

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

R.S.A No.4678 of 2012 (O&M)

Date of decision :17.08.2016

Balwant Singh

..... Appellant

Versus

Pritam Singh

..... Respondent

AND

R.S.A No.266 of 2013 (O&M)

Date of decision :17.08.2016

Balwant Singh

..... Appellant

Versus

Pritam Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Vivek Goyal, Advocate
for the appellant.

Mr. S.S.Momi, Advocate
for the respondent.

DARSHAN SINGH,J

This judgment shall dispose of both the Regular Second Appeals filed against the judgment and decree dated 01.08.2012 passed by the learned Additional District Judge, Kurkshetra, vide which two appeals filed by appellant-Balwant Singh against the judgment and decree dated 19.03.2010 passed by the learned Additional Civil Judge (Sr. Division), Kurukshetra, has been dismissed, whereby two consolidated suits i.e. civil suit no. 56 of 11.4.2003/11.06.2008 titled as 'Balwant Singh Vs. Pritam Singh' and civil suit no. 57 of 11.12.2003/11.06.2008

titled as 'Pritam Singh Vs. Balwant Singh' have been decided.

2. The facts in nutshell are that appellant-Balwant Singh filed the civil suit no. 56 of 2008 against respondent-Pritam Singh for seeking a decree for declaration to the effect that the agreement to sell dated 27.05.2002 allegedly executed by him in favour of respondent-Pritam Singh with respect to the land detailed and described in Para no.1 of the plaint is illegal, null and void and not binding on his rights. It is alleged that the said agreement was obtained by respondent-Pritam Singh by playing fraud and concealment of the facts. It is further the case of the appellant that on 27.05.2002 he had gone to the Court complex for getting an affidavit typed for the purpose of remission of the school fees of his son. Respondent-Pritam Singh met him there and told that he will do the needful and he procured his thumb impression on two affidavits. One of them was handed over to him and other was kept by respondent-Pritam Singh. Plaintiff had no knowledge about the contents of the said document. Thereafter, it was revealed that respondent has got thumb marked the agreement to sell. It was further averred that the market value of the suit land was less than Rs. 10 lacs, but a factitious sale price of Rs. 5 lacs has been mentioned. It is further pleaded that the respondent-Pritam Singh came to the spot and tried to interfere in his possession. He even got issued the legal notice, but of no avail. Hence he filed the suit.

3. Said suit was contested by respondent-Pritam Singh on the grounds *inter alia* that no fraud was committed by him with the appellant. In-fact, the agreement to sell dated 27.05.2002 is perfectly legal and was validly executed by him with his free will. He thumb marked the same

after fully understanding the contents thereof and also received a sum of Rs. 65,000/- as earnest money, which was also attested by the witnesses. It was also agreed that the sale deed shall be executed on or before 31.012.2002. But, the appellant did not perform his part of contract. Though, the plaintiff remained present in the office of Sub Registrar on the prescribed date.

4. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is owner in possession of the disputed land?OPP
2. If issue no.1 is proved, whether the plaintiff is entitled to injunction as prayed for?OPP
3. Whether the plaintiff has no locus standi to file and maintain the present suit?OPP
4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
5. Relief.

5. Civil Suit no. 57 of 2008 was filed by respondent-Pritam Singh for possession by way of specific performance of the agreement to sell dated 27.05.2002 on the allegations that appellant-Balwant Singh has agreed to sell the land measuring 16 Kanals i.e. 320/2609 shares of the land measuring 130 K 9 M situated at village Bahadarpur, Tehsil Thanesar, District Kurukshetra for a sum of Rs. 5 lacs with all the rights appurtenant thereto. He has received the earnest amount of Rs. 65000/- on 27.05.2002 at the time of execution of the agreement to sell. The target date for execution and registration of the sale deed was on or before 31.12.2002. Appellant-Balwant Singh has put his thumb impression on the agreement after understanding all the terms and conditions. The agreement was also attested by Sumer Chand and Ram

Chander, the witnesses. It is further pleaded that plaintiff has always been ready and willing to perform his part of contract and he remained present in the office of Sub Registrar on 30.12.2002 along with requisite balance sale price for getting the sale deed executed and registered. But, appellant-Balwant Singh did not turned up. Rather, he has filed the suit for declaration that agreement to sell in question was null and void. Respondent-Pritam Singh got issued the legal notice through his counsel by giving another opportunity to get the sale deed executed on 13.06.2003. But, despite the receipt of the notice, he did not turned up in the Tehsil Office even on that date. Hence the suit.

6. This suit has been contested by appellant on the similar grounds as raised by him in the plaint of the civil suit no. 56 of 2008 filed by him. It was also alleged that the plaintiff has got forged and fabricated the agreement to sell by showing the false terms and conditions and false payment of the earnest money.

7. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the defendant entered into agreement to sell dated 27.05.2002 with plaintiff in respect of the suit property?OPP
2. Whether the plaintiff has been and is still ready and willing to perform his part of contract?OPP
3. If issue no.1 and 2 proved whether the plaintiff is entitled to decree for possession by way of specific performance of agreement dated 27.05.2002?OPP
4. Whether the suit is hit and barred under Section 10 CPC?OPD.
5. Whether the suit is hit and barred under Order 2 Rule 2 CPC?OPD
6. Whether the plaintiff has no locus standi to file and maintain the present suit?OPD

7. Whether the suit is not maintainable in the present for,?OPD
8. Whether the plaintiff is stopped by his own act and conduct to file and maintain the present suit?OPD
9. Relief.

8. Both these suits were consolidated by the learned trial Court vide order dated 15.12.2008. Civil suit no. 56 of 2008 titled as Balwant Singh Vs. Pritam Singh was considered to be the main suit.

9. On appreciation of evidence adduced by the parties and contentions raised by their counsel, the leaned trial Court dismissed the civil suit no. 56 of 2008 filed by appellant-Balwant Singh titled as Balwant Singh Vs. Pritam Singh, whereas the civil suit no. 57 of 2008 filed by respondent-Pritam Singh titled as Pritam Singh Vs. Balwant Singh for possession by way of specific performance of agreement to sell dated 27.05.2002 was decreed.

10. Aggrieved with the aforesaid judgment and decree passed by the learned trial Court, appellant preferred two appeals bearing civil appeal no. 268 of 2011/10 and civil appeal no. 207 of 2011/10, both titled as Balwant Singh Vs. Pritam Singh. Both these appeals filed by the appellant were dismissed by the learned First Appellate Court vide single judgment and decree dated 01.08.2012. Hence these Regular Second Appeals.

11. I have heard Mr. Vivek Goyal, Advocate, learned counsel for the appellant, Mr. S.S.Momi, Advocate, learned counsel for the respondent and have meticulously gone through the record of the case.

12. Initiating the arguments, learned counsel for the appellant contended that the agreement to sell dated 27.05.2002 was a forged and

fabricated document. Appellant-Balwant Singh has never agreed to sell his land. He contended that in-fact on 27.05.2002, appellant had gone to the Court complex Kurukshetra to get an affidavit typed for remission of the school fees of his son. Respondent-Pritam Singh met him and stated that he will do the needful. Thus, in the garb of the affidavit, he got the agreement to sell thumb marked from appellant by playing the fraud and concealment of the facts. He contended that the execution of the agreement to sell dated 27.05.2002 by appellant is not at all established. As per the statement of respondent-Pritam Singh, the deal was got settled by Ram Chander. But, when said Ram Chander when stepped into the witness box denied this fact. He further contended that the statements of the witnesses of the agreement are discrepant on various material aspects.

13. He further contended that in-fact respondent-Pritam Singh was just playing the role of the stooge of Sumer Chand, the proprietor of M/s Sumer Trading Company, who was the main person behind the curtain. The suit for specific performance was got filed by him through Pritam Singh.

14. He further contended that even the passing over of the earnest money of Rs. 65000/- is not established. As per case of respondent-Pritam Singh, he has borrowed this amount from Sumer Chand. But, Sumer Chand has admitted in the cross-examination that there was no entry in his account books to show that any amount has been paid to respondent-Pritam Singh by Sumer Chand on the date of agreement. He further contended that the plaintiff is also not proved to be ready and willing to perform his part of contract. He has admitted in the

cross-examination that he was only having Rs. One lac when he went to the office of Sub Registrar. But, even as per agreement, the remaining sale price was Rs.4,35,000/-. So, the plaintiff had no sufficient funds for getting the sale deed executed. Hence, he was not entitled for the relief of specific performance.

15. He further contended that it is not believable that the appellant would have agreed to sell his two acres of land just for a sum of Rs. 5 lacs. Whereas, the value of the land was not less than 10 lacs on the date of agreement. Thus, he contended that the agreement dated 27.05.2002 is proved to be a forged and fabricated document. The learned Courts below have wrongly decreed the suit filed by respondent-Pritam Singh and dismissed the suit of the appellant.

16. On the other hand, learned counsel for the respondent contended that execution of the agreement to sell is fully established from the evidence adduced by respondent-Pritam Singh. The story projected by appellant regarding fabrication of the agreement to sell on the pretext of getting the affidavit prepared for remission of the school fees of the son of appellant is not believable. He further contended that in-fact the appellant has executed the agreement to sell dated 27.05.2002 after accepting the earnest money of Rs. 65,000/- and had agreed to sell the suit land to respondent-Pritam Singh. He contended that minor contradictions in the statement of the witnesses are bound to occur with the lapse of time. The story regarding Sumer Chand is totally beyond pleadings. Even, no evidence to this effect has been led that the suit has been filed by respondent-Pritam Singh at the instance of said Sumer

Chand.

17. He further contended that it is established from the evidence on record that the respondent-Pritam Singh was ready and willing to perform his part of contract. He has remained present in the office of Sub Registrar on the target date fixed for execution and registration of the sale deed. He has even got issued the legal notice calling upon appellant-Balwant Singh to execute the sale deed. But, even on that date he did not turned up. Respondent-Pritam Singh had sufficient funds with him to get the sale deed executed and registered. It is not necessary that the cash amount should be exhibited to the Sub Registrar. He further contended that there is no evidence on file to show that the value of the suit land was more than Rs. 10 lacs on the date of agreement. Thus, he contended that there is no legal infirmity in the impugned judgments and decrees passed by the learned Courts below.

18. I have duly considered the aforesaid contentions.

19. Appellant-Balwant Singh has filed the suit for seeking a decree for declaration that the agreement dated 27.05.2002 has been procured by respondent-Pritam Singh by playing fraud and with the concealment of the facts and he had never agreed to sell the suit land. On the other hand, respondent-Pritam Singh has filed the suit to seek the specific performance of the agreement to sell dated 27.05.2002. Firstly, we have to see as to whether the agreement to sell dated 27.05.2002 is proved to be a forged and fabricated document or the same was validly executed by appellant-Balwant Singh.

20. Appellant-Balwant Singh has taken the plea that on

27.05.2002, he has gone to the Court Complex, Kurukshetra in order to get an affidavit typed for remission of school fees of his son. Respondent-Pritam Singh met him there and asked that he will do the needful. He took Rs. 100/- from him and after sometime he brought two affidavits and asked the appellant to thumb mark those stamp papers and also to thumb mark in the register of the stamp vendor. One affidavit was retained by respondent-Pritam Singh and one affidavit was handed over to him. Later on, he came to know that respondent-Pritam Singh has got prepared the agreement to sell with respect to his land measuring 16 Kanals. The story projected by appellant-Balwant Singh does not appeal to the reasons. The appellant has taken the stand that he was not earlier know to respondent-Pritam Singh and he had met him for the first time in the Court. If that was so, it is not believable that appellant will repose confidence in respondent-Pritam Singh for getting the affidavits typed for him for the remission of school fees of his son. Moreover, appellant has not led any evidence to show that in which class and school his son was studying and where the affidavit for remission of fees was to be submitted. It is also the admitted case of the appellant that one affidavit was handed over by respondent-Pritam Singh to him and other was retained by him. If, the intention of respondent-Pritam Singh would have been to play the fraud, then his tendency would have been to conceal the facts rather than handing over one copy of the affidavit to the appellant. The handing over of one copy of the affidavit/document to the appellant rules out any fraud or foul-play on the part of respondent-Pritam Singh. Rather, it shows the fairness on his part.

21. Appellant-Balwant Singh has filed the suit for declaration on 11.04.2003. Agreement to sell was executed on 27.05.2002 and one copy of the affidavit/document was handed over to him by respondent-Pritam Singh on the same day. As per the case of appellant-Balwant Singh, the said affidavit/document was got prepared by him to submit the same in the school for remission of the school fees of his son. If that would have been so, he would have immediately submitted the said affidavit in the school of his son and he would have come to know about the contents of the affidavit then and there. So, there was no reason for him to wait for a period of about 11 months to file the suit. Admittedly, the appellant has not taken any criminal action against the respondent for playing fraud with him by procuring the agreement to sell dated 27.05.2002. So, the story projected by appellant appears to be concocted and an afterthought just to wriggle out of the agreement to sell dated 27.05.2002.

22. On the other hand, respondent-Pritam Singh has led sufficient evidence to establish the due execution of the agreement to sell dated 27.05.2002 by the appellant. Respondent-Pritam Singh himself has stepped into the witness box as DW-1, wherein he has deposed in detail about the execution of the agreement by appellant-Balwant Singh in his favour for the sale of his land. Respondent-Pritam Singh has also examined Ram Chander as DW-2 and Sumer Chand as DW-5, the attesting witnesses of the agreement to sell. They have also fully supported the case of respondent-Pritam Singh with respect to the execution of agreement to sell dated 27.05.2002 by appellant in favour of respondent-Pritam Singh. The case of respondent-Pritam Singh is further

corroborated from the statement of DW-3 Yashpal, the document writer who has categorically deposed that the agreement to sell was scribed by him at the instance of appellant-Balwant Singh, which was duly entered in his register. He also deposed about the passing over of the earnest money of Rs. 65,000/-. Both the attesting witnesses have also deposed about the passing over of the earnest money of Rs. 65,000/- and that the agreement was thumb marked by appellant in their presence after understanding the contents thereof. Whereas, the witnesses examined by the appellant i.e. PW-2 Satpal son of Phool Singh and Pw-3 Satpal son of Sant Ram do not have any personal knowledge about the document in question. They were not present when the said document was prepared. PW-2 has admitted that no cheating was done by respondent-Pritam Singh with appellant-Balwant Singh in his presence.

23. There one another circumstance which depicts that agreement to sell dated 27.05.2002 was consciously executed by appellant-Balwant Singh. There is a correction with respect to the area of the land sold in 4th line of the agreement and this alteration has been duly thumb marked by the plaintiff. It shows that he was fully aware about the contents of the agreement and that is why he has attested the correction/alteration therein.

24. The minor discrepancies/contradictions in the statements of the witnesses are bound to occur with the lapse of time. The agreement was executed on 27.05.2002, whereas the cross-examination of the attesting witnesses has been recorded in the year 2009 i.e. after about 7 years. Thus, the discrepancies pointed out by learned counsel for the

appellant are of no consequences.

25. The plea raised by learned counsel for the appellant that payment of earnest money is not proved also carries no substance. Ex.D-29 is the copy of the ledger account of respondent-Pritam Singh maintained by M/s Sumer Trading Company, which shows that respondent-Pritam Singh has withdrawn Rs. 1 lac on 15.05.2002. The present agreement has been executed on 27.05.2002 i.e. 12 days thereafter. As per the version of respondent-Pritam Singh, the negotiation for the purchase of land of the plaintiff had initiated at least 20 days before the date of execution of agreement to sell. Even, the copy of the Jamabandi Ex.D-4 placed on record has been obtained from Patwari on 16.05.2002. Thus, it is established that respondent-Pritam Singh has taken/withdrawn Rs. One lac from the firm of PW-5 Sumer Chand 12 days before the agreement to sell dated 27.05.2002. Mere, this fact that on the date of agreement to sell i.e. 27.05.2002, no amount has been withdrawn by respondent-Pritam Singh from M/s Sumer Trading Company is no ground to negate the passing over of the earnest money. Even, from the oral evidence i.e. statement of respondent-Pritam Singh, DW-2 Ram Chander, the attesting witness of the agreement, DW-5 Sumer Chand, another attesting witness and DW-3 Yashpal, the deed writer, the factum regarding passing over of the earnest money is fully established. So, there is no escape from the conclusion that appellant-Balwant Singh has duly executed the agreement to sell dated 27.05.2002 for the sale of the suit land in favour of the respondent-Pritam Singh and had accepted Rs. 65,000/- as earnest money on the date of execution of the agreement.

26. Respondent-Pritam Singh has also led the sufficient evidence to establish that he was ready and willing to perform his part of contract. Respondent-Pritam Singh while appearing into the witness box as DW-1 has categorically deposed to this effect. He also went to the office of Sub Registrar, Thanesar on 31.12.2002 i.e. the date fixed for registration and execution of the sale deed and got his presence marked vide his application Ex.D-2 and affidavit Ex.D-3. Even, thereafter he has got issued the legal notice dated 28.03.2003 calling upon the appellant to execute the sale deed on 13.06.2003. But, despite service of the notice, he did not come present for the purpose of execution and registration of the sale deed.

27. No doubt, respondent-Pritam Singh has stated that he has borrowed Rs. One lac from Sumer Chand, his commission agent. But, there is no entry in the account books maintained by Sumer Chand to this effect. If, Sumer Chand has not made the requisite entry in his account books, respondent-Pritam Singh cannot be held at fault particularly when the oral statement of Pritam Singh has been corroborated by DW-5-Sumer Chand.

28. Learned Courts below have rightly observed that the proposed vendee was not required to exhibit the currency notes to show his readiness and willingness to perform his part of contract. Respondent-Pritam Singh owns sufficient agriculture land which is evident from the J-Forms Ex.P-15 to P-18 and his statement of account with his commission agent. He has also stated that he was having sufficient amount in his bank accounts. So, there is no escape from the conclusion that respondent-

Pritam Singh was having the capacity to pay the balance sale consideration. Consequently, he is proved to be ready and willing to perform his part of contract.

29. Appellant-Balwant Singh has not led any cogent and convincing evidence to establish that the price of the suit land was more than Rs.10 lacs at the time of agreement to sell. He has not produced the copy of any sale deed of the locality to show the prevailing value of the land. So, the plea raised by learned counsel for the appellant that the sale price shown in the agreement was inadequate, has no substance.

30. Once, the execution of the agreement to sell is proved and vendee is also proved to be ready and willing to perform his part of contract, the specific performance of the contract is normal rule. In the instant case also from the evidence on record, it is established that appellant-Balwant Singh has executed the agreement to sell dated 27.05.2002 for the sale of suit land in favour of respondent-Pritam Singh for a sum of Rs. 5 lacs. He has also received Rs. 65,000/- as earnest money. It is also established that respondent-pritam Singh was ready and willing to perform his part of contract, whereas appellant-Balwant Singh has neglected thereto rather he has taken the dishonest stand by filing the suit that the agreement was forged and fabricated document. So, certainly respondent-Pritam Singh was entitled for the relief of specific performance of the agreement to sell dated 27.05.2002.

31. Consequently, I have no reason to differ with the concurrent findings recorded by the learned Courts below. The impugned judgment and decrees passed by the learned Courts below do not suffer from any

legal infirmity.

32. Resultantly, the present appeals being devoid of merits, are hereby dismissed with costs.

August 17, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No