

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

**RSA No.4753 of 2014 (O & M)  
Date of Decision:16.01.2015**

Manjit Kaur and another

....appellants

Versus

Sukhchain Singh

.....respondent

**CORAM: HON'BLE MR.JUSTICE ARUN PALLI**

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not? yes**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Surinder Garg, Advocate  
for the appellants

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**ARUN PALLI, J.(ORAL):-**

Suit filed by the plaintiff was decreed by the trial Court vide judgement and decree dated 27.11.2012. Appeal preferred against the said decree failed and was dismissed on 21.04.2014. This is how, defendants are before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff Sukhchain Singh, he prayed for a decree by way of specific performance of agreement to sell a land measuring 4k-9M comprised in khasra No.1103/92 min situated within the revenue estate of village Ghaniewala, Tehsil and District Faridkot. It was averred that defendants had executed an agreement to sell dated 28.05.2007 as regards the suit property in

favour of the plaintiff for a consideration of ₹ 3 lacs. A sum of ₹ 2,80,000/- was paid by way of earnest money at the time of execution of the agreement. It was agreed that the defendants would have the sale deed executed on or before 16.12.2007 and the possession thereof was to be delivered at the time of execution of the sale deed. It was maintained that plaintiff had approached the defendants on 16.12.2007 to execute the sale deed but the plaintiff was asked to have the same executed on 17.12.2007. It was maintained that defendants along with witnesses namely Major Singh Sarpanch and Dalwinder Singh Lambardar, visited Kotkapura and that plaintiff was also present. Stamp papers for an amount of ₹15,000/- were purchased by Kuldeep Singh defendant No.2 and the defendants requested that they would execute the sale deed out of entire khata. Accordingly, the sale deed was written by deed writer as regards 04K-09M i.e.89/1314 share out of land measuring 65 kanals 14 marlas including the land measuring 04K-09M out of khasra No.1103/92 min, measuring 09K-09M. The sale deed and other documents were signed by defendant No.2 Kuldeep Singh, however, Manjeet Kaur defendant No.1 refused to sign the documents and to get the sale deed registered. Plaintiff had always been ready and willing to perform his part of the contract and, thus, the suit.

In defence, it was pleaded, inter alia, that no such agreement to sell qua the suit property was ever executed by the defendants in favour of the plaintiff. Accordingly, the defendants never received a sum of ₹ 2,80,000/- by way of earnest money at the

time of execution of the agreement. In fact, it was pleaded that some time back, the defendants were in need of some money and they approached the plaintiff for advancing loan of sum of ₹ 40,000/-. Since the defendants failed to return the loan amount, plaintiff manipulated another writing after adding interest therein. Eventually, as the loan amount swelled to ₹ 2 lacs, plaintiff then prepared an agreement to sell. In the middle of December 2007, plaintiff requested the defendants to repay the amount and as defendants were not in a position to repay the amount, they renewed the old loan amount, but plaintiff in connivance with the stamp vendor prepared a false sale deed and obtained signatures of defendant Kuldip Singh. Thus, the documents that were being relied upon by the plaintiff were alleged to be false and fabricated. Further, the alleged sale deed was not in terms of the agreement that was purportedly executed by the defendants as the said agreement was only qua the sale of land measuring 09K-04M out of khasra No.1103/92 but the sale deed contained all the numbers of the khewat of which defendants had no saleable right. And, therefore, the agreement in question was not enforceable.

Trial Court, on an analysis of the matter in issue and the evidence on record, found that the plaintiff had examined both the attesting witnesses of the agreement to sell i.e. PW2 Major Singh and PW6 Ram Singh and both the witnesses deposed in unison that the defendants had executed the agreement to sell (Ex.P1) qua the suit property in favour of the plaintiff. They also testified that a sum of ₹ 2,80,000/- was paid by the plaintiff by way of earnest money in

their presence. Deed writer Parminder Kumar-PW5, testified that he had scribed the agreement in question at the instance of defendants Manjit Kaur and Kuldeep Singh and had duly made an entry in this regard in his register, copy whereof was proved on record as Ex.PW5/B. Accordingly, it was concluded that the plaintiff had duly proved the execution of the agreement Ex.P1. As regards the plea of the defendants that they had merely taken a loan of ₹ 40,000/- from the plaintiff and no agreement to sell was ever executed, it was observed that the defendants failed to point out either in the written statement or in their evidence as to on which date, month or year, they had obtained loan from the plaintiff, and if so, in whose presence. So much so, Manjit Kaur defendant No.1, admitted in her cross-examination that the agreement to sell (Ex.P1) bears her signatures and also of her son Kuldeep Singh. She also admitted that she had purchased stamp papers for executing the agreement in question and she duly recognised her signatures on the endorsements Ex.PW3/B to Ex.PW3/D. She also admitted that Ex.P1 was the same writing which was signed by her as well as her son. Still further, plaintiff had also examined the stamp vendor namely Surinder Kumar-PW3, who also testified that Manjit Kaur had purchased three stamp papers worth ₹100/- each from him for execution of the agreement to sell and she had appended her signatures at the back of the stamp papers i.e. Ex.PW3/B to Ex.PW3/D. That being so, it was concluded that the defendants failed to prove that the agreement (Ex.P1) was a forged and fabricated document. On an analysis of the matter and the evidence

on record, it was also observed that the plaintiff had indeed been ready and willing to perform his part of the contract. Scribe of the sale deed (Ex.P1) namely Kewal Krishan, testified that he had seen the original sale deed Ex.P6 and the same was scribed by him at the instance of the defendants. He also proved the entry made in his register in this regard, copy whereof was proved as Ex.P10. So much so, Surinder Kumar, stamp vendor-PW3, deposed that Kuldeep Singh had purchased the stamp paper worth ₹ 15,000/- from him and the entry (Ex.PW3/F) in this regard was made by him in his register. Attesting witness of the sale deed i.e. Major Singh-PW2 also testified that defendant Kuldeep Singh had put his signatures on the sale deed (Ex.P6) in his presence and the same also bears his signatures. That being so, the plaintiff had duly proved that he got prepared the sale deed (Ex.P6) and defendant Kuldeep Singh had even appended his signatures thereon but it was only defendant No.1 Manjit Kaur, who refused to sign the same. Therefore, it was observed that the plaintiff was always ready and willing to perform his part of the contract. As regards the plea of the defendants that they were neither owners nor in possession of the suit property, thus, plaintiff was not entitled to any decree on the basis of an agreement to sell (Ex.P1), it was observed that khasra No.1103/92 consisted of total area measuring 15K-19M and was divided into two parts. One part consisting of an area measuring 06K-10M bearing khatoni No.344 and another part was consisting of area measuring 09K-09M bearing khatoni No.346, as was evident from the jamabandi Ex.P11.

It was also observed that the different co-sharers had sold the land

measuring 10K-10M out of khasra No.1103/92 min to the plaintiff and his brother, pursuant to the sale deeds Ex.P2, Ex.P3, Ex.P4 and Ex. P5 and the mutations were accordingly sanctioned in favour of the vendees. Plaintiff and his brother were already in possession of land measuring 10K-10M. Defendant executed an agreement to sell (Ex.P1), qua the suit property i.e. 04K-09M, bearing khasra No. 1103/92 min out of area measuring 09K-09M khatoni No.346. Since the other co-sharers had already sold the land measuring 04K-08M out of the said khatoni and, thus, balance 05K-01M out of khasra No.346 was remnant as evident from jamabandi Ex.P11. Therefore, it was concluded that the defendants could not maintain that they were neither owners nor in possession of the suit property. Resultantly, the suit was decreed.

Defendants, being aggrieved, preferred an appeal. First appellate Court, reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial Court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the appellant and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of

merit and thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Needless to assert, for plaintiff to succeed, he indeed was required to prove the due and valid execution of the agreement to sell dated 28.05.2007 (Ex.P1). Both the attesting witnesses of the agreement i.e. Major Singh-PW2 and Ram Singh-PW6, deposed in unison that the defendants had indeed executed the agreement in question in their presence. They further testified that plaintiff had paid a sum of ₹ 2,80,000/- by way of earnest money in their presence to the defendant. Deed writer Parminder Kumar-PW5 proved that he scribed the agreement in question at the instance of the defendants and the entry (Ex.PW5/B) was duly made in his register. Surinder Kumar i.e. Stamp vendor-PW3 also fortified the position further, as he deposed that three stamp papers worth ₹ 100/- each were purchased by Manjit Kaur from him for execution of the agreement to sell and she had put her signatures at the back of these papers i.e. Ex.PW3/B to Ex.PW3/D. Defence set out by the defendants that they had merely obtained loan from the plaintiff, and they never executed any agreement, remained unsubstantiated on record. Defendants failed to plead and prove the specific date, month or year as to when did they obtain loan of ₹ 40,000/- from the plaintiff. So much so, Manjit Kaur testified in his cross examination that agreement to sell (Ex.P1) bears her signatures and also of her son. She also admitted to have purchased the stamp papers for execution of the agreement and acknowledged her signatures on the endorsements made thereon. Not just that, plaintiff further proved

that pursuant to the agreement in question, the sale deed (Ex.P6) was scribed by Kewal Krishan-PW7 and the same was signed by defendant Kuldeep Singh. The entry made by the scribe in this regard in his register was also proved on record as Ex.P10. Stamp vendor Surinder Kumar-PW3 proved that stamp papers worth ₹ 15,000/- were purchased by Kuldeep Singh from him and he had duly made an entry in this regard in his register (Ex.PW3/F). Likewise, even Major Singh PW2, who happened to be the attesting witness of the sale deed deposed that defendant Kuldeep Singh had put his signatures as well. Evidence on record, irresistibly showed that plaintiff has always been ready to willing to perform his part of the contract. On a detailed analysis of the evidence on record, it was rightly concluded by both the Courts that the defendants had indeed executed the agreement to sell qua the suit property bearing khasra No.1103/92 measuring 04K-09M out of 09K-09M, khatoni No.346. Since the other co-sharers had already sold land measuring 04K-08M out of the said khatoni, land measuring 05K-01M out of khatoni No.346, still remained. Thus, it was rightly concluded that the defendants could not maintain that they were neither owners nor in possession of the suit property.

Learned counsel for the appellants could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree

being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

16.01.2015

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**(ARUN PALLI)**  
**JUDGE**