

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

RSA No.1826 of 2013(O&M)

Date of Decision:29.11.2016

Jagsir Singh

.....Appellant

Versus

Dilbag Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vinod Khunger, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in regular second appeal in a suit for specific performance.

[2]. Plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 05.05.2002 executed by the defendant in favour of the plaintiff in respect of 5 kanals, 6 marlas out of land measuring 44 kanals, 4 marlas. An amount of Rs.75,000/- was paid as earnest money. The target date for registration was fixed as 05.08.2005. The rate of land was fixed to be Rs.1,40,000/- per acre.

[3]. Plaintiff contended that he got his presence marked before the Sub Registrar on the target date i.e 05.08.2005 and always remained ready and willing to perform his part of obligation. The defendant did not turn up.

[4]. Defendant contested the suit by submitting that neither he executed the agreement, nor had received any earnest money. Defendant asserted that his signatures were obtained on blank papers in the month of August, 2002 and the plaintiff also got copy of *jamabandi* from him at that time. The signatures were obtained by the plaintiff as security document for the amount which the defendant took from his shop of commission agency from time to time. The agreement was shown to have been scribed by one Mr. Mohinder Kumar Sikri, Document Writer, Ferozepur. Defendant never signed the register of alleged document writer, nor the document was scribed in his presence. The attesting witnesses of the document were closed relatives of the plaintiff. Defendant sold the wheat crop weighing 66 bags each containing 50 kgs on 12.04.2004, 56 bags of wheat of the same weight were sold on 15.04.2004. 33 bags of paddy each containing 35 kgs were sold on 09.10.2004, 353 bags of paddy of the same weight were sold on 06.10.2004. 68 bags of wheat each containing 50 kgs were sold on 18.04.2005 and 54 bags of wheat were sold on 21.04.2005 on the shop of commission agency of the plaintiff. Plaintiff refused to settle the account, nor paid any price of the crops sold by the defendant. The signatures were obtained on the blank papers in the manner as projected by the defendant in the written statement.

[5]. Both the parties went to trial on the issues framed by the trial Court. Trial Court while assessing the evidence of the parties scrutinized the testimonies of plaintiff as PW 1, Jaswant Singh as PW 2, Vikas Jindal as PW 3, Mohinder Kumar Sikri as PW 4 and Manohar Lal, Registry Clerk as PW 5 in the evidence of the plaintiff and the statement of defendant as DW 1 and Ravinder Kumar, Auction Recorder as DW 2. Trial Court dismissed the suit and the plaintiff remained unsuccessful before the lower Appellate Court.

[6]. I have heard learned counsel for the appellant.

[7]. Trial Court found that the agreement to sell was scribed on the paper already signed by the defendant. Perusal of Ex.P1 would show that the signatures of the defendant were present on the first page of stamp paper prior to scribing the agreement to sell. Plaintiff had later on converted the paper into agreement to sell. The entry Ex.PW4/A in the register of deed writer bore No.578 depicted that the defendant had also executed pronote in favour of the plaintiff in the sum of Rs.1 lac in respect of the suit land. Nothing was mentioned in respect of the suit property. Since the limitation for filing the suit on the basis of pronote had expired, therefore, plaintiff had filed the instant suit for specific performance seeking possession of the suit land on the basis of alleged agreement to sell Ex.P1. The suit land was only 5

kanals, 1 marla @ Rs.1,40,000/- per acre. In the event of making payment of Rs.75,000/- as earnest money, no prudent man would fix the target date beyond 3 years i.e. 05.08.2005 for ultimate execution of sale deed. The fixing of target date for execution of sale deed was beyond limitation from the date of agreement to sell i.e. 05.05.2002.

[8]. The aforesaid facts have been found on record which have not been denied by learned counsel for the appellant. The questions of law as framed by learned counsel for the appellant do not arise inasmuch as that the agreement to sell dated 05.08.2002 was found to be not properly executed in terms of material on record. The agreement to sell was allegedly executed on 05.08.2002. There was a fiduciary relationship between the plaintiff and the defendant. Defendant used to sell his crops on the shop of commission agency of the plaintiff. Entry No.578 in the register of deed writer i.e. Ex.PW4/A was in respect of pronote in favour of the plaintiff in a sum of Rs.1 lac. The said entry could not be explained away by the plaintiff, nor legal proceedings initiated by the plaintiff in respect of aforesaid pronote. Bare perusal of the agreement to sell itself depicted that the first page of the stamp paper was scribed by the document writer on pre-existed signature and the same was later on converted into agreement to sell. The fixing of the target

date beyond the period of limitation was glaring enough to be appreciated against the plaintiff as after paying amount of Rs.75,000/- towards earnest money, nothing substantial was to be paid. The non-filing of the suit in respect of pronote was lawfully treated to be an incident where on finding expiry of limitation, on that cause of action present suit came to be filed on the basis of said entry in the register of Wasika Navis.

[9]. Question of law No.(i) has to be answered against the plaintiff. Question No.(ii) is a pure question of fact. Questions No.(iii) and (iv) cannot be answered in favour of the plaintiff as there is no misreading of any evidence. The Courts below have properly read the evidence against the plaintiff and the findings recorded by the Courts below cannot be held to be misconceived or perverse. The suit has been rightly dismissed by both the Courts below on the basis of material on record.

[10]. I do not see any justification to interfere in the concurrent findings of facts recorded by both the Courts below. This appeal is accordingly dismissed.

29.11.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No