

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

R.S.A.No.2449 of 1992 (O&M)

Date of Decision: September 21st, 2016

Asha Soni (since deceased) through L.Rs

...Appellant

Versus

Ramesh Kumar

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Mr.Animesh Sharma, Advocate,
for the appellant.**

**Mr.Inderjit Sharma, Advocate,
for the respondent.**

AMIT RAWAL, J.

Appellant-defendant is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the suit for specific performance of the agreement to sell dated 20.2.1985 in respect of land measuring 1 kanal 10 marlas with five feet karam out of Khasra No.1277/134/4 (2-5), 1279/135 (3-0), Khata No.41, 39, 54, Khatoni No.90 as per jamabandi for the year 1980-81, situated in Village Kotli Nangal H.B.No.334, Tehsil and District Gurdaspur, has been decreed.

Mr.Animesh Sharma, learned counsel for the appellant-defendant submits that the respondent-plaintiff instituted the suit on 3.1.1986 propounding the aforementioned agreement to sell for total sale consideration of ₹48,000/- against the payment of ₹45,000/- as earnest money, stating therein that the time was not the essence. Both the attesting witnesses, namely, Bishan Singh PW-8 and Rajnish Kant PW-9 have not

supported the case of the respondent-plaintiff. Even the payment, aforementioned, had not been proved. In fact, appellant-defendant did not enter into agreement to sell. Both the Experts, though have given the reports in favour of their respective clients, but the fact remains that the agreement to sell does not bear the signatures. On the basis of the aforementioned evidence, the trial Court dismissed the suit. In fact, the respondent-plaintiff was working as a Gardner in the Orchard. The Lower Appellate Court has completely misprojected in holding that one of the attesting witnesses had admitted that he signed the agreement Ex.P1, whereas it is not so. The Lower Appellate Court has completely brushed aside the definition of “attestation” as given in Section 3 of the Transfer of Property Act by holding that the agreement to sell had actually been executed. The Lower Appellate Court has also erred in drawing the adverse inference against the appellant that the paper on which the alleged agreement was written was one of the series of four such papers brought by the appellant. In fact, the trial Court has rightly pointed out that there was a discrepancy regarding the entry of the document in dispute.

He further submits that the statement of Dewan K.S.Puri, Document Expert, has been brushed aside, who stated that the agreement to sell did not bear the signature of Asha Soni. The Lower Appellate Court heavily relied upon the statement of the Stamp Vendor, whereas he has not proved his register as to whether the stamp paper was purchased by Asha Soni or it bore her signature. All these factors have not been taken into consideration, therefore, the judgment and decree under challenge are liable to be set-aside.

Per contra, Mr.Inderjit Sharma, learned counsel for the

respondent-plaintiff submits that Asha Soni had executed, a day before, the sale deed in favour of the father of the respondent-plaintiff and also bore her signatures. The Expert had examined the signatures not from the sale deed but from the Vakalatnama tendered in the Court and found that the same were of Asha Soni, though in the written statement, she appended her signature in a different manner and mode by putting “A” instead of small letter in capital. It was an afterthought. The stamp vendor had been very coherent and specific with regard to the purchase of the stamp papers bearing No.8086 to 8089. The Lower Appellate Court, being the last Court of fact and law, has examined the entire evidence and found that PW-10 was put suggestion that agreement was executed in favour of Smt.Romesh Kalia by Asha Soni in respect of the property in dispute and the sale deed Ex.PW11/A was executed by Asha Soni in favour of Gurcharan Dass, i.e., a day earlier.

He further submits that PW-4 Narinder Kumar Stamp Vendor proved that Asha Soni had purchased four stamp papers and entered in his register at Sr.No.8086 to 8089. On perusal of the evidence of Rajnish Kant PW-9, it is proved that he signed the agreement to sell after knowing the fact that his signatures were obtained on the agreement and this fact was told to him. So is the position with regard to the statements of PW-8 and PW-9 and, therefore, the finding rendered by the Lower Appellate Court qua non-execution of the agreement, much less, proved, was totally brushed aside. The Lower Appellate Court has exercised the discretion.

I have heard the learned counsel for the parties and appraised the paper book.

No doubt, both the parties have examined the Experts. It has

now to be seen by this Court as in many judgments, it has been held that the Expert toe to the lines of the party who engages him. This Court had examined the original record. The Expert had not examined the admitted signature of Asha Soni with the sale deed Ex.PW11/A executed by her a day before in favour of father of the respondent-plaintiff and there is a stark difference in the flow of the word “Asha Soni”. Word “Asha Soni” has been signed in slow motion and it appears that an attempt has been made to copy the admitted signatures. This fact has totally been brushed aside by the Lower Appellate Court. Both the attesting witnesses, aforementioned, have not supported the case of the respondent-plaintiff, thus, it was rightly held by the trial Court that the same had not been proved.

The register of the stamp vendor has not seen the light of the day, though there is some reference of the same, but on examination of the records of the Courts below, when this Court was unable to find out Ex.P2/1, the original record was handed over to Mr.Inderjit Sharma, who also examined the same and said that Ex.P2/1 is mentioned on the back of the agreement to sell. Back of the agreement to sell is bearing serial number and date, whereas the stamp paper is alleged to have been purchased by Asha Soni, but the same did not bear her signature. Stamp paper must bear the signature. The respondent-plaintiff has not been able to prove the same through the testimony of PW-4 Stamp Vendor as he was afraid of surfacing of the truth, therefore, an adverse inference is liable to be drawn.

The sale deed Ex.PW11/A executed in favour of Gurcharan Dass has three stamp papers of denomination of ₹100/-, ₹20/- and ₹5/- with series 8086, whereas the agreement to sell in question bears series 8088. No documentary evidence has been proved on record with regard to the stamp

paper bearing series No.8087 and 8089. All these factors have not been noticed by the Lower Appellate Court. In my view, the Lower Appellate Court, being the last Court of law and fact, has not examined the evidence, thus, there is illegality and perversity.

No doubt, this Court on earlier occasions had been framing the substantial questions of law while deciding the appeal but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213** wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, whether provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

For the foregoing reasons, the judgment and decree rendered by the Lower Appellate Court is set-aside and that of the trial Court is restored, the suit in essence is ordered to be dismissed. Resultantly, appeal stands allowed.

September 21st, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No