

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

-.-

RSA 1858 of 2012 (O&M)
Date of decision: March 15th, 2016

Nirmal Kumar and others

..... Appellants

Versus

Jeet Ram

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Bhag Singh, Advocate
for the appellantss

Mr. Sumeet Goel, Advocate with
Mr. Atul Gaur, Advocate
for the respondent

-.-

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

Rekha Mittal, J.

The present appeal lays challenge to concurrent findings recorded by the Courts below whereby the suit filed by the respondent/plaintiff was decreed by the learned trial Court and the judgment and decree passed by the trial Court, has been affirmed in appeal.

In brief, the respondent staked his claim to possession of the suit property by way of specific performance of agreement to sell dated 21.03.2003 executed by Shri Gian Chand (since deceased) represented by the appellants in regard to land measuring 53 square yards situated within

the *abadi deh* of village Panjokhra, Tehsil and District Ambala, detailed in

para 2 of the judgment passed by the trial Court.

The land was agreed to be sold for a sale consideration of Rs.3,70,000.00, out of which, an amount of Rs.2,10,000.00 was paid to Shri Gian Chand as an earnest money at the time of execution of the agreement to sell dated 21.03.2003. The sale deed was agreed to be executed on or before 15.05.2003. On request made by Shri Gian Chand, date of execution of the sale deed was extended to 30.05.2003 and a writing to this effect was prepared on the back of the original agreement whereby Shri Gian Chand received remaining sale consideration of Rs.1,60,000.00 and delivered actual possession. The respondent always remained ready and willing to perform his part of the contract but Shri Gian Chand and his successors-in-interest committed a breach thereof.

Shri Gian Chand filed the written statement, seriously contested claim of the plaintiff, execution of the agreement to sell with a plea that he is a customer of commission agency run by the plaintiff and his sons in Anaj Mandi, Ambala City. He sells his produce at their shop, receives payment sometime in cash or through cheques. The plaintiff and his sons got his signatures sometime in the books of account and sometime on papers and stamps on the pretext to file the paper in the income tax department. It is averred that the suit is *mala fide* and result of misuse of signatures of the answering defendant. He admitted receipt of Rs.1,60,000/- and Rs.2,10,000.00 but as price of produce sold by him at the shop of the plaintiff and his sons. It is further averred that when the plaintiff tried to interfere in possession of the defendant over the suit property, he filed a suit for injunction which is pending in the Court. The notice sent by the plaintiff was duly replied by him.

The learned trial Court, on due consideration of pleadings of the parties, evidence adduced and rival submissions made by their respective counsel upheld plea of the contesting respondent and the defendants were directed to get the sale deed executed in terms of agreement to sell Ex. P3 dated 21.03.2003 within two months from receipt of certified copy of the judgment. The defendants were also restrained from alienating the suit property to anybody else except the plaintiff.

The appeal preferred by Nirmal Kumar and others (legal representatives of deceased Gian Chand) did not find favour with the Additional District Judge, Ambala as the Court in appeal concurred with the findings recorded by the trial Court.

Still feeling dissatisfied, the matter has been carried in regular second appeal before this Court.

Counsel for the appellants has assailed the findings of the Courts primarily on two counts. The first submission made by counsel is that the agreement to sell propounded by the contesting respondent is nothing short of forgery and fraud played upon Shri Gian Chand by taking advantage of his being a customer at the commission agency shop run by the respondent and his sons. The signatures of Shri Gian Chand were obtained on blank papers and later used for preparing agreement to sell and said fact gets substantiated from the documentary evidence that signatures of Shri Gian Chand are appended at three places on Ex.P1 in regard to the receipt of amount of Rs.1,60,000.00 by Shri Gian Chand on 30.05.2003.

Another submission made by counsel is that had it been correct that Shri Gian Chand entered into the agreement to sell and the entire payment of Rs.3,70,000.00 had been made by 30.05.2003 and that too in the

Court complex, what restrained the parties from getting the sale deed executed and registered on 30.05.2003 itself.

Counsel for the contesting respondent, on the contrary, has supported the judgments passed by the Courts with the submissions that no question of law much less a substantial one arises in the circumstances of the present case. Shri Gian Chand was the best person to say something about agreement to sell dated 21.03.2003 Ex P3, receipt of an amount Rs.1,60,000.00 vide writing Ex P1 but he passed away before he could appear in the witness box. In absence of examination of Shri Gian Chand, there is no rebuttal to evidence adduced by the respondent/plaintiff whereby it has been established that Shri Gian Chand himself purchased the stamp papers, executed agreement to sell, receipt of Rs.2,10,000.00 as part payment towards sale consideration and another Rs.1,60,000.00 vide receipt Ex.P1 in discharge of total liability of the respondent to pay an amount of Rs.3,70,000.00 towards sale consideration. According to counsel, as the respondent paid total sale consideration and was delivered possession of the suit land, it does not lie in the mouth of the appellants to assail his readiness and willingness to perform his part of the agreement or to create doubt in the transaction for failure of the parties to complete the transaction on 30.05.2003 itself by getting the sale deed executed and registered.

I have heard counsel for the parties and perused the records.

There is no denial that before institution of the suit, Shri Jeet Ram served a notice (Ex P6) upon Shri Gian Chand and said notice contains detailed reference to the facts incorporated in the plaint. The appellants sent reply to the notice dated 14.07.2004 (Ex. D2). In para 2 of the reply, plea of Shri Gian Chand is that “.....*your client gets the accounts of balance*

signed from my client and your client also gets the signatures of my client on many papers alleging the same to be surety/security of the amount advanced.” In response to para 2 and 4, Shri Gian Chand has not admitted receipt of Rs.2,10,000.00 and Rs.1,60,000.00 but as per case of the plaintiff/respondent, he was paid money on two occasions towards total sale consideration of Rs.3,70,000.00. Even there is no such plea raised that Shri Gian Chand ever appended his signatures on blank stamp papers. On the contrary, Shri Gian Chand in the written statement, in preliminary objection has stated that the plaintiff and his sons got his signatures sometime in the books of account and sometime on papers and stamps on the pretext that they had to file the papers in the income tax department. In para 3, on merits, he has admitted receipt of Rs.2,10,000.00 and Rs.1,60,000.00. The inconsistency in the stand of Shri Gian Chand in his first version by way of reply to the notice viz-a-viz the stand taken in the written statement enure to benefit of the respondent/plaintiff. Even otherwise, as Shri Gian Chand has admitted his signatures on the agreement to sell, there was a heavy onus to be discharged by him that the agreement to sell in question is the result of forgery and fraud. Shri Gian Chand passed away during pendency of the proceedings, therefore, he did not appear in the witness box to counter case of the plaintiff and substantiate the allegations raised in the written statement. As per the settled position in law, plea of fraud is to be proved beyond shadow of doubt to have an escape of a document which admittedly contains signatures of the defendant. Another important aspect is that signatures of Shri Gian Chand are also appended beneath the endorsement in regard to purchase of stamp papers on 21.03.2003. His signatures are there in the register of the Deed Writer against entry at serial No. 1156 in

regard to receipt of total sale consideration of Rs.3,70,000.00. It is none of the plea of the appellants that signatures of Shri Gian Chand were obtained in a register as well. Taken from any angle, plea of the appellants that the agreement to sell has been prepared on blank signatures of Shri Gian Chand does not get substantiate when otherwise it is not open for the Court in second appeal to re-appreciate the entire evidence to differ with the findings recorded by the Courts below. In this view of the matter, there is no merit in contentions of the appellants that agreement to sell (Ex.P3), receipt (Ex.P1) are the result of forgery/fraud.

The second contention raised by counsel for the appellants is misconceived and merits rejection. The agreement (Ex P3) contains a recital in para 3 that in case, the sale deed is not registered within the stipulated period, balance sale consideration shall be paid and the first party shall be entitled to get possession of the suit land and sale deed would be registered as and when Government opens registration of sale deeds in respect of such like property. The said fact has been duly incorporated in entry Ex.P2 in the register of the Deed Writer against serial No. 1156. The appellants exhibited the written statement filed by Shri Jeet Ram in the suit for injunction filed by Shri Gian Chand qua the suit property that was instituted prior to the filing of the suit in question. The written statement also makes reference that the Government did not permit registration of the sale deed in respect of plots of small sizes. The recital in agreement to sell (Ex P3), contents of Ex.P2 and the stand taken by Jeet Ram in the written statement filed in the earlier litigation between the parties, is a complete answer to the contention raised by the appellants as to why the sale deed qua the suit property could not be executed and registered on 30.05.2003, the day Shri Jeet Ram paid

the entire sale consideration by payment of balance sale consideration of Rs.1,60,000.00.

The respondent claims himself to be in possession of suit land measuring 53 square yards situated in the abadi deh of village Panjokhra, Tehsil and District Ambala. Shri Gian Chand in the year 2004 filed a suit seeking permanent injunction restraining the defendant (Shri Jeet Ram) from interfering in peaceful possession of the suit property. The said suit was later withdrawn in view of the statement made by one of the legal heirs of Shri Gian Chand dated 29.10.2009. The very fact that the legal heirs of Shri Gian Chand withdrew the suit for injunction goes a long way to substantiate plea of the respondent that possession of the suit property was delivered to Shri Jeet Ram on receipt of total sale consideration of Rs.3,70,000.00. Analyzed from any angle, I do not find any error much less illegality in the findings recorded by the Courts below when otherwise there is nothing on record suggestive of the fact that the findings recorded by the Courts are perverse having been based on misreading of evidence or based on no evidence. This apart, no substantial question of law arises for admission of the appeal.

In view of what has been discussed here-in-above, finding no merit, the appeal is dismissed with costs.

(Rekha Mittal)
Judge

March 15th, 2016
mohan bimbra