IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.707 of 2015 (O&M)
Date of Decision: 06.07.2015

Major Singh and another
..... Appellants

Versus

Ranjit Singh ..... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.K. Walia, Advocate,
for the appellants.

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

**RAJIV NARAIN RAINA, J.**

**CM No.2040-C of 2015**

For the reasons stated in the application, the same is allowed and the delay of 61 days in re-filing the appeal beyond 40 days is condoned.

**CM No.2041-C of 2015**

The deficiency in affixing court fee having been removed, the application is allowed retrospectively from the date of filing of the appeal.

**Main case**

The defendants are in second appeal in a suit for specific performance and permanent injunction filed by the plaintiff in Civil Suit # 62 of 2.4.2009. The defendants agreed to sell 11 kanals of land described in the head note of the plaint in a village in District Bathinda by entering into an agreement to sell on December 29, 2003 with the plaintiff. The land was agreed to be sold at Rs.3.20 lacs per acre and the defendant received earnest money of Rs.4.30 lacs. The target date fixed was June 30, 2006 when the balance amount would be paid and the sale executed between the parties before the Sub Registrar, Nathana. The plaintiff pleaded that possession was delivered on the spot on date of signing the contract. It was known to the parties that the suit land was mortgaged to a bank. The mortgage was not redeemed and the sale deed could not be executed on the target date. Eighteen days before the target date i.e. June 12, 2006, the date was mutually extended to December 15, 2008 for registration of the sale deed. The plaintiff went to the office of the Sub Registrar only to be let down by the defendants. Plaintiff got his presence marked in the Tehsil office. The request for execution of sale deed was refused which led to the filing of the suits for specific performance and in the alternative to recover earnest money and damages along with the interest at 2% per mensum from the date of execution of agreement till its realization. Plaintiff remained ready and willing to perform his part of the contract and is still ready and willing to abide.

Defendants entered appearance and contested the case by denying the averments in the plaint. They said that the sale agreement is a false, forged and fabricated document. There was no agreement to sell executed between the parties. Nine issues were framed by the trial court which read as follows:-

> *"1. Whether the defendants agreed to sell the suit property to the plaintiff and executed agreement to sell dated 29.12.2003 after receiving earnest money of Rs.4,30,000/- ? OPP*
> *2. Whether the plaintiff always remained ready and willing to perform his part of contract? OPP*
> *3. Whether the plaintiff is entitled to specific performance of agreement to sell dated 29.12.2003? OPP*
> *4. Whether the plaintiff is entitled to injunction as prayed for?*

*OPP*
*5. Whether the suit is within limitation? OPP*
*6. Whether the suit is not maintainable in the present form? OPD*
*7. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
*8. Whether the suit is bade for non joinder of parties? OPD*
*9. Relief."*

Parties led their oral and documentary evidence in support of their cases.

Issues # 1 to 4 were decided by common reasoning. The sale agreement was proved. Earnest money was paid and received. The trial court read the evidence of the three witnesses produced by the plaintiff including the plaintiff himself standing in the witness box to support his case.

It is somewhat interesting that DW-1 Bhura Singh was a Nambardar but he was also brother of the defendants Major Singh and Gauhra Singh. He was an attesting witness to the agreement to sell. In his examination-in-chief, he denied the existence of the agreement but succumbed during cross-examination where he had to admit that his brothers had entered into an agreement to sell with the plaintiff. This admission knocked out the base of the defence and it would be sheer wastage of time to look at any other evidence in second appeal. The extension of the date by mutual consent was proved. The target date was December 15, 2008 and the suit was brought on April 01, 2009 and it was well within limitation. Issue # 5 was found in favour of the plaintiff. Receipt of earnest money of a large amount of Rs.4.30 lacs was proved that there could be no doubt that the plaintiff was always ready and willing to perform his part of the contract and it is safe to conclude that he remained so throughout the period from filing of the suit and thereafter while prosecuting his case, when the defendants denied the sale agreement and disputed it as a forged and fabricated document. But it is proved to the contrary with the admission of DW-1 Bhura Singh, Nambardar who was none other than the brother of the defendants.

Disappointed before the trial court, the defendants appealed to the court of the learned District Judge, Bathinda against the decree. The court of first appeal re-appreciated the evidence on record but came to the same view as held by the trial court. There was unimpeachable evidence in proof of execution of sale agreement. The marginal witness Tarsem Singh appeared for the plaintiff and testified through his affidavit Ex.PW-1/A that he knew the party. On December 29, 2003 Mr. Bhagwant Singh Dhillon, Advocate deposed he scribed the agreement at the instance of the defendants in favour of Ranjit Singh whereby they agreed to sell their land at the rate agreed. He testified that both the defendants had received Rs.4,30,000/- from the plaintiff as earnest money in his [Tarsem Singh's] presence as well as in the presence of Bhura Singh, Namberdar and Bhagwant Singh Dhillon. The terms of the agreement were read out to the defendants in their presence and they admitted the same to be correct. Defendant Major Singh signed the agreement while Gauhra Singh put his thumb impressions on the agreement-contract. PW-2 Harnek Singh said the same thing as the first witness.

In rebuttal brought Gauhra Singh to the witness box who testified that they are still in continuing possession of the suit land. He deposed that the agreement was false and fabricated and was a forged document prepared by the plaintiff in connivance with the petition writer and the same would not qualify as admissible in evidence. They never agreed to sell land nor received earnest money. His brother Major Singh deposed on the lines of Gauhra Singh. Bhura Singh Nambardar testified that they visited Tehsil office, Nathana where plaintiff met him and informed him that the defendants had executed the agreement to sell of 11 kanals of land in his favour. He further deposed that plaintiff took him to the chamber of the petition writer, where the petition writer obtained his signatures on the agreement on the asking of the plaintiff. The agreement was never executed in his presence nor was payment made in his presence. Defendants never put their signatures/thumb impressions in his presence.

I would only say that the witness was a brother of the defendants and a Nambardar of the village and pretended with such innocence admitting to be on the spot when the agreement was drawn. Though the court of first appeal does not say categorically on a reading of testimony of Bhura Singh Nambardar like the trial court says there was an admission in his cross-examination that his brothers had entered into a sale agreement then where is the question that there has been a misreading of the evidence in the testimony of the witness/es. There is nothing forthcoming in the grounds of appeal that there has been a misreading of the evidence. I would take it that there was a tacit admission of facts pleaded by the plaintiff.

Learned counsel failed to enlighten the court on the point but actually this much appears to be true that the brother of the defendants knew that they had sold land to the plaintiff while he pretended innocence. If he was Nambardar then he would be assumed to be prudent not to led by his nose by the plaintiff to willingly append his signatures on the sale agreement in the presence of the petition writer. He did participate in the making of the agreement. The court of first appeal found the documents to be genuine and duly proved by the marginal witnesses of the agreement to sell. The statement of all the three brothers does not inspire confidence and it cannot be believed that the contract was a result of fraud. Moreover, no handwriting expert was examined by the defendant to disprove signatures on the sale agreement that those signatures and thumb impressions were not theirs.

The court read the testimony of Bhura Singh and agreed with the trial court that there was indeed an admission in it that his brothers had entered into an agreement to sell with the plaintiff. The learned District Judge, Bathinda consequently found the appeal without merit and dismissed the same with costs by his judgment and decree dated July 28, 2014 holding that the evidence on record is compatible with all the issues and the relief clause which are synchronous.

Learned counsel for the appellants submits that the period between the sale agreement and the target date was extraordinarily long which makes the execution of the document a suspicious circumstance. Where was the need to fix a target date by two and half years? When the plaintiff pleaded that land was under mortgage with the bank and knew of it by disclosure then the defendants were incapacitated from executing sale deed on the target date which led to extension up to December 15, 2008. The details of the mortgage, if any, were exclusive to the knowledge of the defendants that they should have produced evidence to show that the land was not under mortgage and was free from encumbrances open without hindrance to be sold on the target date. But no such evidence was led by the defendants. Nor was any issue claimed or framed from and by trial court. If the property was encumbered then extension would follow naturally where parties felt bound by contract and willing to go through the bargain. If the document was forged or did not bear the signatures of the defendants then they shied away from bringing the authenticity of signatures to the judicial test by production of expert evidence. This is a material circumstance against the defendants and I would not agree with the learned counsel that there are any suspicious circumstances in the making of the agreement or its extension or that fraud was practiced upon the defendants by the plaintiff.

The other ground pleaded by the learned counsel for the appellants is that delay defeats equity. The suit was brought in 2009 after five years of the sale agreement and a few months after the last target date spilled over, and in the meantime property prices have risen appreciably and, therefore, the appellants would suffer undue hardship if the decree is sustained. Argues that the price agreed at Rs.3.20 lacs per acre in today's context is a pittance and the defendants cannot be seen to sell 11 kanals of land for a song. Merely because the agreed price is low has to be seen in the context of the times past and prices then prevalent in the market but this is not sufficient reason to deny relief of specific performance since the amount is the contracted price which the defendants agreed to willingly with open eyes and thus they cannot wriggle out of the contractual obligations voluntarily incurred. It would have been a different matter if defendants had admitted the agreement to sell and pleaded a case of hardship under section

20 (d) of the Specific Relief Act, 1963 but hardship was not pleaded in the written statement nor could be in view of the self destructive stand that the document was a forged and fabricated document born out of fraud when ultimately the truth was revealed in the presence of a preponderance of evidence heavily against the defendant proving that the agreement was indeed a genuine document which was far from being suspect. When the plea of fraud fails or is disbelieved by court on evidence then the principle of false in part – false in whole can well be applied. It is often said that every part of a true sentence must be "true". If any one part of the sentence is false, the whole sentence is false despite many other true statements.

I, therefore, reject the argument of learned counsel for the appellants based on undue hardship to bring the case within the fold of the freedoms available in section 20(d) of the Specific Relief Act, 1963 to deny relief to a suitor who may otherwise have a good case to decree. I am thus unable to intercede in the matter and hold in favour of the appellants, the defaulting sellers, who set up not just an untrue but false defence when face to face with litigation and recording of sworn testimonies while appearing in the witness box along with their witnesses.

For the foregoing reasons, the appeal is found without merit and is liable to be dismissed as no substantial question of law is involved for consideration which may ex facie warrant admission of the appeal for regular hearing with the help of record of the lower courts as they would not reveal anything material other than what is in the appeal paper-book as affirmed on hearing the learned counsel.

Accordingly, the appeal is ordered to stand dismissed with costs in all the courts.

**(RAJIV NARAIN RAINA)**
**JUDGE**

**06.07.2015**
manju