

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

**Regular Second Appeal No.1734 of 2011 (O&M)
Date of Decision: December 07, 2016.**

Ashwani Kumar

.....APPELLANT(s).

VERSUS

Joginder Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Nakul Sharma, Advocate
for the appellant (s).

None for the respondent.

SURINDER GUPTA, J.

This is appeal by plaintiff Ashwani Kumar against the judgment passed by first Appellate Court, whereby the appeal filed by respondent-defendant against the judgment of the Civil Judge (Senior Division), Ferozepur was accepted and the suit of the appellant-plaintiff was ordered to be dismissed.

2. Plaintiff filed suit seeking the relief of specific performance of agreement to sell dated 21.02.2000 executed by defendant in his favour for sale of agricultural land measuring 8 kanals comprised in khewat No.1821 khatauni No.2360, Rect. No.260 Killa No.21(8-0) situated in the area of village Guruharsahai Darmiani, Tehsil Jalalabad (West), District Ferozepur.

3. Case of the plaintiff, in brief, is that the defendant agreed to sell the suit land for a sum of ₹2,25,000/- and received ₹2,10,000/- as earnest

money vide agreement dated 21.07.2000. The date for execution and registration of the sale deed was fixed as 20.08.2000 on payment of balance sale consideration. On 20.08.2000, there was Sunday and on the next day i.e. 21.08.2000, plaintiff reached the office of Sub Registrar, Guruharsahai with balance sale consideration for registration of the sale deed but defendant did not turn up. Plaintiff alleged that he has always been ready and willing to perform his part of the agreement but the defendant avoided to perform his part under the agreement. He sought specific performance of the agreement and possession of the suit land and in alternative recovery of ₹2,25,000/- i.e. earnest money and damages along with interest.

4. The defendant contested the claim of plaintiff, inter-alia pleading that he is not exclusive owner of the suit land. He is merely recorded as cosharer of this land in the jamabandi for the year 1998-99. He denied execution of the agreement and receipt of earnest money of ₹2,10,000/-. Giving details regarding his signatures on the agreement, defendant pleaded in para 3 of the written statement as follows:-

“In fact the plaintiff forged and fabricated the agreement in question in connivance with his brother Ajay Kumar who is doing business of Commission Agent in the name and style of M/s Ajay Kumar Sandip Kumar, Commission Agent, Guruharsahai, the scribe and the marginal witnesses who are very close to him. The plaintiff used to sell his agricultural produce through Ajay Kumar abovesaid and a dispute arose between them on the question of settlement of account and the defendant is selling his agriculture produce through Tara Chand Commission Agent, Guruharsahai. The defendant has four minor children and also lives (sic living) wife. The defendant has no other source of income and is fully

dependant on agriculture. In order to settle the dispute with the brother of the plaintiff, a Panchayat consisting of Manohar Singh etc. was convened at the instance of Ajay Kumar. The account was settled and a sum of Rs.35,000/- was due towards the defendant and the defendant agreed to pay the same. However, the plaintiff and his brother got scribed the agreement in question and obtained signature of the defendant, saying that this is a document which has been reduced into writing as per compromise taken in the Panchayat. The defendant is an illiterate person but can sign only. The defendant is a handicapped. The plaintiff and his brother and the whatever disclosed was not true but they have played fraud with the defendant, when they secured his signature on the agreement in question by misrepresenting and playing fraud with the defendant. It is made clear that neither the defendant was in need of any money and as such, there was no occasion for the execution of the agreement in question. The said agreement in question is not binding upon the rights of the defendant. It is made clear that neither the defendant entered into any agreement nor received any earnest money from the plaintiff.”

5. Pleadings of the parties led to the framing of issues as follows:-
- (1) Whether the defendant agreed to sell the suit land in favour of plaintiff and executed agreement to sell dated 21.7.2000 ?OPP
 - (2) Whether the plaintiff remained ready and willing to perform his part of contract? OPP
 - (3) Whether plaintiff is entitled to decree for possession by specific performance of agreement to sell dated 21.7.2000 or in the alternative for recovery of Rs.2,25,000/-? OPP

- (4) Whether the suit is bad for non-joinder of necessary parties? OPD
- (5) Whether this suit is not maintainable in the present form? OPD
- (6) Relief.

6. While recording finding on issue No.1, learned Civil Judge (Senior Division), Ferozepur held that the execution of the agreement dated 21.07.2000 is duly proved and the plaintiff has remained ready and willing to perform his part of the agreement. However, the relief of possession of the suit land and specific performance of the agreement was declined with the observation that this agreement was executed for security purpose for the amount taken by defendant regarding which there was dispute with M/s Ajay Kumar Sandip Kumar and the alternative relief of recovery of earnest money with interest was allowed.

7. Not satisfied, the defendant preferred appeal and the first Appellate Court set aside the findings of learned Civil Judge on issue No.1 relating to the execution of the agreement by defendant in favour of plaintiff and dismissed the suit.

8. I have heard learned counsel for the appellant-plaintiff and have also perused the paper book and record of the Courts below with his assistance.

9. Agreement Ex.P1 was allegedly scribed by S.K. Sharma, Deed-writer but he was not examined. This agreement bears five signatures on third page i.e. of plaintiff, defendant and three witnesses. On perusal of this agreement, I find that all the signatures have been appended using different ink and pen. Even the signatures of Deed-writer are not with the pen used

by either of the above five persons, who have signed the agreement. Sher Singh witness had signed the agreement using black ink pen below his typed name and not on the space provided for his signature. In the same manner, Joginder Singh had also not signed at the space provided for his signatures and signed using black ink pen below his typed name. However, Surinder Kumar Pardhan had signed above his typed name but used green ink pen. Ashwani Kumar had signed the agreement using a blue ball point pen while Raj Kumar had signed below his name using a different blue ball point pen. It is really surprising that five person and deed-writer are signing the agreement using 5/6 different pens and ink. A very safe conclusion which can be drawn on this sole factor is that all the witnesses have not signed the agreement at one point of time. This may be the reason for the plaintiff not to examine the scribe S.K. Sharma, who would have clarified the user of different pens and ink by all the persons, who signed the agreement.

10. PW1 Ashwani Kumar plaintiff has stated that the agreement was scribed at the shop of Surinder Kumar Sharma (Scribe) situated in Bazar Guruharsahai. Surinder Kumar Pardhan gives altogether different version in this regard and has stated that this agreement was executed in the shop of S.K. Sharma situated in Tehsil compound Guruharsahai. This reflect that the plaintiff and marginal witnesses are giving altogether different places of the execution of agreement. Bazar of Guruharsahai is at a distance of half kilometre from Tehsil compound. This has been so stated by PW3 Raj Kumar. This witness has given third version regarding the place of execution of the agreement while stating that he signed this

agreement at the shop of Ajay Kumar at 12.00 p.m. and Surinder Kumar had also signed agreement at that place. As per this witness, Sher Singh, third witness of the agreement was brought to the shop of Ajay Kumar. He further stated that except Surinder Kumar nobody else came forward to become witness of the agreement to sell or put his signature on the agreement as witness.

11. PW3 Raj Kumar admitted that Joginder Singh defendant used to sell his agricultural produce at the commission agency of Ajay Kumar. The fact that the agreement as per this witness was executed at the shop of Ajay Kumar and that this witness is employee of Ajay Kumar, support the contention of defendant that this agreement was prepared at the instance of Ajay Kumar.

12. PW2 Surinder Kumar and PW3 Raj Kumar were not even aware of their statements made in the examination-in-chief as per the affidavit Ex.PW2/A and Ex.PW3/A respectively.

13. Besides above glaring discrepancies which have created suspicion in the mind of the first Appellate Court about the genuineness of the agreement, there is another factor which shatter the case of the appellant-plaintiff about the execution of the agreement. A buyer is always vigilant while entering into an agreement to purchase immovable property. He verifies the title, antecedents of titleholder and also the record relating to the property being purchased. In this case, it appears that the agreement was got scribed even without copy of jamabandi of the suit land available with the plaintiff. The plaintiff has placed on record copy of jamabandi Ex.P2 which was issued by the Patwari on 26.12.2002 i.e. much after the

execution of the agreement Ex.P1. Perusal of this jamabandi shows that defendant Joginder Singh was owner to the extent of 1/4th share in the suit land. There is no other document on record to show that defendant has share more than two kanals in the suit land. Here a question arises that if defendant was not owner of 8 kanals of land situated in rect. No.260 killa No.21, the plaintiff would not have taken risk to purchase it. This reflects falsity of the agreement and corroborates version of respondent-defendant that a writing was executed while settling dues of Ajay Kumar Commission Agent, who is brother of appellant.

14. Learned counsel for the appellant has argued that the execution of the agreement is admitted by the defendant in his written statement, as such, the first Appellate Court has committed grave illegality while venturing into this aspect. In support of his contention, he has referred to averments of defendant in para 3 of the written statement quoted above.

15. I find no merit in the submission of learned counsel for the appellant. While appreciating plea of respondent-defendant about execution of agreement, his entire version is to be seen and appreciated. The fact that the scribe of the agreement was not examined; witnesses are not aware about place of execution of the agreement; defendant is not recorded as owner of suit land in the jamabandi produced by the plaintiff; role of Ajay Kumar, Commission Agent in the execution of the agreement; one of the employee of Ajay Kumar signed the agreement as witness; all the signatories to agreement signed using different pen and ink and the conclusion drawn by the first Appellate Court that payment of earnest money is not proved, support the contention of defendant that no agreement

to sell was in fact executed in favour of appellant. As per agreement, ₹2,10,000/- out of total sale consideration of ₹2,25,000/- were paid as earnest money, however, the possession of the suit land was not taken. It is not believable that a prudent man will pay more than 90% of the sale consideration without getting the possession of the immovable property.

16. Keeping in view the above facts and circumstances, I find no reason to differ with the observations of first Appellate court discarding the agreement (Ex.P1). The finding of fact recorded by the first Appellate Court is based on proper appreciation of evidence on record.

17. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

December 07, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***