

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

RSA No.1234 of 2009 (O&M)

Date of Decision.07.09.2016

Pritam Singh

.....Appellant

Vs.

Gurdial Singh (deceased) through LRs and others

.....Respondents

2. RSA No.5106 of 2014 (O&M)

Pritam Singh

.....Appellants

Vs.

Surjit Kaur and others

.....Respondents

Present: Mr. M.S. Sidhu, Advocate
for the appellants in both cases.

Mr. R.K. Gupta, Advocate
for LRs of respondent No.1 in RSA No.1234 of 2009 and
for the caveators-respondents in RSA No.5106 of 2014.

Mr. Puneet Sharma, Advocate
for respondent Nos.2 and 3 in RSA No.1234 of 2009.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

-:-

AMIT RAWAL J. (ORAL)

C.M. No.3648-C of 2009 in RSA No.1234 of 2009

The application for impleading the legal representatives of deceased-appellant No.1 before the Courts below is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

C.M. No.12035-C of 2014 in RSA No.5106 of 2014

deceased-respondent No.1 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

C.M. No.12036-C of 2014 in RSA No.5106 of 2014

For the reasons stated in the application, delay of 146 days in filing the appeal is condoned.

Application is allowed.

Main Cases

This order of mine shall dispose of two regular second appeals. RSA No.1234 of 2009 is arising out of the dismissal of the Civil Suit No.329 of 1995 (hereinafter called as 1st suit) seeking specific performance of the agreement to sell dated 26.11.1994 and RSA No.5106 of 2014 is arising out of Civil Suit No.25 of 2009 (hereinafter called as 2nd suit) whereby the suit of the plaintiff (respondent herein) seeking possession of the suit property has been decreed. The appeals filed by the respective parties against the judgment and decrees passed in the aforementioned suits i.e. suit Nos.1 and 2 have also been dismissed.

Mr. M.S. Sidhu, learned counsel appearing on behalf of the vendees namely Ram Kishan and Pritam Singh submits that agreement to sell dated 26.11.1994 was entered into by Gurdial Singh for a land measuring 29 kanals 10 marlas for a total consideration of ₹6 lacs. Against the aforementioned consideration, a sum of ₹3,65,000/- i.e. some amount, has been paid through various demand drafts and some amount in cash, which has been duly proved on record. The target date was 27.06.1995. The attesting witnesses of the agreement to sell were PW-3, Sohan Singh and PW-4, Rabbi Singh. Through testimony of PW-8, Surinder Pal Singh and PW-9, Manmohan Singh, rest of the payment was also proved. Both the

Courts below have abdicated in not referring to the entire oral and documentary evidence and formed an opinion different to the stand taken in the written statement. The defendants categorically denied the execution of the agreement to sell, much less, stated that it was forged and fabricated, however, did not discharge onus by proving whether their signatures bore on agreement to sell or not, whereas on the contrary, both the Courts below rendered a finding that agreement to sell bore the signatures of Gurdial Singh but, it was, on blank paper. He submits that even if the decree is against the beneficiary Gurdial Singh, nothing prevented him to challenge the aforementioned finding by way of appeal, thus, finding qua signatures of Gurdial Singh on agreement to sell had attained finality. He further submits that had statements of the aforementioned witnesses been looked into, much less, the cross-examination, the plaintiffs had been able to prove the execution of the agreement to sell but both the Courts below, particularly the lower Appellate Court, committed illegality and perversity, much less, abdicated in not referring to the oral and documentary evidence. The suit aforementioned was filed on 17.08.1995. Even the receipt Ex.PW5/A regarding payment of ₹50,000/- was not emphatically denied in the written statement, thus, urges this Court for setting aside the judgment and decree rendered in 1st suit declining the relief of specific performance and as well as judgment and decree rendered in the 2nd suit for possession.

Mr. Raj Kumar Gupta, learned counsel appearing on behalf of respondent No.1-Gurdial Singh submits that during the subsistence of the agreement through the assistance of the plaintiff, vendor-Gurdial Singh, sold the land measuring 8 kanals 2 marals to subsequent vendees, vide sale deed dated 03.05.1995. The receipt dated 02.04.1994, Ex.PW5/A, has not

been proved. No doubt, the defendant has admitted the receipt of the amount paid by drafts and cheques but it was in respect of sale of trees which were planted on the land in *lal lakir* and it was not remotely connected with the agreement to sell. In fact, the defendant never entered into the alleged agreement to sell and it was outcome of fraud and fabrication. A specific plea was taken in the written statement that the defendant reserved right to launch prosecution against the plaintiffs. He submits that ₹2,19,000/- was alleged to have been paid through cheques and drafts but the plaintiffs have failed to prove the payment of remaining amount in cash i.e. ₹1,50,000/-. Neither there was readiness and willingness nor the agreement to sell bore signature of Gurdial Singh and therefore, rightly so, the Courts below after giving the finding that the agreement to sell was never executed, dismissed the 1st suit for specific performance and decreed the 2nd suit for possession. The concurrent finding of fact cannot be interfered unless and until, there is gross illegality and perversity, thus, urges this Court for confirming the findings rendered by the Courts below.

Mr. Puneet Sharma, learned counsel appearing for subsequent vendees-respondent Nos.2 and 3 submits that sale of land measuring 8 kanals 2 marlas was made after verification of the revenue records, in essence, they are bona fide purchasers and entitled to seek protection under Section 41 of the Transfer of Property Act. The revenue record did not reflect the existence of agreement to sell and after making reasonable enquiry, they purchased the land, thus, urges this Court for confirming the findings rendered by the Courts below.

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 appeals aforementioned.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Sidhu, learned counsel appearing for the appellant, for, both the Courts below have committed gross illegality and perversity in not referring to the cross-examination. The tenor and mode of cross-examination of Pritam Singh at the instance of defendant-Gurdial Singh has proved the agreement to sell. For the sake of brevity, the relevant portion of the cross-examination reads thus:-

“.....No agreement in writing has been scribed prior to document Ex.PW5/A. Date was fixed telephonically for the arrival of Gurdial Singh in the village, one day earlier. But no stamp paper was purchased for writing Ex.PW5/A....

Similarly, Pritam Singh, one of the plaintiffs appeared as PW5.

₹50,000/- was paid to Gurdial Singh and writing was got executed by Rashpal Singh son of Gurdial Singh. The relevant piece of examination-in-chief reads thus:-

“.....On 2.4.1994, I paid the amount of ₹50,000/- to Gurdial Singh and writing was got executed by Rashpal Singh son of Gurdial Singh. It was signed by Gurdial Singh and attested by Mohinder Singh. It also bears my signatures. The writing in Ex.PW5/A.....”

I have gone through the records of the Courts below and the cross-examination. Except the suggestion qua agreement, no other question has been put. The same reads thus:-

“.....It is incorrect to suggest that my signatures and thumb impression of my father are above the signatures of Gurdial Singh on document Ex.P1....”

However, to a specific question put by the counsel of Gurdial Singh, he answered in the following manner:-

“.....Defendant Gurdial Singh along with his companion reached at my residence at about 11.00 AM. I asked Gurdial Singh for purchasing of stamp paper for writing the agreement to sell. Gurdial Singh told me that it was Saturday and stamp paper could not be available on that day. There were 4/5 stamp vendors/petition writer at Ropar on those days. We did not think of writing the agreement to sell Ex.P1 from the petition writer because it was a Saturday. I do not remember, if the year of the jamabandi was mentioned in the agreement to sell Ex.P1 regarding the land of the Pholpur Grewal. We had the knowledge regarding receipt Ex.PW5/A. But the same was misplaced at the time of agreement Ex.P1. Mention of receipt was made in the agreement to sell Ex.P1.”

.....Prior to the telephonic conversation there was no agreement i.e. prior to 1.4.94. Receipt was executed on the

next date of the said telephonic conversation after payment of ₹50,000/-. In the receipt, the details of the property nor its description was mentioned. However, the location of the property was mentioned therein.”

To a specific question regarding the stand in the written statement that the plaintiff had paid ₹30,000/- and ₹20,000/- was emphatically denied. The appellant-plaintiff has proved the payment of balance amount in cash through the testimony of PW-8, Surinder Pal Singh, whose examination-in-chief reads thus:-

“I had to pay the amount of Rs.5000/- to Pritam Singh one of the plaintiff. On 6.8.1994, I came to shop of Pritam Singh at Ropar. Gurdial Singh defendant was sitting at the shop of plaintiff. Gurdial Singh demanded ₹40,000/- from Pritam Singh. I paid the amount of ₹3000/- to Pritam Singh and Pritam Singh paid the amount of ₹38,000/- to Gurdial Singh in my presence and I paid the remaining amount of ₹2000/- after two days and the said amount was paid in my presence to Gurdial Singh.....”

PW-9, Manmohan Singh deposed in the following manner to prove the case of the plaintiff regarding payment of balance amount to Gurdial Singh:-

“I know Pritam Singh, plaintiff. I purchased submersible pump, cable used for installation of submersible pump and the pipe at different times from the plaintiff. I have brought the receipts regarding purchased of the said material and the receipts are Ex.PW9/A, PW9/B and PW9/C (objected to on the ground of late production and not relied upon). Production of documents is allowed subject to costs of ₹150/-). The said receipts were issued by Pritam Singh, plaintiff in my presence. (Costs paid and accepted). And at the asking of plaintiff Pritam Singh in lieu of the cash payment regarding purchase of

the said material I directly issued a cheque in the name of Gurdial Singh for sum of ₹50,000/-. Copy of the cheque is mark PW9/D. The said cheque was encashed by Gurdial Singh.”

The aforementioned two witnesses have been cross-examined in *extenso* but their examination-in-chief remained unshattered, in essence, the vendors/defendants have not been able to discharge onus. Both the witnesses were coherent and consistent. Rather in para 3 of the written statement, the defendants vaguely denied the receipt of ₹50,000/- by cheque. The entire tenor and mode of cross-examination leads to irresistible conclusion, that the agreement to sell was signed on a simple paper and no spacing was left. I am afraid that how the Courts below without looking the cross-examination formed an opinion that the agreement to sell has been written on a blank paper bearing the signatures of Gurdial Singh. Gurdial Singh has not even taken stand on the plea of his signature taken on blank paper rather emphatically denied the execution of agreement to sell in question. In my view, the findings are totally beyond pleadings and evidence. If at all, Gurdial Singh could have challenged the finding of the Courts below with regard to agreement to sell by filing appeal but no appeal has been filed. It is settled law that even when the decree is in favour of a party but some findings are against him, he is at liberty to impugn the same. All these aspects have escaped the notice of Courts below. By doing the cross-examination in the manner extracted above, I am of the view that the defendant has proved the case of the plaintiff that the agreement to sell was actually entered into. The defendant, in the written statement, has not denied the receipt of the payment of amount of ₹2,19,000/- by way of cheque and drafts, but he has not been able to give any explanation whether

it was in lieu of the trees having been sold, as no direct and cogent, much less, corroborative evidence has been led. Keeping in view the aforementioned pleadings and the evidence, I am of the view that the plaintiff has been able to make out a case of specific performance as he was always ready and willing by the fact that the target date for execution of the sale deed was 27.06.1995 and the suit, as noticed above, has been filed on 17.08.1995. Even in the cross-examination of Sohan Singh, PW3, the mode and tenor of cross-examination was in conformation with the cross-examination of PW-4 Rabbi Singh. The relevant portion of the cross-examination of PW4 reads thus:-

“The document was scribed at the house of Pritam Singh. It was scribed at 10/11.00 AM and it was winter season. It might have been scribed 4 ½/5 years ago. I do not know if the bargain was struck in my presence, but it was read over to me. I cannot tell the area of the land which was subject matter of the agreement but it was situated in two villages. The agreement pertains only to the landed property. The parties are not relations inter-se them but they are Taya Bhateja. I do not know if Gurdial Singh is real brother of father of Pritam Singh. The document was scribed on a single paper. The document was scribed on a full scale paper and it was filled to the end of the same. No margin was left on either side of the paper. The document was scribed from the top of the paper and it was concluded at the bottom of the paper. The document was scribed by Savdesh Sharma. I do not know the location of said Savdesh Sharma. I have signed the document in Punjabi

and it was scribed in Punjabi. I have not given my address on the agreement. Sohan Singh the another witness has given address on the document. First of all the document was thumb marked by Ram Kishan. Thereafter, I signed the agreement. Thereafter, none signed the document. This document was not registered. I signed the document after entire procedure was carried out.”

The conducting of cross-examination is also an art. The counsel/party has to be wary in putting the question to the adversary party, particularly when the plaintiff has not stated it in examination-in-chief or in the affidavit. Having asked the question what the adversary party has not stated tantamounts to cutting its own feet and the instant case is the example of such kind i.e. the defendant has proved the case of the plaintiff.

For the foregoing reasons, I am of the view that both the Courts below being Courts of fact and law committed illegality and perversity in dismissing the suit. Resultantly, the judgments and decrees under challenge challenge are set aside. The suit of the plaintiff for specific performance is decreed. The plaintiff is called upon to deposit the balance amount within a period of two months from the date of receipt of certified copy of this judgment and the defendants are directed to execute the sale deed thereafter and in case, the defendants fail to do so, the plaintiff shall be at liberty to seek the execution of the decree in accordance with law. Since I have already granted ownership right by way of specific performance, the judgment and decree granting the possession in favour of respondent-plaintiff is not sustainable and hereby set aside. Resultantly, Both the appeals are allowed. Decree-sheet shall be prepared accordingly.

Since during the course of hearing, Mr. Sidhu, learned counsel for the appellant, on instructions from his client, submits that he is not averse in case the decree is confined to 21 kanals 8 marlas. Consequently, I do not intend to set aside the sale deed dated 03.05.1995 for 8 kanals 2 marlas. The plaintiff shall accordingly deposit the balance amount by taking into consideration the reduction of the area in the sale deed.

(AMIT RAWAL)
JUDGE

September 07, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes