

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CM No.13474-C of 2014 in/and
RSA No.5675 of 2014 (O&M)
Date of Decision: March 11, 2015**

Iqbal Singh

...Appellant

Versus

Kewal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.IPS Doabia, Advocate
for the appellant.

INDERJIT SINGH, J.

CM No.13474-C of 2014

For the reasons mentioned in the application, the same is allowed. The delay of 29 days in re-filing the appeal is condoned.

RSA No.5675 of 2014

Appellant Iqbal Singh has filed this regular second appeal against Kewal Singh respondent and Sakinder Singh, Palwinder Singh, Devinder Singh, Avtar Singh and Paramjit Kaur proforma respondents challenging the judgment and decree dated 10.05.2013 passed by learned Civil Judge (Junior Division), Samrala vide which the suit filed by the respondent No.1-plaintiff was decreed and judgment and decree dated 08.05.2014 passed by learned Addl. District Judge, Ludhiana, vide which appeal filed by the appellant-defendant No.1 was dismissed.

At the time of arguments, learned counsel for the appellant argued that plaintiff-respondent No.1 has failed to prove his case by leading cogent evidence. One witness has deposed in support of the defendant No.1-appellant. The lower Court has misread the evidence and the judgments passed by the Courts below are against the evidence on record.

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

From the record, I find that Kewal Singh plaintiff-respondent No.1 filed a suit for possession by way of specific performance of the agreement to sell dated 30.04.2003 regarding land measuring 40 kanals out of land measuring 71 kanal 7 marla as fully described in the head note of the plaint along with right in passage, in electric motor etc. on payment of ₹6 lacs after adjusting the amount of ₹6,50,000 lacs paid by the plaintiff as earnest money to the defendant, by directing defendants No.2 to 5 to join defendant No.1 to execute and get the sale deed registered in favour of the plaintiff and for declaration that the collusive decree dated 04.03.1991 by defendant No.1 in favour of his sons defendants No.2 to 4 is wrong, null, void and further for declaration that the mutation entered and sanctioned on the basis of above mentioned collusive decree dated 04.03.1991, is also wrong, illegal, null and void and for declaration to the effect that the sale deed dated 28.07.2004 registered on 29.07.2004 bearing vasika No.1654 executed by defendants No.2 to 4 in favour of defendants No.5 and 6 qua the property is null and void and suit for

recovery of ₹13 lacs i.e. ₹6,50,000/- paid as advance earnest money and ₹6,50,000/- as stipulated damages and for permanent injunction restraining the defendants No.2 to 6 from alienating, selling, transferring, mortgaging, disposing of or creating any sort of change, in any manner etc.

As per the case of the plaintiff-respondent, defendant No.1-appellant is the owner and in possession of land measuring 40 kanals. Defendant No.1 entered into an agreement to sell dated 30.04.2003 for the sale of above-said property in favour of the plaintiff for a total consideration of ₹12,50,000/- and received ₹6,50,000/- as advance earnest money and the sale deed was to be executed on or before 31.10.2003. As per the plaintiff, on 23.10.2003, defendant No.1 requested him to extend the date for the execution and registration of the sale deed from 31.10.2003 to 10.11.2003 and endorsement was made by Deed Writer Rajan Kumar Sharma on 23.10.2003 whereby the parties extended the date of execution of sale deed from 31.10.2003 to 10.11.2003. The plaintiff went to the office of Sub Registrar, Samrala on 10.11.2003 but defendant No.1 did not turn up. Plaintiff also sworn an affidavit which was attested by Executive Magistrate, Samrala.

It is further the case of the plaintiff that some time prior to the filing of the present suit, he came to know that defendant No.1 with malafide intention and in order to cheat and defraud the plaintiff, got entered and sanctioned the mutation regarding the suit property and his other properties in favour of his sons i.e. defendants No.2 to 4

on the basis of collusive decree dated 04.03.1991. Defendants No.2 to 4 in collusion and connivance with defendant No.1, sold the property vide sale deed dated 28.07.2004.

On the other hand, the case of defendant No.1 is that plaintiff has no right to challenge legal and valid decree dated 04.03.1991 in favour of defendants No.2 to 4. Defendant No.1 denied that he has executed agreement to sell in favour of the plaintiff. He also submitted he was not the owner of the suit land. No question arises to enter into the contract of sale of the land in favour of the plaintiff. It is also submitted that Jasbir Singh son of Bagga Singh is brother-in-law of plaintiff. Above-said Jasbir Singh also got executed two alleged agreements of sale of the same land from defendant No.1 by way of fraud and showed the earnest money of ₹6,50,000/- in each agreement of sale dated 04.04.2003 and 10.11.2003. Ultimately, the suits filed on the basis of above said agreements were withdrawn by Jasbir Singh. As per defendant No.1, if his signatures are proved on the agreement dated 30.04.2003, then the same would have been certainly obtained by way of fraud and misrepresentation by Jasbir Singh in collusion with present plaintiff. It is further submitted that defendant No.2 to 4 being the owners have sold the land to defendants No.5 and 6 vide registered sale deed dated 29.07.2004. Defendant No.1 also denied the fact that he received ₹6,50,000/- from the plaintiff at the time of execution of alleged agreement to sell in favour of the plaintiff.

Plaintiff-respondent No.1 examined PW-1 Charanjit Singh,

PW-2 Ram Rakha, examined himself as PW-3, PW-4 Swaran Singh, who tendered his affidavit but he did not turn up for his cross-examination and as such his examination-in-chief was not taken into consideration. The plaintiff also examined Rajan Kumar Sharma, Deed Writer as PW-5 and tendered documents Ex.P1 and P6.

On the other hand, defendants examined DW-1 Sukhjinder Singh, Stamp Vendors, defendant No.1 Iqbal Singh as DW-2, defendant No.4 Devinder Singh as DW-3 and defendant No.5 Avtar Singh as DW-4. They have also examined DW-5 Sant Ram and tendered documents Ex.D1 to D11.

Learned Civil Judge (Junior Division), Samrala, after appreciating the evidence decreed the suit for recovery of ₹6,50,000/- along with interest @ 10% per annum from the date of execution of the agreement to sell Ex.P-3 till the date of passing of decree in favour of the plaintiff along with future interest @ 6% per annum till the actual realization of amount against defendant No.1. An appeal was filed by Iqbal Singh, which was also dismissed by learned Addl. District Judge, Ludhiana vide judgment and decree dated 08.05.2014.

Lower Court record is also summoned in this case.

The perusal of the record shows that two agreements have been executed by the present appellant-defendant No.1 in favour of Jasbir Singh, stated to be brother-in-law of plaintiff-respondent No.1 on 04.04.2003 and 10.11.2003. As admitted by learned counsel for the appellant, the suits have been withdrawn on the basis of compromise. There is nothing on the record to show that both those

agreements were the result of fraud nor there is any finding of the Courts below in this regard. The agreement dated 30.04.2003 has been entered into the Deed Writer's register. The signatures of defendant No.1, as per the evidence of the Deed Writer, appear in his register also along with signatures of attesting witnesses and plaintiff. Further, I find that PW-5 Rajan Kumar Sharma, Deed Writer had deposed regarding endorsement, which was scribed by him on 23.10.2003, which is Ex.P2. This endorsement is not on the overleaf of the agreement. It is, rather, an independent writing in which details have been mentioned regarding the agreement executed between the parties. This endorsement has been duly proved by the plaintiff by producing evidence. Even at the time of executing the endorsement, entry has been made in the register where also the signatures of the defendant No.1 are appended. Defendant No.1 has not denied the signatures specifically on the agreement. The lower Court after properly appreciating the evidence, reached to the conclusion that defendant No.1 has entered into the agreement to sell the property and received earnest money of ₹6,50,000/- and also executed the endorsement. The mere fact that one witness of the agreement appeared in favour of defendant-appellant, is no ground to disbelieve the whole version of the plaintiff. Further, this witness also admitted his signature on the agreement.

In view of the above discussion, I find that the Courts below have not misread the evidence, rather appreciated the evidence in right perspective. Both the Courts below have given concurrent

findings of fact, which are correct, as per evidence and law and do not require any interference from this Court.

As no substantial question of law arises in the present regular second appeal, therefore, the same is dismissed.

March 11, 2015
Vgulati

(INDERJIT SINGH)
JUDGE