

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

(1)

**Regular Second Appeal No.2213 of 1987 (O&M)
Date of Decision: May 25, 2016.**

Har Lal (Deceased) through LRs

.....APPELLANT(s).

VERSUS

Manbhar

.....RESPONDENT(s).

(2)

Regular Second Appeal No.3892 of 1987 (O&M)

Har Lal (Deceased) through LRs

.....APPELLANT(s).

VERSUS

Manbhar

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mani Ram Verma, Advocate
for the appellant (s).

Mr. Surender Lamba, Advocate
for the respondent (s).

SURINDER GUPTA, J.

The appeals captioned above have been filed by Har Lal appellant-plaintiff (now deceased through his LRs) against two separate judgments and decree passed by learned Additional District Judge, Bhiwani, whereby the judgment and decree of then Senior Sub Judge, Bhiwani and

then Sub Judge 1st Class, Charkhi Dadri, were set aside and the suits of the plaintiff seeking the relief of specific performance of the agreements to sell dated 09.02.1979 (in both the cases under appeal) were dismissed with costs. The alternative relief sought by him for recovery of earnest money with interest, was also declined.

Brief Facts in RSA No.2213 of 1987

2. Har Lal, appellant-plaintiff filed civil suit No.317 of 1979 seeking the relief of specific performance of the agreement allegedly executed by respondent-defendant Manbhar on 09.02.1979 (Ex.P3), whereby he agreed to sell his land measuring 54 kanals to plaintiff for a sum of ₹20,250/- out of which a sum of ₹18,000/- was paid as earnest money and the remaining amount of ₹2,250/- was payable before the Sub Registrar at the time of execution and registration of the sale deed. As per the agreement, the sale deed was to be executed within a period of two months in the name of plaintiff or any other person as per the choice of plaintiff. The possession of the land agreed to be sold was, however, not delivered to the plaintiff.

3. The plaintiff has alleged that he was always ready and willing to perform his part of the contract and to get the sale deed registered after paying the balance sale consideration of ₹2,250/-. The respondent-defendant was repeatedly requested to execute and get registered the sale deed but he was putting off the matter on one pretext or the other and ultimately denied. On 09.04.1979, plaintiff remained present in the office of Sub Registrar with balance sale consideration but the defendant did not turn up. Plaintiff claimed the relief of specific performance of agreement to sell dated 09.02.1979 (Ex.P3) or in the alternative, for recovery of ₹18,000/- paid as

earnest money with interest.

4. In the written statement, respondent-defendant denied the execution of the agreement and pleaded that the agreement appears to be the outcome of fraud. The plaintiff never asked the defendant to execute the sale deed. He also denied the receipt of ₹18,000/- as earnest money. Plaintiff had admitted before the *panchayat*, which was convened to discuss the matter of forging the agreement, that he had forged the agreement. Matter was also reported to the police and challan was filed against the plaintiff for forging agreement.

5. Plaintiff re-asserted his case in the replication and pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the defendant entered into an agreement of sale regarding the suit land on 9.2.1979 and received ₹18000/- as alleged in para No.1 of the plaint? OPP
- (2) Whether the plaintiff has been ready and willing to perform his part of the contract? OPP
- (3) Whether agreement in question is without consideration and a forged one? OPD
- (4) Whether the suit is false and frivolous and the defendant is entitled for special costs u/s 35-A CPC
- (5) Relief.

Brief facts in RSA No.3892 of 1987

6. Appellant-plaintiff Har Lal filed another civil suit bearing No.623 of 1981 at Charkhi Dadri against respondent-defendant Manbhar. The agreement in this case was also dated 9.2.1979 and pertained to 54 kanals of land, alleged to have been executed by respondent-defendant Manbhar for a consideration of ₹20,250/-. The plaintiff alleged that ₹15,000/- were paid as earnest money and the remaining amount was to be

paid before the Sub Registrar at the time of registration of the sale deed, which was to be executed within four months from the date of agreement. The plaintiff alleged that he was always ready and willing to perform his part of the contract and also remained present on 09.06.1979 in the office of Sub Registrar along with balance sale consideration but the defendant did not turn up.

7. The respondent-defendant contested the claim of plaintiff with similar pleas as taken in civil suit No.317 of 1979, which are not being repeated for the sake of brevity.

8. In the replication, plaintiff re-asserted his case and pleadings of the parties led to the framing of issues as follows:-

- (1) Whether defendant Manbhar executed any agreement in favour of plaintiff on 9.2.1979 as alleged in paragraph No.1 of the plaint? OPP
- (2) Whether agreement dated 9.2.1979 is without consideration and based on fraud and forgery? OPD
- (3) Whether the plaintiff has been ready and willing to perform his part of the contract? OPP
- (4) In case the plaintiff is not entitled for specific performance of the contract then whether he is entitled to refund of ₹15,000/-? OPP
- (5) In case, issue No.4 is proved whether plaintiff is entitled for interest? If so at what rate and how much? OPP
- (6) Whether the suit in the present form is not maintainable? OPD
- (7) Relief.

9. Civil suit No.317 of 1979 was decreed by Senior sub Judge, Bhiwani vide judgment dated 16.11.1981 and the plaintiff was allowed the

relief of specific performance of the agreement dated 09.02.1979. The defendant was given two months' time to execute and register the sale deed in favour of plaintiff, failing which he was allowed liberty to get the sale deed register through Court.

10. Civil suit No.623 of 1981 pertaining to second agreement was also decreed by then Sub Judge 1st Class, Charkhi Dadri on 29.07.1985 and the relief of specific performance of the agreement dated 9.2.1979 was allowed.

11. Not satisfied, defendant Manbhar filed appeals before the first Appellate Court which were separately decided by Additional District Judge, Bhiwani vide judgments dated 01.04.1987 and 21.10.1987.

12. In civil appeal No.3-13 of 1981/1986 filed by defendant Manbhar against the judgment and decree of Senior Sub Judge, Bhiwani dated 16.11.1981, an application was moved under Order 6 Rule 17 CPC by defendant Manbhar for amendment of written statement, which was allowed. By way of amendment, he pleaded that the agreement dated 09.02.1979 was got executed by Shiv Lal (marginal witness) and Har Lal (plaintiff) under a conspiracy whereby they wanted to grab the land as well as ornaments of defendant Manbhar, who had no issue and was unmarried. He is also illiterate and innocent person, who can only append his signatures. Shiv Lal, attesting witness of the agreement to sell, got a case of theft registered against Manbhar and the agreement is the outcome of the threat given to the defendant by police and his thumb impressions were obtained by playing fraud. An additional issue No.3-A was framed in Civil Appeal No. 3-13 of 1981/1986 decided on 01.04.1987 by Additional District Judge, Bhiwani,

which reads as follows:-

3-A Whether the alleged agreement is based on fraud, coercion and undue influence as alleged in the amended written statement, if so, to what effect? OPD

13. The report was called from learned trial court on additional issue, which after recording evidence of the parties, was sent on 24.02.1987. Respondent-plaintiff filed objections against that report. While recording finding on issues No.1 and 3, learned first Appellate Court observed in para 21 of the judgment as follows:-

“21. After hearing the rival contentions of the parties, I am of the view that the arguments of the learned counsel for the defendant-appellant have force and it is proved that the plaintiff had exercised undue influence before the agreement to sell Ex.P3 was executed, as Shiv Lal (PW2) stated in his testimony that a theft had taken place in his house on 5/6.2.1979 i.e. before the alleged agreement to sell was executed and the report of the same was lodged later on. Therefore, from this fact that undue influence and coercion was exercised on defendant Manbhar as well as other circumstances as discussed in the earlier part of the judgment, it is proved on the record that the alleged agreement was the outcome of fraud, coercion and undue influence exercised by Har Lal and Shiv Lal on defendant-appellant. As such the plaintiff has not been able to prove on the record that the alleged agreement dated 9.2.1979 was the voluntary act of the defendant-appellant. The plaintiff has also failed to prove on the record that any consideration was passed under the said agreement. Accordingly, the finding of the learned trial court on Issue No.1 & 3 cannot sustain and the same is hereby set aside and both these issues are decided

against the plaintiff. Further in view of my foregoing discussion, the finding of the learned trial Court on issue No.3-A is also hereby affirmed.”

14. The appeal was allowed and the suit of the plaintiff, for grant of specific performance of the agreement as well as for alternative relief of recovery of ₹18,000/-, was dismissed with costs.

15. In the second Civil Appeal No.79 of 1985 filed by defendant Manbhar against the judgment and decree dated 29.07.1985 passed by Sub Judge 1st Class, Charkhi Dadri, learned Additional District Judge, Bhiwani accepted the appeal and dismissed the suit filed by plaintiff Har Lal. While accepting that appeal, learned first Appellate Court took note of the following facts that have come on record:-

(i) Shiv Lal, attesting witness of the agreement had supported the case of plaintiff, while Zile Singh another attesting witness, did not support his case and had deposed that his thumb impression on the agreement to sell were obtained by plaintiff by playing fraud.

(ii) Shiv Lal, PW5 lodged a complaint with the police alleging theft of his ornaments on 5/6.02.1979 i.e. 3/4 days before the execution of the alleged agreement by Manbhar in favour of plaintiff and Manbhar was alleged to be involved in that theft. Police registered FIR on the complaint of Shiv Lal on 05.03.1979. In that criminal case, Manbhar was acquitted vide judgment dated 09.11.1982 (Ex.D13). Learned District and Sessions Judge, Bhiwani vide order dated 09.08.1983 (Ex.D14) ordered return of the ornaments in that case to pledgee of Manbhar i.e. goldsmith with whom the property was pledged.

(iii) The above fact shows that Shiv Lal was nursing grudge against

Manbhar from the night of 5/6.02.1979. As such, Shiv Lal cannot be termed as independent witness on 09.02.1979, as he was bent upon to implicate Manbhar in a theft case.

(iv) The first Appellate Court also found substance in the plea raised by respondent-defendant Manbhar that his thumb impressions were obtained on 5/6 papers under threat and he was taken to tubewell of plaintiff and locked in a room, where he was given threat that in case, he disclosed regarding execution of the agreement, he would be done to death.

(v) Plaintiff Har Lal had stated that the talk of agreement took place a day before its execution on 09.02.1979, while it was proved on record that copy of jamabandi of the land of Manbhar had been obtained by the plaintiff on 02.02.1979.

(vi) A *panchayat* was also convened on 17.02.1979, where the appellant-plaintiff confessed that he had not paid any consideration to the defendant and would return his documents. In *panchayat* proceedings (Ex.D1), it was concluded that the appellant-plaintiff forged the agreements and same should be returned by him to the *Pradhan* of the *panchayat*.

(vii) Zile Singh, another marginal witness of the agreement stated that plaintiff obtained his thumb impressions on the pretext that he had purchased a truck and the documents regarding the purchase required attestation. On coming to know that his thumb impressions were obtained on agreement, he reported the matter to the police as well as *panchayat*. On his complaint (Ex.D3), *panchayat* passed a resolution (Ex.D4) that it could not do anything as the matter was not within its purview. This proceeding was also signed by plaintiff Har Lal and his signatures were duly proved by K.S.

Puri, Hand-writing and Finger Prints Expert.

(viii) In order to pressurise Zile Singh, who was not supporting the case of plaintiff, a civil suit was got filed against him for recovery of ₹8,000/- through Suba Singh, brother of plaintiff, which was dismissed.

16 Taking into account the above facts and circumstances, learned Additional District Judge, Bhiwani concluded that the agreement (Ex.P1) in this case was the result of fraud practised upon defendant Manbhar. It was also found that the defendant had pleaded broad particulars of fraud in the written statement, which were further corroborated by him while appearing as witness.

17. I have heard learned counsel for the parties and have gone through the paper book and record of the Courts below with their assistance.

18. Learned counsel for the appellant has argued that in both the cases, the first Appellate Court has failed to take note of the fact that execution of both the agreements to sell dated 09.02.1979 by the defendant was duly proved by the appellant by examining scribe and one marginal witness. The plaintiff had also appeared before the Sub Registrar on the date after expiry of period during which the sale deeds were to be executed but the defendant did not turn up. The story propounded by the defendant that Shiv Lal is the person behind obtaining the signatures of defendant Manbhar on blank papers, has no basis because the FIR was got registered by Shiv Lal much after the execution of the agreement to sell. There was no reason to disbelieve the statements of marginal witness and the scribe. The fact that the marginal witness Zile Singh has not supported the case of the plaintiff and had appeared as witness of defendant shows that he had sided with him.

He could not deny his thumb impressions on the agreements and has cropped up a story that the same were obtained by the plaintiff on the ground that he had purchased the truck. The *panchayat* proceedings relied upon by the defendant has also no impact in this case as the appellant was not party to the same.

19. Learned counsel for respondent No.1 while refuting the argument of learned counsel for the appellant, has argued that the fact of the case and the evidence on record clearly make out that plaintiff who was a *Panch*, in collusion with Shiv Lal had played fraud on the defendant by obtaining his signatures on blank papers and converting the same as agreement to sell. The jamabandi of the land of defendant was obtained by the plaintiff. Fraud is writ large from the fact that the land of which agreements were executed is measuring 54 kanals. The defendant was owner of lesser land than 54 kanals. Had there been genuine deal, appellant-plaintiff must have been aware about share of land owned by defendant sought to be purchased by him. Shiv Lal has played a prominent role and stood as witness of the agreement executed by the defendant. The theft of gold jewellery had taken place in his residence on 5/6.02.1979 and Manbhar-defendant was a prime suspect/accused for that incident of theft. The agreements were executed on 9.2.1979 i.e. within 3/4 days after the incident. It is highly improbable that the defendant will accept Shiv Lal as witness on the agreement. On coming to know about the agreement fabricated by the appellant, defendant immediately brought the matter to the knowledge of *gram panchayat*, which discussed the matter and before *Panchayat*, appellant-plaintiff admitted that agreement was without consideration. The

other witness of the agreement namely Zile Singh had not supported the case of the plaintiff. In order to pressurise him, plaintiff got filed a suit for recovery against him through his brother, which was ultimately dismissed. The reasons given by the first Appellate Court(s) are cogent, convincing and sufficient to draw inference that the agreements are forged and fabricated documents.

20. Appellant had filed two suits based on two different agreements to sell of same date i.e. 09.02.1979. For the purpose of convenience, reference to the pleadings and evidence recorded in civil suit No.623 of 1981 shall be made as the documentary as well as oral evidence in both the cases is almost similar. The case of the plaintiff is that defendant vide agreement Ex.P1 agreed to sell land measuring 54 kanals 0 marlas as per the details given below:-

- (i) 1/8th share of land measuring 80 kanals of khewat No.225 i.e. 10 kanals;
- (ii) 1/8th share of land bearing khewat No.252 khatauni No.334 measuring 124 kanals 8 marlas i.e. 15 kanals 10 marlas;
- (iii) 1/8th share of the land measuring 193 kanals bearing khewat No.253 khatauni No.335 i.e. land measuring 24 kanals 2 marlas;
- (iv) 1/8th share of land measuring 35 kanals 3 marlas bearing khewat No.321 khatauni No.479 measuring 4 kanals 8 marlas; total land measuring 54 kanals.

21. As per jamabandi of the land bearing khewat No.253 khatauni No.335, it was 69 kanals and not 193 kanals. 1/8th share of 69 kanals comes to 8 kanals 12 marlas and not 24 kanals 2 marlas. The jamabandi of the land

was brought by the plaintiff himself. This glaring mistake in the agreement shows that it was not got executed in normal course. Otherwise, there could not be any mistake in reading the area of the land bearing khewat No.253. The total area of defendant Manbhar does not come out to be 54 kanals in aforesaid khewats. Such a mistake occurs when the parties are not acting in natural course. The party getting the agreement scribed takes the assistance of someone while playing fraud and is in hurry to prepare the relevant document.

22. The plaintiff, when appeared before the Sub Registrar, again described the land he agreed to purchase as 54 kanals in his application (Ex.PC). The defendant did not remain silent on coming to know of the agreements and immediately reported the matter to the *panchayat*. *Panchayat* convened a meeting and inquired from plaintiff Har Lal about the agreements, who admitted that he had not paid any consideration to defendant towards purchase of land. He agreed that he spent ₹65/- on the papers and getting the documents scribed and was ready to hand over these agreements to the *Panchayat*. In the proceedings (Ex.D1), *panchayat* concluded that Har Lal had got prepared forged agreements on which he had spent ₹65/-. Har Lal plaintiff was directed to hand over the forged documents to the President (Sarpanch) which will be handed over to Manbhar. The amount of ₹65/- spent by Har Lal was apportioned between Har Lal and Manbhar in equal shares. *Panchayat* also gave directions to Mabhar to withdraw any case pending before police on his complaint or in the Court. *Panchayat* proceedings were proved on record by DW3 Sher Singh. Zile Singh another marginal witness of the agreement also moved

application (Ex.D3) to the *gram panchayat* stating therein that his signatures were obtained on some papers by Har Lal, which was returned to him by *gram panchayat* with the noting (Ex.D4) asking him to take appropriate action as the matter did not fall within its purview.

23. This shows that Manbhar was not sitting idle but immediately took actions after coming to know of the agreements. Har Lal plaintiff was admittedly a member *panchayat (Panch)*. In report dated 20.02.1987 sent by the Senior Sub Judge, Bhiwani on issue No.3-A framed in civil suit No.317 of 1979 while referring to the incident of theft in which Manbhar was implicated and the circumstances leading to execution of agreements, it was observed in para 7 as follows:-

“7. Defendant Manbhar had deposed that plaintiff Har Lal and Shiv Lal had joined and so Shiv Lal had accused him of theft and he was beaten and his signatures were taken on a paper regarding agreement of land. He further deposed that he had his own house and so he never required any money. He has further deposed that on his complaint, plaintiff Har Lal and Shiv Lal were challaned by the police for offence under Section 420 IPC for forging documents and these facts were admitted by plaintiff Har Lal in a *panchayat* of the villagers convened for the purpose. It is not disputed that Har Lal and Shiv Lal were tried for offence under Section 420 I.P.C. for forging agreement to sell in question although they were acquitted by giving benefit of doubt. The defendant was also later involved in a case of theft by Shiv Lal. The theft was alleged to have been committed by the defendant on 5th/6th February, 1979. Although report of alleged theft was lodged after the alleged agreement dated 9.2.1979, but it indirectly corroborates the version of

defendant inasmuch as the defendant might have been accused of theft and threatened of implication in that case on 9.2.1979. When the defendant reported the matter to the *panchayat* and the police, Shiv Lal actually lodged a report of theft against the defendant. Shiv Lal had alleged that the defendant had pledged stolen ornaments with some goldsmiths, but it was found in the trial of that case that the ornaments actually belonged to the defendant and he had already pledged those ornaments with those goldsmiths long before the alleged theft. Learned Sessions Judge had, therefore, ordered the return of those ornaments to the goldsmiths from whom the same had allegedly been recovered at the instance of defendant. These facts, therefore, corroborate the defendant's version that he was beaten and frightened into signing of the alleged agreement(s) to sell dated 9.2.1979.”

24. In view of the above, the statement of Shiv Lal that he along with Manbhar had come from Dadri to Court complex, where two agreements for sale of land of Manbhar were executed in favour of Har Lal which was thumb marked by him as witness is unreliable. As per this witness, he had come to the Court complex with Manbhar and Zile Singh. In fact, he had to go to his village but he was stopped by Manbhar to be a witness to the agreements. He had admitted that there was a theft in his house regarding which a criminal case was registered against Manbhar and a *Panchayat* was also held with regard to this theft. His golden articles were recovered from goldsmith, which were mortgaged with him by Manbhar. As already discussed, theft is prior to the date of agreement and it is highly unbelievable that despite all this, Shiv Lal will accompany Manbhar, who as per him(Shiv Lal) had committed theft in his house, to be a witness of

agreement. This version that under police pressure signatures of Manbhar were obtained on agreement, is more probable and reasonable.

25. Zile Singh has also distanced himself from the story put forth by Har Lal that Manbhar had executed agreements in his favour. Zile Singh had moved application (Ex.D3) before the *panchayat* for obtaining his thumb impressions and fabricating agreements by Har Lal. This application was moved on 13.02.1979 (date wrongly mentioned as 13.02.1976 in Ex.D3). *Panchayat* in its meeting dated 15.02.1979 returned the application of Zile Singh being beyond its purview, advising him to take up the matter with the concerned authorities. This resolution was signed even by Har Lal. It was, thereafter, that a suit was instituted against Zile Singh by the brother of Har Lal for recovery, which was dismissed.

26. The above evidence shows that it is not a case of forgery of agreements only but also of obtaining thumb impressions of Zile Singh witness on this agreement on the pretext that same were being taken for the transaction of purchase of truck. The first Appellate Court(s) have looked into all the facts and circumstances and evidence on record before reaching the conclusion that agreements were based on fraud, collusion and undue influence. In the civil suit No.317 of 1979, the first Appellate Court, while disposing of the appeal, observed in para 27 as follows:-

“In view of my foregoing discussion on issues No.1, 3 and 3-A, the defendant-appellant has been able to prove that the alleged agreement to sell was based on fraud, coercion and undue influence. Accordingly, the plaintiff is not entitled to any relief of specific performance of the agreement. Consequently, the appeal of the appellant is accepted with costs, the judgment and decree of the

learned trial Court is set aside and the suit of the plaintiff for specific performance as well as for alternative relief of recovery of Rs.18000/- is dismissed with costs.”

27. In the first appeal against the judgment of learned Sub Judge, Charkhi Dadri in civil suit No.623 of 1981, learned first Appellate Court accepted the appeal and dismissed the suit.

28. As a sequel of my above discussion, I find no merits in both the appeals.

29. No substantial question of law requiring determination arises in both these appeals.

30. Dismissed.

(SURINDER GUPTA)
JUDGE

May 25, 2016.
Sachin M.