IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.5029 of 2012 (O&M)
Date of decision: 16.03.2016

Sukhraj Singh
...Appellant

Versus

Kuldip Singh
...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. K. B. Raheja, Advocate for the appellant.

Mr. BPS Virk, Advocate for the respondent.

****

Jitendra Chauhan, J. (Oral)

This regular second appeal is directed against the judgment and decree dated 22.08.2012, passed by the Additional District Judge, Ferozepur, (for short, the 'first Appellate Court') whereby, the appeal filed by the respondent-plaintiff, against the judgment and decree dated 12.10.2010, dismissing the suit of the plaintiff by the Additional Civil Judge, Sr. Divn., Ferozepur, (for short, the 'trial Court'), has been allowed, for refund of money.

The facts:-

2. The plaintiff-Kuldip Singh is a commission agent while Sukhraj Singh is a farmer, who used to sell his agricultural crop

through the plaintiff. It is alleged in the plaint that Sukhraj Singh-defendant entered into an agreement to sell Ex.P1, dated 17.11.2005 of land measuring 20 kanals 9 marlas in favour of the plaintiff-Kuldip Singh at the rate of Rs.2,50,000/- per acre, and received a sum of Rs.5,70,000/- as earnest money. The sale-deed was to be executed on or before 16.08.2006. On refusal of the defendant to execute the sale-deed, the plaintiff brought this civil suit for specific performance or in the alternative for refund of the earnest money along with interest.

3. The defendant contested the suit on the ground that the plaintiff is a commission agent and the defendant is his customer, who used to sell his crop at his shop. The defendant never executed any agreement to sell in favour of the plaintiff. The said agreement is a result of fraud. The defendant has only 12 kanals 12 marlas of land, out of it eight kanals is already mortgaged with the bank. The defendant alleged that he ownes only 4 kanals 4 marals of land. So, the defendant could not execute the sale-deed of the land mentioned in the head note of the plaint.

4. From the pleadings of the parties the following issues were framed:-

> *"1. Whether defendant executed agreement of sale dated 17.11.2005 agreeing to sell suit land in favour of the plaintiff at the rate of Rs.2,50,000/-*

per acre and received Rs.5,70,000/- as earnest money as alleged? OPP.

2. Whether defendant is owner of the suit property? OPP

3. Whether plaintiff always remained ready and willing and is still ready and willing to perform his part of contract? OPP

4. Whether the agreement in dispute is result of fraud as alleged in preliminary objection No.2 of written statement? OPD

5. Whether plaintiff is entitled to possession by way of specific performance of agreement in dispute and consequential relief of permanent injunction as prayed for? OPP

6. If issue No.5 is not proved, whether plaintiff is entitled to alternative relief of recovery, if so, to what extent? OPP

7. Whether suit is not maintainable in present form? OPD

8. Relief."

5. The trial Court dismissed the suit of the plaintiff with costs holding that there was actually no sale-purchase dealings between the parties, that the version put forth by the plaintiff-Kuldip Singh in the plaint as well as in his statement on oath that earnest money was paid in the presence of marginal witnesses, is not correct version, in fact no money transaction took place in the presence of witnesses that the defendant was able to prove that the agreement

Ex.P1 dated 17.11.2005 was the result of fraud and after appreciation of evidence the trial Court decided issues No.1 to 3 and 5 and 6 against the plaintiff and in favour of the defendant whereas issue No.4 was decided in favour of the defendant against the plaintiff.

6. Kuldip Singh, plaintiff, filed civil appeal No.125 of 2010 before the Ist Appellate Court, who accepted the appeal on 22.08.2012 holding in para No.21 of the judgment as under:-

> *"The appellant is not entitled to the relief of specific performance of the agreement to sell, but certainly he is entitled to receive back the money which he had paid to the respondent/defendant under the said agreement Ex.P1. He is also entitled to receive compensation by way of interest on the said amount and it would be equitable to grant 6% from the date of payment till realization of the amount. Consequently, suit of the plaintiff stands decreed for alternative relief of recovery of Rs.5,70,000/- along with interest at the rate of 6% per annum with effect from the date of agreement to sell till the date of realization of the amount. The present is partly accepted. The findings of the learned Courts below are set-aside."*

After re-appraisal of the statements of both the parties, the marginal witnesses and the document writer and after taking into consideration the fact that the parties had financial dealings before and at the time of execution of agreement to sell Ex.P1 and other circumstances, the learned Ist Appellate Court reached the conclusion that intention of both the parties at the time of execution of document Ex.P1 was not to make a contract for sale of the property, but it was in fact a loan transaction and the agreement was executed as security for that transaction. The Ist Appellate Court further held that in case there was no financial transaction before putting signatures on the document Ex.P1 the defendant would not have signed the document. The appellate Court set aside the findings of the trial Court, accepted the appeal and decreed the suit as referred to above.

7. The defendant-Sukhraj Singh filed this regular second appeal No.5029 of 2012 assailing the judgment of the Ist appellate Court and restoring the judgment of the trial Court dismissing the suit of the plaintiff.

8. The learned counsel for the appellant submits that the learned trial Court has rightly dismissed the suit of the respondent-plaintiff as there are material contradictions in the statement of the respondent with regard to the place of payment of earnest money. The learned Ist Appellate Court has ignored the fact that if it had been a money transaction, same would have been executed on some document permissible under the Negotiable Instrument Act. The alleged agreement to sell dated 17.11.2005 is neither a promissory note nor any other document which can be termed as a genuine document for the purpose of advancing money. The agreement to sell

is the result of fraud which is amply proved from the fact that the appellant is not the owner of 20 kanals and 9 marlas, as alleged by the respondent. He is a co-sharer in the land measuring 12 kanals 12 marlas only and out of this, 8 kanals of land is already mortgaged with the Agricultural Development Bank, Ferozepur. The appellant used to sell his agricultural crops at the shop of the respondent and at that time, his signatures were obtained by the respondent on blank stamp papers, just for security purposes or for settling of amount of crops. Lastly, the learned counsel states that two marginal witnesses, namely Jugraj Singh and Mohinder Kumar, clearly have stated that no money transaction was made in their presence.

9. The learned counsel cites '**Jyotimoyee Debi Vs. Durgadas Banerjee and other**', 1976 AIR (Calcutta) 238, '**Dalip Singh Vs. Gram Panchayat, Village Bhartana, Tehsil Safidon, District Jind, through its Sarpanch Sh. Phool Singh**', 2009(4) RCR (Civil) 533, '**Smt Ind Kaur Vs. Tara Singh and others**', 1978 PLR 41, '**Ravinder Nath Sahni Vs. Poddar Construction Co. P. Ltd and another**', 2014 (211) DLT 561 and '**Akula Madhava Rao Vs. P. Rukmani Bai**', 196(1) RRR 251.

10. On the other hand, the learned counsel for the respondent asserted that being the owner of land measuring 20 kanals 9 marlas, the appellant entered into an agreement to sell dated 17.11.2005 with

the respondent with regard to the sale of the suit property at the rate of Rs.2,50,000/- per acre and received Rs.5,70,000/- as earnest money. The terms and conditions of the agreement were reduced into writing in the said agreement, which was scribed by the regular deed writer namely Mohinder Kumar Sikri, Document Writer, Ferozepur at the instance of the appellant and after admitting the contents thereof, the appellant put his signatures over the same in the presence of marginal witnesses namely, Jugraj Singh and Sukhwinder Singh. The learned counsel states that if it is assumed that the signatures of the appellant were obtained on blank papers, even then how his signatures appeared in the register of the document writer and how there is an entry in the register of the regular deed writer remain unexplained. Therefore, the learned Ist Appellate Court has rightly allowed the appeal of the respondent.

11. The learned counsel cites **'Jeet Singh Vs. Bahadur Singh'** 2009(4) RCR (Civil).

12. I have heard the learned counsel for the parties and carefully scrutinized the record.

13. In this case, Kuldip Singh, the plaintiff, vendee is a commission agent while vendor Sukhraj Singh, a farmer is a customer of the plaintiff. It is well known fact that a farmer remains dependent on his commission agent and normally raise loan for

agricultural and other household purposes. There is a fiduciary relationship between the two. A commission agent, in certain cases, is in a position to dominate the will of a debt ridden farmer. So, this Court in the above background has carefully scrutinized the oral and documentary evidence.

14. The case of the appellant is that the agreement to sell dated 17.11.2005 is the result of fraud and to prove this fact the appellant refers to the statement of Jugraj Singh, who is a marginal witness of the agreement to sell, made during his cross examination, wherein he admitted that the rate of the disputed land in the year 2005-06 was more than double of the agreed price i.e. Rs.2,50,000/- per acre and stated that he simply put his signatures over the agreement and at that time no money transactions took place in his presence. Therefore, the version of the respondent that earnest money was paid in the presence of marginal witnesses is belied by the cross examination of Jugraj Singh. However, the presence of this witness is doubtful as he failed to disclose who had purchased the stamp papers. In plaint, the respondent stated that the earnest money was paid at the time of execution of the agreement, however, in his cross examination he admitted that no earnest money was paid to the appellant at the time of executing the alleged agreement to sell and the same was paid at Patel Nagar. This fact first time came in cross-examination; neither it is part of pleading nor mentioned in the

affidavit duly tendered in evidence, thus, this fact makes the factum of giving the earnest money doubtful. He further admitted that Sukhwinder Singh, one of the marginal witnesses is the son of the respondent, and he was not present at the time of execution of the agreement to sell which means his signatures were obtained later. No second independent witness was associated. The respondent has not been able to disclose the source of amount of Rs.5,70,000/-, alleged to be paid to the appellant as earnest money. PW3, Mohinder Kumar Sikri, Document Writer, in his cross examination stated that he told the respondent that the appellant is the only owner of land measuring 12 kanals 12 marlas, as per jamabandi, but the respondent asked to execute the agreement of land measuring 20 kanals 9 marlas instead of 12 kanals 12 marlas which shows that the respondent committed fraud upon the appellant. Further, PW3 admitted that no money transaction was carried out in his presence. Once the respondent as well as the marginal witnesses admitted that one marginal witness namely, Sukhwinder Singh was not present and his signatures were obtained later and respondent as well as Jugraj Singh and Mohinder Kumar have admitted that no money transaction was made on the spot, therefore, in the given facts and circumstances, it emerges that the fraud was committed by the respondent which stands duly proved. In addition to this, if it is considered that the money transaction was carried out between the appellant and the respondent, then the money can be lent out only by executing a promissory note, hundi, bond or bill of exchange not by the agreement to sell. Money transaction can be effected only through the permissible mode of negotiable instrument. In these circumstances, the appellant has duly proved that the said agreement is the result of fraud. Therefore, the learned trial Court has rightly dismissed the suit of the respondent-plaintiff and the learned Ist Appellate Court has erred in passing the impugned judgment and decree, for refund of money.

15. On consideration, this Court finds that the contentions raised by the learned counsel for the appellant have merits. Thus, the judgment and decree passed by the learned Ist Appellate Court is liable to be set aside and the judgment and decree dated 12.10.2010 dismissing the suit of the plaintiff by the learned trial Court is affirmed.

16. Accordingly, this appeal is allowed as prayed with costs, the judgment and decree dated 22.08.2012 passed by the Ist Appellate Court is set aside, and judgment and decree dismissing the suit of the plaintiff is restored. Counsel fee assessed as Rs.11,000/-.

16.03.2016 **(JITENDRA CHAUHAN)**
ashok **JUDGE**