shri B.N.Srivastava, Handwriting and Finger Prints Expert, who submitted the report (Ex.PW3/1) wherein it is stated that the agreement the (Ex.P2) is original. Leaving apart the report, the bare perusal of the agreement (Ex.P2) shows that it is not the coloured photostat but the original. Photographs of Lakhmi Chand and his grand sons appear on the same, which can be clearly distinguished as having been pasted on the first page. All the pages of the agreement also have the thumb impressions of Lakhmi Chand in original. Even the backside of the first page bears the original thumb impressions, stated to be of Lakhmi Chand. On the backside, some endorsement is made regarding the sale of the stamp papers, mentioning No.756 dated 12.5.2005. Therefore, agreement (Ex.P2) is the original document and not the coloured photostat.

Further contention has been raised that at the time of evidence, the agreement was not properly proved and that the only photostat of the agreement was proved during the evidence and that the original was later on produced in the statement of the counsel for plaintiff, which was objected to. Therefore, the agreement (Ex.P2) was not properly proved in accordance with law. Shri S.K.Jain, Director of the plaintiff company had appeared as PW1 and had filed his affidavit in examination-in-chief, wherein copies of the agreement Mark A and Mark B were produced. The contents of the agreement were proved by the witnesses and the proof by way of filing photostat

copy was not objected to at appropriate stage. Since the contents of the agreement were proved and defendants were raising the plea about the genuineness of the original, therefore, the original was also produced for perusal of the Court. In addition to this, Manik Ram attesting witness of agreement also appeared as PW2 to prove the contents of the agreement. He also identified his signatures on the agreement to sell. Though in cross-examination, he has stated that he has not seen the original agreement, which bears his signatures. However, he proved that the agreement was duly executed by Lakhmi Chand and was signed by the attesting witnesses. The second attesting witness was Sanjeev Kumar Tyagi son of Baleshwar Tyagi defendant, who was not produced by the defendants to controvert the contents of the agreement.

Learned counsel for the appellants has argued that the only Photostat copy of the agreement was proved during evidence and the original was later on exhibited in statement of the counsel and therefore, the same could not be exhibited during the statement of the counsel and is liable to be de-exhibited. Reliance has been placed on the authorities of this Court in Karnail Singh v. M/s Kalra Brothers, Sirsa, 2009(2) RCR (Civil) 380, of the Hon'ble Supreme Court in Narbada Devi Gupta v. Birendra Kumar Jaiswal and another, 2003(4) RCR (Civil) 683 and authority of this Court in Darshan Kaur v. The Amritsar Primary Cooperative Agricultural Development Bank Limited Amritsar and another, 2010(1) RCR (Civil) 747. The agreement was proved by examining the witnesses. Since the objection of the defendant was that the original has not been produced, therefore, the

original agreement was produced by the counsel during his statement so as to clear the doubts as to whether the original is the coloured Photostat copy or the original document. Therefore, these authorities are of no help to the plaintiff.

It being so, I concur with the findings of both the Courts below that the agreement has been duly proved.

The next contention raised before this Court is that the original agreement has been tampered with, therefore, the same is not executable. The perusal of the agreement shows that the agreement is otherwise printed on computer, but some of the blanks like date and name of first party have been filled later on. The contentious issue is regarding date of execution of sale deed, which is mentioned as 27.2.2006. According to the counsel for the appellants, the date has been changed from 1.10.2005 to 27.2.2006. In this regard, reliance has been placed on the statement of Shri B.N.Srivastava, Handwriting and Finger Prints Expert (PW3), who has stated in his report that these writings have been done in date to make legible. However he has asserted that there is no overwriting in the document with regard to any of the dates. Shri Ram Dhan Babbar, Expert (DW2) produced by the defendants opined otherwise. In order to examine whether there is forgery of the date, due to alleged overwriting, one has to examine the disputed entries on relevant page as clause No.6. In clause 6, in addition to the printed material, the filling of blanks are regarding 'cheque No.285264' 'dated 28.5.2005' and the name of the Bank 'Standard Chartered Bank'.

Then the date of execution of sale deed dated '27.2.2006' is also

handwritten. There are no allegations that the cheque no. and the date of the cheque and the name of the bank were also forged. Evidence discussed above clearly shows that the cheque was issued and that the same cheque was deposited in the joint account of Lakhmi Chand and Sanjeev Kumar Tyagi son of Bleshwar Tyagi defendant No.1. The cheque No. and the date tally with the entries made in hand in the agreement (Ex.P2). Just above the said entry regarding the cheque no. date, thumb impression apparently of Lakhmi Chand also appears. A comparison of the writing of cheque no. date and name of bank with the disputed date regarding the execution of sale deed shows that these are the written in similar way. It appears that the pen used was such so as to give impression regarding two lines being drawn at some places. Same is apparent from the number of cheque, name of the bank mentioned in the said agreement. It is in the similar way, the date '27.2.2006' is written. Therefore, the date 27.2.2006 tally with the writing material, habit and manner of writing of cheque number, date and the name of the bank, which have been proved to be genuine one. It being so, I concur with the findings of the two Courts below that there is no overwriting regarding the date of execution of the agreement to sell and consequently, there is no material alteration. In any case, it is not the case of the defendants that they were ready to execute the sale deed on the date alleged by them i.e. 1.10.2005. There case is of complete denial and they are not ready and willing to execute the sale deed, rather they have set up their independent title to suit land on the basis of the judgment and decree dated 23.3.1992 in their favour.

Therefore, once there is complete denial of the agreement and the right of the Lakhmi Chand to execute the agreement has been denied, the date of execution of sale deed otherwise becomes immaterial. If the defendants claim that some overwriting has been made, the best person was available with them in the shape of Sanjeev Kumar Tyagi son of Baleshwar Tyagi defendant. He could have been produced to controvert the statement of the plaintiff and Manik Lal PW2 attesting witness, to show that some overwriting has been done. However, he was not produced. Lakhmi Chand is stated to have died on 6.11.2005. It was only thereafter that the judgment and decree was reported to the revenue authorities and his legal heirs refused to execute the sale deed, which shows that after the death of their father Lakhmi Chand, his sons became dishonest and started finding one or the other way to avoid the agreement.

Learned counsel for the appellants has further argued that the scribe of the agreement has not been produced, therefore, the agreement is not proved. I am of the view that when one of the attesting witnesses has been examined in addition to the party to the agreement, the agreement of sale is duly proved.

In view of the foregoing discussion, I am of the view that judgments and decrees of both the Courts below are well reasoned and do not call for any interference by this Court.

Accordingly, the present regular second appeal stands dismissed with costs.

**02.11.2015***gk***(Kuldip Singh)  
Judge**