IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.3245 of 2013 (O&M)

Date of decision : 16.05.2016

Jaswinder Singh

......Appellant

Versus

Gurdeep Kaur and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Palavi, Advocate for appellant.

Mr. Atul Jain, Advocate for respondent No.1.

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DARSHAN SINGH, J.

The present regular second appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 09.05.2013, passed by learned Additional District Judge, Kapurthala, vide which the appeal filed by him against the judgment and decree dated 11.03.2011, passed by the learned Additional Civil Judge (Senior Division), Kapurthala has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The appellant-plaintiff filed the suit for possession by way of

specific performance of agreement to sell dated 17.11.1999 or in the alternative for recovery of Rs.4,00,000/- along with interest. As per the averments in the plaint defendant No.1 Gurdeep Kaur was the owner in possession of the land measuring 24 Kanal detailed and described in the head-note of the plaint. She entered into an agreement to sell dated 17.11.1999 of said land to the plaintiff for a sale consideration of Rs.2,50,000/- and received a sum of Rs.1,00,000/- out of the total sale price. The stipulated date for execution of the sale deed was 12.11.2001. It is further pleaded that vide endorsement dated 08.11.2001, the plaintiff paid Rs.1,00,000/- as further earnest money to defendant No.1 and the date for execution of the sale deed was extended upto 11.11.2002. The plaintiff was always ready and willing and is still ready and willing to perform his part of contract along with the balance sale consideration and expenses. On 11.11.2002, he had gone to house of defendant No.1 and tendered the amount before her and asked her to get the sale deed executed in terms and conditions of the agreement. It is further pleaded that after the execution of agreement dated 17.11.1999, defendant No.1 Gurdeep Kaur illegally obtained a loan of Rs.3,00,000/- from defendant No.2-Bank by mortgaging the aforesaid land. She had been making promise to repay the mortgaged amount to defendant No.2 and execute the sale deed in favour of the plaintiff after getting the land redeemed, but she failed to get the land redeemed. The plaintiff also remained present in the office of the Sub Registrar throughout the day fixed for execution of the sale deed but defendant No.1 did not turn up. Hence the suit.

4. The defendants contested the suit by filing the separate written statement. Defendant No.1 denied the execution of the agreement to sell in favour of the plaintiff. She also denied having received the amount of Rs.2,00,000/- from the plaintiff. She further pleaded that the plaintiff is running the commission agent shop under the name and style 'Virk Commission Agent'. The husband of defendant No.1 used to sell his crops on the shop of the plaintiff. Due to natural calamities, their land came under the river bed, so they could not clear the loan of the plaintiff. The plaintiff got the thumb impressions of defendant No.1 on blank papers and then in connivance of deed writer and marginal witness, got prepared a forged and fabricated agreement to sell. She has never agreed to sell her property in dispute. The plaintiff is the money lender and in the habit of getting the signatures of customers on blank papers and used to convert those papers into forged and fabricated documents. The plaintiff wanted to recover the amount illegally and forcibly with the help of the police. Then the husband of defendant No.1 filed a suit for injunction which was pending in the Court. Thus, it was pleaded that the agreement was executed only as security of the repayment of the loan.

5. Defendant No.2 filed the written statement pleading therein about the mortgage of the suit property vide mortgage deed dated 29.01.2003 in consideration to the loan advanced to defendant No.1 vide loan application dated 22.01.2003 and thereafter further mortgaging the suit land vide mortgage deed dated 22.12.2004 for consideration of the loan amount of Rs.3,50,000/- for dairy farming. It is further pleaded that

the said loan amount is still outstanding. Thus, they pleaded for dismissal of the suit.

6. The plaintiff filed replication to the written statements. The trial Court framed the following issues :-

1. Whether the plaintiff is entitled to the possession of the suit land by way of specific performance of agreement to sell dated 17.11.1999? OPP
2. Whether in the alternative for recovery of plaintiff is entitled to the recovery of Rs. four lacs from defendant No.1 along with interest @ 2% P.M. from the date of filing of suit till recovery of the decreetal amount? OPP
3. Whether the agreement to sell is forged and fabricated document? OPD(1)
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiff has got no locus standi to file the present suit? OPD
6. Whether the plaintiff has got no cause of action to file the present suit? OPD
7. Whether the suit is liable to be dismissed for non delivering of notice u/s 79 of the Punjab Co-op. Societies Act, 1961? OPD(2)
8. Whether this Court has got no jurisdiction to try and entertain the present suit? OPD(2)
9. Relief.

7. On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned trial court decreed the suit filed by the plaintiff for alternative relief i.e. for recovery of Rs.2,00,000/- along with interest at the rate of 6% per annum from the date of execution to agreement to sell till realisation.

8. The plaintiff filed the appeal and the defendant also filed

the cross-objection to the aforesaid judgment and decree passed by the learned trial court. The learned first appellate court vide impugned judgment and decree dated 09.05.2013 dismissed the appeal as well as cross-objection. Hence, this regular second appeal by the appellant-plaintiff.

9. I have heard Mr. Sunil Chadha, learned Senior Advocate counsel for the appellant, Mr. Atul Jain, Advocate, learned counsel for respondent No.1 and gone through the paper-book carefully.

10. Mr. Sunil Chadha, learned Senior Advocate, counsel for the appellant contended that the execution of the agreement to sell dated 17.11.1999 is established from the evidence adduced by the plaintiff. The same has also not been disputed by the defendant. He contended that the relief of specific performance has been declined to the plaintiff on the ground that it was only a money transaction and the agreement was got executed as a security for loan. He contended that once the execution of the agreement to sell was established, the appellant was entitled for the relief of the specific performance. To support his contentions, he relied upon case ***Abhay Singh and others Vs. Ramesh Kumar and others, 2009(3) PLR 490***.

11. He further contended that there was nothing to establish that the agreement to sell dated 17.11.1999 was executed as a security for loan. No loan amount was alledgedly advanced to defendant No.1 the executant of the agreement. He contended that the plea taken by defendant No.1 is extraneous to the agreement which cannot be taken into

consideration. The terms and conditions of the agreement clearly shows that it was a simple agreement for sale of the suit property. It was not open to defendant to plead that it was only a security for loan. To support his contentions he relied upon case ***Gurbachan Singh and another Vs. Gurmit Singh, 2003(4) RCR (Civil) 223***.

12. He further contended that the story projected by the defendant No.1 that the agreement to sell dated 17.11.1999 was only as a security to the loan does not appeal to the reason as defendant No.1 has already obtained the loan from respondent No.2-Bank. So, there was no question of any loan transaction between the parties.

13. He further contended that the delay has occurred as the land was mortgaged by defendant No.1 with defendant No.2 Punjab Land Mortgage Bank against loan. The said loan was not repaid and the land was not redeemed. He contended that the appellant-plaintiff was always ready and willing to perform his part of contract. There was no hardship to deny the relief of specific performance. Thus, he contended that the learned courts below have wrongly declined the decree for specific performance of the agreement to sell dated 17.11.1999. To support his contentions, he relied upon cases ***Ram Dass Vs. Ram Lubhaya 1998(2) RCR (Civil) 642, Hodil Singh Vs. Bhagwant Singh deceased by LRs 2010 AIHC 2816*** and ***Vijay Kumar Vs. Rakesh Kumar and others 2011(2) PLR 303***.

14. On the other hand, learned counsel for respondent No.1 contended that the agreement dated 17.11.1999 was got executed as a

security of loan. From the evidence on record, it is established that Piara Singh the husband of defendant No.1 has taken loan from the appellant-plaintiff. He contended that there was no intention to sell the property. If the intention would have been to sell the suit land there was no need to fix the date for execution of the sale deed after two years and then to extend the date for further one year. Even the possession of the land was not transferred to the appellant-plaintiff. He further contended that the loan from the bank against mortgage of the suit property has been taken after the execution of the agreement. Thus, he contended that it was only a loan transaction. So, there is nothing wrong in the findings recorded by the learned courts below that the appellant-plaintiff was not entitled for relief of specific performance.

15. I have duly considered the aforesaid contentions.

16. The sole question for adjudication in the present appeal is as under:-

> "Whether respondent No.1-defendant has executed the agreement to sell dated 17.11.1999 with intention to sell her land or it was only as a security for repayment of the loan outstanding against her husband Piara Singh?"

17. As per the case of the appellant-plaintiff, respondent No.1-defendant Gurdeep Kaur executed the agreement to sell dated 17.11.1999 in favour of the plaintiff for the sale of the suit land for a sum of Rs.2,50,000/-. In the written statement defendant No.1 has taken the stand that due to natural calamities their land went under river bed and her husband could not clear the loan of the plaintiff. The plaintiff in order

to safeguard his amount, got her thumb impressions on the blank papers and in connivance with deed writer and marginal witness, got prepared a forged and fabricated agreement to sell. She has never agreed to sell her property in dispute. It is further pleaded that the alleged agreement was executed only for security of repayment of the loan amount.

18. Even though implidely the execution of the agreement to sell has been admitted by defendant No.1 but a specific plea has been raised by her that the said agreement was procured by the plaintiff as a security for loan advanced to her husband. This fact is not disputed that plaintiff is running the commission agent shop. It is also not disputed that Piara Singh the husband of defendant No.1 used to sell his crops through the commission agency of the plaintiff. PW-3 Narinder Singh has admitted that there was a dispute between Jaswinder Singh appellant-plaintiff and husband of Gurdeep Kaur (respondent-defendant No.1) with respect to the money transaction. The learned first appellate court has also observed that respondent Gurdeep Kaur had moved repeated applications for production of account books by the appellant pertaining to the accounts of Piara Singh but despite the repeated applications, the plaintiff did not produce the cash book/Rokar for a long period of three years. He produced the account books only in his cross-examination after a period of three years. During this long span of period, the preparation of false and fabricated accounts cannot be ruled out. It is also admitted fact that Piara Singh, the husband of defendant No.1 had filed a suit for permanent injunction against the plaintiff. In that suit the appellant-

plaintiff had filed the written statement. Copy thereof is Ex.D1. In the said written statement appellant has admitted that Piara Singh used to sell his crops on his shop and he used to get advances from the appellant. His accounts are yet to be settled. But he has taken the contradictory stand in the cross-examination that he never advanced any amount to the husband of defendant No.1. It shows that the appellant-plaintiff is concealing the true facts with respect to the money transactions between him and Piara Singh, the husband of defendant No.1 in his statement. Though he has admitted the said transactions in the written statement filed by him in the injunction suit filed by Piara Singh. In the written statement Ex.D1 he has alleged that a sum of Rs.3,00,000/- were due against the husband of defendant No.1 and he has refused to settle the account. It shows that the loan amount was outstanding against the husband of defendant No.1.

19. In order to secure the relief of specific performance of agreement of sell dated 17.11.1999, the paramount question was to determine the real intention of the transaction. If it is found that there was actually no intention to sell the suit land by defendant No.1 and the agreement to sell was executed only as a security for the outstanding loan, no fault can be found in the findings recorded by the learned courts below to decline the relief of specific performance and to allow only the alternative relief of recovery. In the instant case, there are various circumstances which negate the intention of the parties for the sale of the suit land vide the agreement to sell in question. The agreement to sell has been executed on 17.11.1999. The date for registration of the sale deed

was fixed as 12.11.2001. The total sale price was 2,50,000/-. Out of that Rs.1,00,000/- are alleged to have been paid on the date of agreement. There was no reason to fix such a long date for execution of the sale deed after two years from the date of agreement. The date for execution of the sale deed was further extended by another one year i.e. upto 11.11.2002 on payment of Rs.1,00,000/- more. With that payment, only Rs.50,000/- was remaining and there was no reason to further extend the period for one year. The contention raised by learned counsel for the appellant that this delay has occurred as the land was under mortgage with defendant No.2-Bank and the same was not redeemed, has no legs to stand in view of the written statement filed by defendant No.2-Bank. In the written statement filed by defendant-Bank, it has been pleaded that defendant No.1 Gurdeep Kaur has applied for the loan of Rs.3,00,000/- for dairy farming vide loan application dated 22.01.2003. After completing the necessary formalities, the loan was sanctioned and defendant No.1 mortgaged 1/3rd share of the suit property vide mortgage deed dated 29.01.2003. Then another loan was obtained by defendant No.1 from defendant No.2-Bank to the extent of Rs.3,50,000/- for dairy farming against the mortgage of her land vide mortgage deed dated 22.12.2004. Thus, on the date of execution of the agreement dated 17.11.1999 and the stipulated dates fixed for execution of the sale deed dated 12.11.2001 and 11.11.2002, no loan was taken by defendant No.1 from defendant No.2-Bank against mortgage of the land. So, there was no question of any delay in execution of the sale deed for want of redemption of the mortgage as the land was mortgaged much after the last stipulated date for execution of the sale deed i.e. 11.11.2002.

20. As per the case of the appellant-plaintiff he has paid Rs.2,00,000/- out of the total sale consideration of Rs.2,50,000/-. In this way he has already paid 80% of the sale price, but it is an admitted fact that the possession of the disputed property was not taken over by the plaintiff. This fact further shows that there was no real intention to sell the land.

21. The plaintiff has not issued any legal notice in writing calling upon defendant No.1 to execute the sale deed. The present suit has been filed by the plaintiff on 18.08.2005 when the period of three years was going to expire, even after the alleged extended date for execution of the sale deed. All these circumstances clearly indicates that the dominant purpose of the execution of the agreement to sell dated 17.11.1999 was only to secure repayment of the loan standing against the husband of defendant No.1 and, there was no intention of the parties for the sale of the suit property. Cases relied upon by learned counsel for the appellant-plaintiff are quite distinguishable on facts. In case ***Gurbachan Singh and another Vs. Gurmit Singh*** (supra), the agreement was dated 13.12.1977. The date for execution of the sale deed was 15.11.1978. The vendee has appeared in the office of the Sub Registrar for getting the sale deed registered and also filed an application before the Sub Registrar showing her readiness and willingness. He also got issued a telegram to the vendor calling upon to execute the sale deed. He further got served the legal

notice dated 16.11.1978 i.e. only on the next day of the target date. In those circumstances, the story regarding the transaction of loan was disbelieved by the Court. In case ***Abhay Singh and others Vs. Ramesh Kumar and others*** (supra), the agreement was executed on 04.08.1997. The stipulated date for execution of the sale deed was 31.01.1998 i.e. about five months after the date of execution of the agreement. The plaintiff had got served the legal notice calling upon the vendee to execute the sale deed immediately after the decision of the civil suit which was hurdle in the execution of the sale deed. Case ***Ram Dass Vs. Ram Lubhaya*** (supra) deals with Section 20 of the Specific Relief Act, 1963 with respect to the hardship to avoid the relief of specific performance.

22. Case ***Hodil Singh Vs. Bhagwant Singh deceased by LRs.*** (supra) was entirely on different footings, wherein the dispute was as to whether it was agreement to sell or a lease deed. In case ***Vijay Kumar Vs. Ramesh Kumar and others*** (supra) on appreciation of evidence it was found that it was a genuine transaction with intention to sell the property, which is totally missing in the present case.

23. The Hon'ble Supreme Court in case ***S. Rangaraju Naidu Vs. S. Thiruvarakarasu 1995(3) RRR 298*** has laid down that where the dominant purpose of the agreement is repayment of the loan amount the Court is not bound to grant decree for specific performance and alternative relief claimed for refund of the amount with simple interest

was granted. In case ***Kala Singh Vs. Mahinder Singh 2010(7) RCR (Civil) 3006,*** on the basis of evidence the Court came to the conclusion that transaction was loan transaction and as a security the agreement to sell was executed without intention of sell, therefore, there was no illegality in a decree for recovery. In case ***Uttar Singh Vs. Pal Singh 2011(7) RCR (Civil) 1154,*** the agreement to sell was duly proved by examining the witness as well as scribe. Learned lower appellate court found that agreement was executed for collateral security to secure the loan and relief of recovery of earnest money along with interest was granted and this Court upheld order passed by the learned first appellate court. In case ***Suresh Singla Vs. Smt. Phool Pati and another 2013 (3) PLR 729,*** again the plea of loan transaction was raised. The defendant has taken the plea that the agreement was result of fraud. She was an illiterate lady. The courts below held that agreement was executed between the parties but with the findings that the agreement was to secure a loan which was based on circumstantial evidence and other material available on record. This Court held that as per Section 20 of the Specific Relief Act, 1963 the Court is not bound to grant the discretionary relief of specific performance taking into consideration the circumstances that the time for execution of the sale deed was deferred for six months after paying the 90% of the sale consideration. In case the intention of the parties was actually to execute the agreement in that case after paying 90% of the consideration, the sale deed would not have been postponed for such a long period. The case in hand is even on better footings, as in the instant case initially the date for execution of the sale deed was fixed after about two years of the date of agreement, then after payment of 80% of the sale price the period of execution of the sale deed was further extended by one year and even the possession of the suit property remained with defendant No.1.

24. Thus, keeping in view my aforesaid discussion, the dominant purpose of the execution of the agreement to sell dated 17.11.1999 was as a security for the loan outstanding against the husband of defendant No.1. So, the plaintiff was not entitled for the relief of specific performance of agreement to sell dated 17.11.1999. He was only entitled for the relief of the refund of the earnest money, which has been granted by the learned trial court along with interest. So, I have no reason to differ with the concurrent findings recorded by the learned courts below.

25. Thus, the present appeal is without any merits and the same is hereby dismissed.

16.05.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**