

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

Regular Second Appeal No.4603 of 2015 (O&M)
Date of decision:29.09.2015

Hans Raj ... Appellant

versus

Prem Sagar and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajesh Goyal, Advocate,
for Mr. Pritam Saini, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (*Oral*)

1. The 3rd defendant is the appellant before this court. A suit for specific performance was instituted by the plaintiff said to have been executed by the 3rd defendant after deliberations through defendants 1 and 2 through a document dated 31.05.2005. The written down agreement was said to have been handed over by defendants 1 and 2. As per the recitals in the agreement, the consideration stipulated was ₹3 lacs out of which ₹1,30,000/- was paid as earnest and the balance of sale consideration was required to be paid on 30.01.2006 and sale deed obtained. The plaintiff would contend that the period stipulated in the agreement was extended till

28.02.2006 and endorsement of extension was made on document by the 3rd defendant in his presence. Since the defendants 1 and 2 brought to the plaintiff the 3rd defendant's offer to sell, they had actually signed as witnesses along with one Neeraj Kaushik on the date of the agreement. When the time for performance was extended and endorsement made in the agreement, it was witnessed by Neeraj Kaushik and two other persons. The plaintiff claimed that he was present at the Registrar's office when it was fixed for execution of sale but since the 3rd defendant did not come for execution, a notice was issued by the plaintiff to the 3rd defendant calling upon him to execute the sale. The defendant received the notice but did not respond. The suit came to be filed in a situation where, according to the plaintiff, defendants 1 and 2 were colluding with the 3rd defendant and were preparing to sell the property to someone else.

2. Defendants 1 and 2 filed a short reply denying that they were ever involved in the negotiations of selling the property by the 3rd defendant. The 3rd defendant denied the execution of the agreement as well as endorsement.

3. At the trial, the plaintiff examined himself and the witness Neeraj Kaushik. The plaintiff also brought the evidence of a thumb-impression expert, who compared the thumb-impression found in the agreement and the endorsement of extension with the admitted thumb-impression of the 3rd defendant. He opined that the

thumb-impression found in the endorsement in the agreement tallied with the thumb-impression found in the admitted document but the thumb-impression in the principal document of agreement was not good enough for comparison.

4. The trial court decreed the suit and made reference to the evidence of the witnesses that vouched for the execution of the agreement and the extension. It made further reference to the fact of issuance of notice for which the 3rd defendant did not reply and proceeded to make adverse inference from the fact that the defendant did not give even any complaint to the police. The 3rd defendant appealed and the trial court's judgment was confirmed.

5. The learned counsel appearing on behalf of the appellant contended that the trial court failed to advert to a criminal complaint that was actually filed by the defendant. I will not take this to be very relevant, for, the trial court's observation contains also another serious flaw in inverting the burden of proof for a person, who was pleading a case of forgery ought to prove the forgery. If a document is stated to be a forgery, a person, who seeks for enforcement of the document, alone has to prove it. Such a proof was available through the versions of the witnesses and even if the observation that the defendant's failure to prove the forgery were to be eschewed, the plaintiff must be taken as having established the genuineness of the agreement.

6. The counsel would argue that the thumb-impression expert could only be seen making an opinion and the court cannot act on the same. The science of thumb-impression is perfect and if the opinion given by the expert could not be impeached by anything brought out adversely against the version, there is no need to suspect the same. It is not as if the expert's opinion found a variation between the thumb-impression as found in the agreement and admitted thumb-impression. He only opined that the impression in the agreement was not good enough for comparison, while the thumb-impression found in the endorsement tallied with the admitted thumb-impression. The defendant was taking a defence that he executed neither the agreement nor made endorsement. It was not the case of the 3rd defendant that there were any blank papers containing thumb-impressions that had been left in the custody of the plaintiff. It was evidently a deliberate false plea put-forward by the defendant. This gets confirmed by the fact that the defendant did not even reply to a registered notice given to him by the plaintiff calling upon him to execute the sale in terms of the agreement. There was simply no explanation for non-issuance of reply to the demand made by the plaintiff on the basis of the suit agreement.

7. The counsel also has a plea that the 3rd defendant's son died on 22.05.2005 and it was most artificial that the defendant

would have executed the agreement in favour of the plaintiff within 10 days from the date of death. I find no discussion as regards the same and all that the defendant would refer to the fact that there is a death certificate on file and, therefore, it must have been an aspect of evidence. With no definite pleadings nor oral evidence as regards the alleged improbability, there is nothing substantial to discredit the validity of document only by reference to the production of death certificate at the trial. There is also an argument that the defendants 1 and 2, who were reported to have signed as witnesses in the agreement, had been cited as defendants 1 and 2 and they had denied having brought about the agreement. According to the counsel, the non-examination of these two witnesses ought to be taken as seriously affecting the plaintiff's credibility.

8. I cannot allow for such an argument when the plaintiff has stated that the defendants 1 and 2 were actually hand-in-glove with the 3rd defendant and they had participated in the initial negotiations. The averment in the plaint was that the defendants 1 and 2 were already asked to press defendant No.3 (sic) to execute the sale deed through notice and the defendants had failed to do the needful and they were starting to negotiate to alienate the property to some strangers secretly to defeat the rights of plaintiff. Nothing turns on the non-examination of the defendants 1 and 2 under the circumstances pleaded by the plaintiff.

9. It is also contended that the defendant owns no other land and he will be grossly prejudiced by the sale. As per Explanation II to Section 20 of the Specific Relief Act, the prejudice or hardship has to be with reference to the date when the document was executed and not with reference to subsequent events. There is, therefore, no merit in the above contention.

10. I do not think there is any merit in appeal and the case involves no substantial question of law for consideration. The judgments of the courts below are confirmed and the second appeal is dismissed.

(K.KANNAN)
JUDGE

29.09.2015
sanjeev