

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

1. RSA No.2679 of 2014(O&M)
Date of decision: 26.02.2015

Pardeep Kumar and others

...Appellants

Versus

Dhanpati and others

... Respondents

2. RSA No.6269 of 2014(O&M)

Karambir Singh

... Appellant

Versus

Dhanpati and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate,
for the appellants.

Mr. Puneet Jindal, Senior Advocate with
Mr. Parambir Singh, Advocate,
for the caveator/respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was decreed by the trial court vide judgment and decree dated 01.02.2011. Appeal preferred against the said decree failed and was dismissed on 24.12.2013. This is how, defendants No.2, 3 & 5 to 7 are

before this court, in these regular second appeals. RSA No.2679 of 2014 is preferred by defendants No.3 & 5 to 7. Whereas, RSA No.6269 of 2014 is preferred by defendant No.2. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In a suit filed by the plaintiff i.e. Rameshwar son of Jia Lal, he prayed for a decree for possession by way of specific performance of the agreement dated 23.08.2004, qua a land measuring 58 kanals 7 marlas i.e. the suit property. And also that the sale deed bearing No.11377, dated 16.02.2005, executed by defendant No.1, in favour of defendants No.2 to 4, qua the suit land, was null and void. A decree for injunction was also claimed, restraining the defendants from alienating the suit land in any manner. It was averred that defendant No.1 i.e. Ved Singh, happened to be the owner of the suit property, situated within the revenue estate of Village Asadpur, Tehsil and District Sonapat and an agreement to sell dated 23.08.2004, was executed by him qua the suit land in favour of the plaintiff, for a total sale consideration of ₹ 44,46,250/-. A sum of ₹ 5,00,000/- were purported to have been advanced to defendant No.1, by way of earnest money. ₹ 1,00,000/- were paid on 23.08.2004 at the time of execution of the agreement and the rest ₹ 4,00,000/-, were paid subsequently but on the same day i.e. 23.08.2004.

Sale deed was to be executed in favour of the plaintiff on or before 31.05.2005, after receiving the balance sale consideration. Further, on 20.12.2004, defendant No.1 demanded another sum of ₹ 21,88,125/- from the plaintiff and accordingly, a cheque No.0093951, dated 20.12.2004, for a sum of ₹ 21,88,125/-, in the name of defendant No.1, was drawn on Bank of India, Rai. Accordingly, requisite details in this regard were recorded at the back page of the agreement and even names of the witnesses were also typed, however, defendant No.1 refused to accept the cheque and affix his thumb impression upon the agreement in this regard. It was maintained that plaintiff has always been ready and willing to perform his part of the contract, as he requested to defendant No.1 on several occasions to execute the sale deed after receiving the balance sale consideration, but to no avail. On 31.03.2005, plaintiff came to know that defendant No.1 had in fact sold the suit property to defendants No.2 to 4, vide a registered sale deed dated 16.02.2005. As defendants No.2 to 4 were aware, that defendant No.1 had already executed an agreement dated 23.08.2004, in favour of the plaintiff, the sale deed dated 16.02.2005 was illegal, inoperative and a void *ab initio*. Since, despite repeated requests, defendants refused to acknowledge the claim of the plaintiff, thus, the suit.

Pursuant to the notice issued by the court, defendant No.1 had caused appearance through his counsel in the suit on 01.06.2005 and had prayed for time to file the written statement. On 18.11.2005, an application was moved by the plaintiff that defendant No.1 had since passed away, a list of LR's was being placed on record with a prayer to implead them. Amended title was also placed on record in this regard. As observed by the trial court, although counsel for defendant No.1, continued to appear till the final stage of the arguments in the suit, but neither any written statement on his behalf, till he remained alive, nor on behalf of his LR's was filed.

In a separate written statement filed by defendants No.2 to 4, it was pleaded, inter alia, that plaintiff had no locus to institute the present suit for specific performance of the agreement to sell dated 23.08.2004, as the same was executed much after the execution of the agreement dated 01.07.2004, executed in their favour, by defendant No.1, and pursuant where to even the sale deed was executed on 16.02.2005. In fact, defendant No.1 never executed an agreement dated 23.08.2004, in favour of the plaintiff.

As defendants No.5 to 7, were impleaded as parties during the pendency of the suit, in a separate written statement filed by them, it was pleaded, inter alia, that they had purchased the suit property from defendants No.2 to 4,

vide a registered sale deed dated 24.08.2007, for a consideration of ₹ 52,00,000/- and accordingly, the vacant possession of the suit land was delivered to them. It was maintained that they were bona fide purchasers for a valuable consideration. Further, there was never any agreement between the plaintiff and defendant No.1, and defendant No.1, had only entered into an agreement to sell with defendants No.2 to 4 on 01.07.2004.

On a comprehensive consideration of the matter in issue and evidence on record, the courts below concluded that the execution of the agreement to sell dated 23.08.2004 (Ex.P1) was duly proved on record by the plaintiff by leading cogent evidence. Nothing was brought on record by the defendants to prove that the agreement(Ex.P1), was indeed a forged and fabricated document. As a result, it was found that Ex.P1 to Ex.P3 i.e. the agreement and the receipts, were duly executed documents by defendant No.1, and thus, binding upon him. As regards the agreement dated 01.07.2004 (Ex.D1), that was purported to have been executed by defendant No.1, in favour of defendants No.2 to 4, and receipt (Ex.D2), it was observed that these documents were bogus and fraudulently prepared by the defendants with an intent to defeat the interest of the plaintiff. Consequently, the sale deed dated 16.02.2005 (Ex.D3), executed pursuant to

the agreement dated 01.07.2004, was also illegal. In so far as the plea of defendants No.5 to 7, that they were bona fide purchasers for a consideration, it was concluded that since defendants No.2 to 4 had got a sale deed executed by playing a fraud, in connivance with Ved Singh defendant No.1, they could not transfer a valid title in favour of defendants No.5 to 7. So much so, vide order dated 01.06.2005, trial court had enjoined defendants No.1 to 4 from alienating the suit land, but in complete disregard to the said order, they still sold the suit property to defendants No.5 to 7, on 24.08.2007. Thus, defendants No.5 to 7 could not claim to be the bona fide purchasers. And in any case, the sale deed executed in their favour was hit by the principle of *lis pendence*. And as plaintiff had instituted the present suit, immediately on having come to know of the sale deed executed by defendant No.1, in favour of defendants No.2 to 4, that by itself proved that he has been ready and willing to perform his part of the contract. On the contrary, defendant No.1, disposed of the suit property, despite the agreement dated 23.08.2004, even before the date fixed for execution of the sale deed in favour of the plaintiff, that proved that he himself was not willing to perform his part of the contract. Resultantly, the suit filed by the plaintiff was decreed and as indicated above, the appeal preferred against the said decree failed and was dismissed.

I have heard learned senior counsel for the parties at length and perused the records.

Mr.S.K.Garg Narwana, learned senior counsel for the appellants submits that apparently, plaintiff (respondent) failed to prove the execution of the agreement dated 23.08.2004. He contends that the agreement in question was alleged to have been typed by Satyawar (PW1), who was merely a typist and not a regular deed writer. Though, he claimed to have typed the agreement, but still the same neither bears his name nor is signed by him. In fact, he admitted in his cross-examination that he did not know defendant No.1 i.e. Ved Singh, personally. Further, the report submitted by an expert could not be looked into, being inadmissible in law, as the expert, who had authored the said report was never examined. Even otherwise, he contends that the said report was extremely vague. The other attesting witness of the agreement dated 23.08.2004 i.e. Kartar Singh was never examined by the plaintiff to prove his claim. Still further, the testimony of Naresh Kumar could not be read into being beyond pleadings as he was never pleaded to be present at the time of execution of the agreement. Therefore, he asserts that the plaintiff failed to prove the execution of the agreement dated 23.08.2004. And once that was so, notwithstanding anything, a decree for specific performance

ought not to have been granted in his favour. No other agreement was advanced.

Per contra, learned senior counsel for the caveator-respondents contends that both the courts below had concurrently found that the execution of the agreement dated 23.08.2004, was duly proved. On the contrary, he submits that the agreement, propounded by defendants No.2 to 4, was found to be bogus and a forged document. Further, defendants No.5 to 7 being *transferee pendente lite*, could not claim themselves to be the bona fide purchasers.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeals are wholly devoid of merit and are thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for plaintiff to be entitled to a decree prayed for, he was required to prove that the agreement in question i.e. dated 23.08.2004 (Ex.P1), was indeed executed by defendant No.1. As is made out from the records, on being served, defendant No.1 had caused appearance through his counsel, who continued to appear till the final stage of the arguments but never chose to contest the claim of the plaintiff. Even his successor-in-interest did not come forward to file any written statement. Naresh (PW3) i.e. the son of the plaintiff (Rameshwar son of Jialal), who claimed to have

accompanied his father at the time to execution of the agreement, proved the contents of the agreement and also that a sum of ₹ 1,00,000/-, were advanced to defendant No.1 by way of earnest money at the time of execution of the agreement and subsequently, pursuant to the demand made by defendant No.1, another sum of ₹ 4,00,000/-, were also paid, the same day. Satyawan (PW1), who typed the agreement dated 23.08.2004, testified that he had typed the agreement in question at the instance of defendant No.1, i.e. Ved Singh. And, thereafter, he read out the contents thereof to the parties and even the attesting witnesses, and having understood and admitting the same to be correct, defendant No.1 appended his thumb impression upon the document in his presence and in the presence of the attesting witnesses. Likewise, plaintiff Rameshwar and the attesting witnesses also signed the document. He further proved both the receipts i.e. dated 23.08.2004 (Ex.P2) qua a sum of ₹ 1,00,000/- and Ex.P3 qua ₹ 4,00,000/-, which were thumb marked by defendant No.1 i.e. Ved Singh. Further, Om Parkash (PW2), one of the attesting witnesses of the agreement dated 23.08.2004, also proved the due and valid execution of the agreement dated 23.08.2004. He purports to have known both i.e. plaintiff and defendants, personally. He deposed that after receipt of ₹ 1,00,000/- defendant No.1 demanded another sum of ₹ 4,00,000/- and

son of the plaintiff i.e. Naresh brought that amount from home. And defendant No.1 on receipt of the said amount appended his thumb impression upon the revenue stamps affixed on the receipt (Ex.P3). And the same was also signed by him and the other attesting witness. As contended by learned Senior counsel for the respondents, pursuant to an application moved by none other than defendants No.2 to 4, both the agreements, propounded by the plaintiff and defendants No.2 to 4, dated 23.08.2004 and 01.07.2004, receipts (Ex.P2 and Ex.P3), and the sale deed dated 16.02.2005 (Ex.D3) were sent for analysis to the State Finger Print Bureau. And the report (Ex.P4) submitted in this regard, reveals that the agreement (Ex.P1) and receipt (Ex.P3) indeed bears the thumb impressions of Ved Singh i.e. defendant No.1. Report (Ex.P4), is clear, concise and incapable of any misconstruction and, thus, could not be termed as vague or cryptic. The veracity of the said report could not be questioned as the defendants themselves sent documents i.e. Ex.D1 and Ex.D2 to the said agency soliciting its opinion. Report (Ex.P4) was not submitted by any private expert but by the State Finger Print Bureau. Concededly, neither any objections were filed against the said report nor any application was moved by defendants No.2 to 4 to call the concerned expert for the purposes of cross-examination in this regard. That being so,

the argument being advanced by learned senior counsel for the appellants that the report (Ex.P4) was inadmissible in evidence, lacks conviction and cannot be countenanced. Even if, Satyawar (PW1) was only a typist and not regular deed writer and the agreement does not bear his name or signatures, that by itself was not sufficient in law to vitiate the veracity of the agreement dated 23.08.2004, which even otherwise was fully proved. His testimony reveals that he was working as typist in Tehsil Sonapat for the last ten years and would type agreements everyday. Son of the plaintiff i.e. Naresh (PW3), claimed to have been present at the time of execution of the agreement dated 23.08.2004, which was quite natural, if being a son, he accompanied his father. In fact, deposition of Om Parkash (PW2), corroborates this fact. He testified that both i.e. plaintiff and defendant No.1 brought him along with the other attesting witness, and Naresh to old courts Sonapat on 23.08.2004. Of course, it was pleaded by the plaintiff that he advanced the earnest money to defendant No.1, in presence of the witnesses and since Naresh was never a witness to the agreement, there was hardly any necessity to specifically plead that even he was present at the time of execution of the agreement. The fact, that the other witness of the agreement i.e. Kartar Singh was not examined, is also of no consequence in law, particularly when the execution of the

agreement was duly proved with the evidence already on record. Though, defendants No.2 to 4 sought to allege that the agreement dated 23.08.2004, was a forged and fabricated document, but nothing was brought on record to substantiate such a plea. As concluded by both the courts below, sale deed was executed by defendant No.1, in favour of defendants No.2 to 4, on 16.02.2005, much before the date fixed for execution of the sale deed in favour of the plaintiff i.e. 31.05.2005, and plaintiff filed the present suit on 07.04.2005, immediately on coming to know of the sale deed dated 16.02.2005, thus, it was proved that the plaintiff has always been ready and willing to perform his part of the contract. However, despite this being so, plaintiff would still not be entitled to a decree prayed for, provided it was proved that defendant No.1 had indeed executed an agreement dated 01.07.2004, that was prior in point of time, in favour of defendants No.2 to 4. The agreement dated 01.07.2004 (Ex.D1) showed that Pardeep (Defendant No.3) had purchased the stamp papers on 28.06.2004 from a shop "Nattu Documentation" of Ramesh Kumar, Stamp Vendor, licence No.394, shop No.2, ITO Lane, New Delhi. Though, Ramesh Kumar was a crucial witness, who could be examined by defendants No.2 to 4, to prove their agreement, but surprisingly, he was examined by the plaintiff. Ramesh Kumar (PW4) testified that the stamp papers, upon

which the agreement dated 01.07.2004 was scribed, did not bear his stamp. Nor were they ever sold by him. Further, the stamp papers also did not bear his signatures or register number. Further, the record of stamp papers, that are sold is duly recorded in a register that is finally submitted with the SDM office. As observed, if the agreement dated 01.07.2004 was indeed executed by defendant No.1, defendants could always requisition the register from SDM's office, to prove that the stamp papers were purchased from Ramesh Kumar on 28.06.2004. As is made out from the records, when the stamp papers were easily available at Sonapat, that was only 15 kilometers away from their village, defendants failed to explain as to what was the need to still go to Delhi i.e. about 40 kilometers away to purchase the stamp papers. So much so, Ravinder Narwal, Advocate (DW5) failed to explain as to from whom the said agreement was got typed by him. The case set out by defendants No.2 to 4, was that, it was pursuant to an agreement dated 01.07.2004 (Ex.D1), a sale deed dated 16.02.2005 (Ex.D3) was executed by defendant No.1, in their favour. However, an analysis of the said sale deed shows that there was neither any reference to the agreement dated 01.07.2004 (Ex.D1) nor to the receipt (Ex.D2) therein. As observed by the courts below, one of the witness examined by the defendants deposed that Ex.D1 & Ex.D2

were typed and executed at Advocate's chamber No.348, New Delhi, whereas other witnesses testified the execution of the said documents at their village. That being so, it was rightly concluded by both the courts below that the agreement (Ex.D1) and receipt (Ex.D2) were indeed bogus documents and were fraudulently prepared, with an intent to frustrate the rights of the plaintiff. Once that is so, even the sale deed dated 16.02.2005 (Ex.D3) also pales into insignificance. As regards the question, whether defendants No.5 to 7 were bona fide purchasers for consideration, suffice it to say, despite an order of injunction dated 01.06.2005, restraining defendant No.1 to alienate the suit property, vide sale deed dated 24.08.2007, he sold the suit property in favour of defendants No.5 to 7. It would be apposite to point out at this juncture, that the said sale deed was executed during the pendency of the suit. And thus, the sale deed in favour of defendants No.5 to 7, was hit by principle of lis pendence. Even otherwise, they derived their title from defendants No.2 to 4 and once the sale deed dated 16.02.2005 (Ex.D3), executed in their favour, is set aside, they could hardly transfer a valid title in favour of defendants No.5 to 7. Still further, none from defendants No.5 to 7 chose to step into the witness box to prove their claim. Records show that post passing of the decree by the trial court, defendants No.5 to 7 and defendants No.2 to 4

preferred a common appeal. Thus, connivance between defendants No.2 to 4 and their vendees i.e. defendants No.5 to 7, was writ large on the face of the record. Execution of the agreement dated 23.08.2004 (Ex.P1), having been duly proved. Agreement dated 16.02.2005, propounded by defendants No.2 to 4, being bogus and fabricated. Defendants No.5 to 7, having failed to prove that they were bonafide purchasers for consideration. The only and the inevitable conclusion one could arrive at is that a decree for specific performance of the agreement to sell dated 23.08.2014, has rightly been granted to the plaintiff.

In the wake of the position, as set out above, there hardly exists any ground, to interfere with the conclusions that have concurrently been arrived at by both the Courts below. No question of law, much less any substantial question of law, arises for consideration. Appeals being devoid of merit are, accordingly, dismissed.

February 26, 2015
Rajan

(Arun Palli)
Judge