

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1474 of 2014 (O&M)
Date of Decision: April 21, 2015

Lekh Raj

...Appellant

Versus

Dilbagh Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.K.Garg Narwana, Senior Advocate with
 Mr.Karan Garg, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-defendant Lekh Raj has filed this regular second appeal against Dilbagh Singh, Dalbir Singh and Kuldeep Singh respondents-plaintiffs challenging the judgment and decree dated 20.01.2010 passed by learned Addl. Civil Judge (Senior Division), Pathankot vide which the suit for possession by way of specific performance filed by the plaintiffs-respondents was decreed and judgment and decree dated 08.10.2013 passed by learned Addl. District Judge, Pathankot, vide which appeal filed by the appellant-defendant was dismissed.

The brief facts of the case are that plaintiff-respondents have filed the suit against defendant Zorawar Singh through LR Lekh Raj for possession by way of specific performance of the agreement

to sell dated 12.06.2000 in respect of the land to the extent of 27 kanals 12 marlas after payment of amount of ₹11,50,000/- after deducting ₹2 lacs as earnest money.

It is mainly stated in the suit that defendant being owner of the suit land entered into an agreement to sell the land in dispute for total consideration of ₹11,50,000/- and defendant executed katcha receipt after receiving a sum of ₹5000/- as advance money vide katcha agreement dated 09.06.2000 on a plain paper in the presence of witnesses and thereafter defendant executed formal agreement on a stamp paper at Tehsil Complex Pathankot vide agreement dated 12.06.2000 wherein the defendant agreed to sell the aforesaid land to the extent of 27 kanals 12 marlas for a total consideration of ₹11,50,000/- along with tubewell connection after adjusting ₹5000/- earnest money already received. The defendant received ₹1,95,000/- and thereby entered ₹2 lacs as earnest money having been paid by the plaintiffs to the defendant and further agreed to get the sale deed executed on or before 12.07.2000. It is further stated that plaintiffs were always ready and willing to perform their part of agreement and as per the program given by defendant, plaintiffs reached Tehsil office along with balance amount for registration and execution of the sale deed on 04.07.2000. The defendant also reached there and thereafter plaintiff paid the amount for the purchase of stamp paper to the defendant, who purchased necessary stamp papers for execution of the sale deed after the calculation of amount and it was decided by both the parties to execute two sale deeds in respect of the suit land

and as such one set of stamp papers was purchased for ₹17100/- vide No.1797 and another set was purchased for ₹17100/- vide No.1798. The defendant also purchased three stamp papers vide No.5818 to 5820 for getting the mutation effected on the basis of above sale deeds and for the transfer of tubewell connection. When the deed writer was scribing the sale deed, the persons accompanying the defendant instigated the defendant and defendant stopped the deed writer from completing the draft of the sale deeds and quickly slipped away from the Tehsil office. A notice was also given to defendant through Advocate calling upon the defendant to execute the sale deed on or before 12.07.2000. Defendant sent reply dated 08.07.2000 wherein he admitted that he agreed to sell the land but falsely alleged that the agreement was got signed on blank papers and he alleged that there was only an oral agreement to sell the land at the rate of ₹11,50,000/- per killa. It is further stated that plaintiff also went to the Tehsil office with necessary amount for execution and registration of sale deeds and balance amount of consideration but the defendant did not turn up.

On the other hand, defendant filed written statement and denied that he agreed to sell land to the extent of 27 kanals 12 marlas to the plaintiffs for a total consideration of ₹11,50,000/- or that the defendant executed a katcha receipt after receiving sum of ₹5000/- as advance money or executed a katcha agreement dated 09.06.2000 or that thereafter executed a formal agreement on a stamp paper at Tehsil Complex Pathankot on 12.06.2000 or that the defendant agreed

to sell the land measuring 27 kanals 12 marlas for a consideration of ₹11,50,000/- along with tubewell connection. It is further stated that defendant has not entered into the katcha agreement or pucca agreement with the plaintiffs. The plaintiffs have indulged in sheer fabrication and concoction to create false evidence in their favour with malafide intention to grab the suit land for the paltry sum of ₹11,50,000/-. It is also stated that in the second week of June 2000, the defendant orally agreed to sell to plaintiffs his land measuring 26 kanals situated in village Farakhpur for the sale consideration @ ₹11,50,000/- per killa and the plaintiff paid ₹2 lacs as the advance money to the defendant. It was agreed that the sale deed as per the oral agreement shall be executed on or before 12.07.2000. As a matter of security, the plaintiffs obtained the signatures of the defendant and that of his son on the blank stamp paper on the condition that the said blank stamp paper with the signatures of the defendant shall be retained by them and shall be destroyed in the presence of the defendant after the execution and registration of the sale deed. No writing has been done on the said blank stamp paper to the knowledge of the defendant or with this consent. It is further averred that on 04.07.2000, the defendant came to the Tehsil complex Pathankot for the execution and registration of the sale deed as per the oral agreement of sale. The plaintiffs purchased the stamp paper for the purpose without disclosing to the defendant and approached the deed writer there. The defendant was astonished to note that the plaintiffs wanted to purchase the said land for a very meagre price,

quite contrary to the agreed consideration for the sale i.e. ₹11,50,000/- per killa. The defendant refused to execute the sale deed. The defendant also stated that he served the plaintiffs with the registered notice calling upon them to get the sale deed executed by 12.07.2000 @ ₹11,50,000/- per killa and destroy/return the blank signed stamp papers by them. It is further stated that on 12.07.2000, the defendant waited for the plaintiffs but they failed to turn up and the defendant got his presence marked through an affidavit, sworn and attested before the Executive Magistrate.

Both the parties led their evidence. Learned Addl. Civil Judge (Senior Division), Pathankot decreed the suit of the plaintiffs vide judgment and decree dated 20.01.2010. Defendant-appellant filed appeal against the above-said judgment and decree and learned Addl. District Judge, Pathankot dismissed the appeal vide judgment and decree dated 08.10.2013.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellant.

At the time of arguments, learned counsel for the appellant argued as per the case of the defendant-appellant as pleaded before the lower Courts and mainly argued that the plaintiffs have failed to prove the execution of agreement and especially the contents of the agreement by producing deed writer. He argued that only deed writer can prove the contents and plaintiffs should have produce the deed writer to prove the contents when the defendant is denying the contents of the agreement alleging that his signatures as well as the

signatures of his son have been obtained on blank stamp papers.

I have heard learned counsel for the appellant and have gone through the record.

From the record, first of all, I find that the findings of both the Courts below are concurrent. No substantial question of law arises in the present regular second appeal. The findings are given by the Courts below on the basis of evidence produced by the parties by correctly appreciating the evidence. The plaintiffs have duly proved the Katcha agreement dated 09.06.2000 vide which ₹5000/- has been paid and this document is bearing the signatures of the defendant as well as of his son. The plaintiffs also by bringing attesting witness, have proved the execution of the agreement to sell dated 12.06.2000. This agreement is also bearing signatures of the defendant and his son. Though, the agreement has not been executed by son of the defendant but it bears the signatures of the son of the defendant also. The defendant is denying the written agreement as well as the katcha agreement/receipt executed by him. He contended that his signatures as well as signatures of his son were taken on blank stamp papers. Therefore, the onus was upon the defendant to rebut the evidence of the plaintiffs by leading cogent evidence that he has not executed any agreement to sell. There is no reason or ground as to why the defendant signed on the blank stamp papers. The execution of the agreement is duly proved by the plaintiff by appearing in the witness box as well as by bringing the attesting witness to the witness box. It is nowhere mandate of the law that deed writer must be examined and

only then the contents can be proved. The contents of the document can be proved by the attesting witness also. Mere non-examination of deed writer, in no way, can be held as fatal to the plaintiffs' case.

Otherwise also, the defendant was also at liberty to examine the deed writer but he has not examined deed writer. The defendant is admitting material fact that he agreed to sell his land to the plaintiff. In the month of June 2000, he also admitted that he went to Sub-Registrar Office to execute the sale deeds. The fact that stamp papers were purchased is also admitted. When the deed writer started scribing the sale deeds, then the defendant left the place. The defendant is now raising issue that he agreed to sell the land @ ₹11,50,000/- per killa whereas the case of the plaintiffs is that the defendant agreed to sell the suit land for the total amount of ₹11,50,000/-.

The perusal of the lower Court record as well as the judgments passed by the Courts below, show that the Courts below have correctly appreciated the evidence. The contents of the agreement have been duly proved by the attesting witness as well as the plaintiffs. Their statements have been duly supported and corroborated by the documentary evidence. There is nothing on the record that any fraud has been played. There is no reason or ground for the defendant and his son to sign the blank papers or blank stamp papers. The version of the defendant is not believable. The contents of the agreement have been duly proved and as per the contents, the agreement was for total amount of ₹11,50,000/-. The plaintiffs

remained ready and willing to perform their part of the contract and it is the defendant, who refused to execute the sale deed.

Learned counsel for the appellant cited judgment passed by the Hon'ble Bombay High Court in ***Sir Mohammed Yusuf and another vs. D. and another, AIR 1968 Bombay 112***. I have gone through this cited judgment and the same having distinguished facts will not apply in the present case as in that case, an attempt was made to prove the contents of the document by proving the signature or the handwriting of the author thereof, which is not the fact in the present case because attesting witness and plaintiff have come to the witness box and deposed regarding the contents of the documents.

Learned counsel for the appellant also cited judgment passed by the Hon'ble Supreme Court in ***Joseph Johan Peter Sandy vs. Veronica Thomas Raj kumar and another, 2013(3) CCC 270***. I have gone through this cited judgment. In that case, neither of the party has examined the attesting witness to the document Ex.A-3. As such a witness could have explained the conduct of the parties and deposed as to who had prepared the document A-3 and that document does not bear either the signature or the address of the scribe and the appellant has also not examine the scribe. It was also not explained as to who had bought the non judicial stamp paper for the document. In these circumstances, the Court held the document looks suspicious whereas in the case in hand, the attesting witness has been examined and the stamp papers were purchased by the defendant. Therefore, the above-cited judgment will not apply in the

present case.

Learned counsel for the appellant has placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***Sait Tarajee Khimchand and others vs. Yelamarti Satyam and others, AIR 1971 SC 1865***, in which it is held that mere marking of a document as an exhibit does not dispense with its proof. This cited judgment having distinguished facts will not apply in the present case as in the case in hand, the agreement to sell has been duly proved by bringing the attesting witness. Learned counsel for the appellant further placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***Malay Kumar Ganguly vs. Sukumar Mukherjee and others, AIR 2010 SC 1162***. I have also gone through this cited judgment and the same having distinguished facts will not apply in the present case as in the case in hand, the contents of the documents have already been proved by the plaintiff as well as the attesting witness and in no way, it can be held that non-examination of scribe is fatal to the case of the party and in other words, it is not the law that the examination of the deed writer or document writer is mandatory to prove the contents of the document. The contents of the agreement can also be proved by the party to the document or by the attesting witness also.

Learned counsel for the appellant has also cited judgment passed by this Court in ***Karnail Singh vs. M/s Kalra Brothers, Sirsa, 2009(4) CCC 110 (P&H)***. This cited judgment also having distinguished facts will not apply in the case in hand as in that case, it

is held that mere exhibiting a document does not dispense with the proof of a document and in that case author of the Bahi entries was not examined. Learned counsel for the appellant further cited judgment passed by the Hon'ble Supreme Court in ***Narbada Devi Gupta vs. Birendra Kumar Jaiswal and another, 2003(4) RCR (Civil) 683***. In that case, it is held that mere production and marking of a document as exhibit by the Court, cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence. However, situation is different where the documents are produced, they are admitted by the opposite party, signatures of them are also admitted and they marked thereafter as exhibits by the Court. This cited judgment having distinguished facts will not apply in the present case.

Learned counsel for the appellant has further placed reliance upon the judgment passed by this Court in ***Suraj Mal and another vs. Rajender and another, 2014(3) CCC 490 (P&H)***, in which it is held that exhibition of document without objection does not dispense with the mode of proof to prove a document. I have gone through this cited judgment and the same having distinguished facts will not apply in the present case as in the case in hand, the document has been duly proved by the plaintiff, who has come to the witness box as well as by bringing the attesting witness.

In view of the above discussion, I find that the judgments and decrees passed by the Courts below are correct, as per law and on the basis of appreciation of the evidence in right perspective. The

findings of both the Courts below are concurrent and do not require any interference from this Court. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

April 21, 2015
Vgulati

(INDERJIT SINGH)
JUDGE