

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

RSA No.1402 of 2005 (O&M)

Date of decision:26.10.2016

Lishkar Singh @ Lashkar Singh

... Appellant

Vs.

Gurnam Kaur (since deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Arnav Sood, Advocate
for the appellant.

Mr. Prateek Pandit, Advocate
for respondent No.1(ii).

Mr. Vijay Rana, Advocate
for respondents No.1(iii) to (v).

AMIT RAWAL J.

The appellant-plaintiff is aggrieved of the concurrent findings of facts and law, whereby, suit for possession by way of specific performance of the agreement to sell dated 07.06.1993 in respect of land measuring 24 kanals 4 marlas being 1/6th share of land measuring 145 kanals 6 marlas comprised in khasra numbers as described in the head note of the plaint agreed to be sold for a total sale consideration of Rs. 2,26,875/- against the payment of earnest money of Rs.90,000/-, has been dismissed by both the Courts below.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Arnav Sood, Advocate appearing on behalf of the appellant-plaintiff submits, that the aforementioned agreement to sell was executed between the parties and the stipulated date for execution and registration of the sale deed was

6.12.1993. The appellant-plaintiff had always been ready and willing to perform his part of the contract. The agreement was scribed by Avtar Singh - PW6 and Tarlochan Singh – PW7. However, they appeared but turned hostile and denied the execution of the agreement to sell, much less, payment of the sale consideration though admitted their signatures. The plaintiff has also examined the stamp vendor and Sudarshan Kumar, deed writer. Issue No.5-A was framed on the basis of the pleading of the defendant and the agreement being an outcome of fraud and misrepresentation has not been proved being not pressed. The defendant did not appear in the witness box, but her grandson, aged 21 years, appeared in the year 2001, whereas, the agreement to sell was of 1993, he was hardly a minor child at the relevant point of time.

The signatures of the vendor on the register of the stamp vendor existed. No doubt, stamp paper does not bear the signatures but that would not be fatal to the decision of the case. Even in the register of the deed writer, in this regard, there is an entry. Though in cross-examination, deed writer had said that few of the entries had been done by his son but this would not be a sufficient ground for non-granting the discretion. Non-obtaining of the permission from the department would not be dependent on the decree of the specific performance, in view of the law laid down by the Hon'ble Supreme Court in **Vishwa Nath Sharma vs. Shyam Shankar Goela and another 2007(2) RCR (Civil) 415**. He further submits that the alleged criminal case registered against the vendor and as well as the scribe as per the order dated 30.07.2007 tried in respect of FIR bearing No.55 dated 25.08.1998 resulted into acquittal. In view of the aforementioned fact,

the agreement to sell has been proved, thus, the Courts below ought to have exercised the discretion.

There is no finding on record by the Courts below with regard to issue No.5A, the objection qua readiness and willingness could not have been taken by the defendant as the agreement to sell was denied. The plaintiff has been deprived of the cross-examination of the vendor in view of her non-appearance. This issue has already been pondered upon by the Hon'ble Supreme Court in **Janki Vashdev Bhojwani vs. Industrial Bank Limited 2005(1) RCR (Civil) 240** and **Mann Kaur (dead) by LRs vs. Hartar Singh Sangha 2010 (4) RCR (Civil) 239**.

No doubt, Avtar Singh in his cross-examination, turned hostile but has stated that Gurnam Kaur did not thumb mark in his presence and he was called by the scribe and Lishkar Singh stated that he had agreed to sell the land from Gurnam Kaur and requested him to sign as attesting witness. Once he admitted his signatures as attesting witness, he cannot turn back by supporting the vendor. He in cross-examination further deposed that Gurnam Kaur belongs to his village as she was on visiting terms with him, therefore, he knew her. Gurnam Kaur had already thumb marked prior to obtaining the signature of marginal witnesses. He further deposed that he knew the scribe as Gurnam Kaur had agreed to sell 3 acres of land @ Rs.75,000/- per acre. The execution of the agreement to sell has been proved and thus, urges this Court for setting aside the concurrent findings by decreeing the suit.

Mr. Prateek Pandit, learned counsel appearing on behalf of respondent No.1(ii) submits that it is not the fact that only scribe was tried

in the aforementioned FIR but the plaintiff also. Even the register has not regularly been found to be maintained and this fact has been noticed by the trial Court, whereas, number of entries were not made by his hand but by his son, who has not been examined. Non-appearance of the signatures on the stamp paper is against the provisions of Punjab Stamp Rules 1934 as applicable to State of Punjab.

In support of his contention, he relies upon the judgment of learned Single Bench of this Court rendered in **Mangat Singh vs. Rakesh Kumar Gupta and another 2014(4) RCR (Civil) 387**. He further submits that if the witnesses to the agreement to sell do not support the agreement to sell, the discretionary relief cannot be granted. In support of aforementioned contention, also referred to the ratio decidendi culled out by this Court in **Shiv Charan vs. Siri Ram and another 2008 (3) RCR (Civil) 454**. In fact, the appellant-plaintiff has failed to discharge the onus/burden of proof. It has been found that the agreement to sell is suffering from suspicious circumstances and rightly so, the Courts below have also not granted the alternative relief. Even the scribe when appeared as PW8 admitted in cross examination that no consideration was passed at the time of scribing of the agreement. The stamp vendor did not produce the register, whereby, the signatures of Gurnam Kaur was allegedly appended, nor the stamp paper bore the signatures of Gurnam Kaur and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Jain, for, scribe PW8 in testimony

specifically admitted that no consideration was passed on at the time of agreement. Even Krishan Khera, PW4, from whom the stamp paper of agreement to sell (Ex.P3) was purchased stated that he did not obtain the thumb impression of vendor- Gurnam Kaur on the stamp paper. He was afraid of producing the register in view of the incongruence. Non-appearance of Gurnam Kaur could not be fatal to the case as no person can identify the thumb impression, as it is only examined by the expert.

The witnesses of the agreement to sell have turned hostile and not supported the case of the plaintiff. I am of the view that the Courts below have rightly declined the relief under Section 20 of the Specific Relief Act. Even the payment of consideration has not been proved to be passed, therefore, even did not grant the alternative relief. PW6 – Avtar Singh submitted that in his presence, Gurnam Kaur did not thumb mark the agreement to sell. PW7 – Tarlochan Singh was also not present there and when he appeared, he stated that agreement had already been scribed when he reached, i.e., thumb impressions stated to be that of Gurnam Kaur already existed on it. All these factors weighed in the mind of the Courts below in discarding the execution of the agreement to sell.

Even entries in the register of Deed Writer, Sudarshan Kumar PW5, have been found to be written by his son, who has not been examined. The registration of the criminal case cannot be ignored though entailed into acquittal, which shows that there was an element of suspicion regarding the issuing of antedated agreement.

I am in agreement with the submission of Mr. Parteek Pandit, that discretionary relief cannot be granted in view of the judgment cited

supra. Knowing Gurnam Kaur being from the same village would lead to an irresistible conclusion that Gurnam Kaur had entered into agreement to sell.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 26, 2016

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No