

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

RSA No.112 of 2016 (O&M)

Date of Decision: 24.10.2016

Anit Paul and Anr.

.....Petitioners

Vs.

Tulsi Dass

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr.Ritesh Pandey, Advocate, for the appellants.

Mr.Namit Gautam, Advocate, for
the respondent-caveator.

RAJ MOHAN SINGH, J.

1. Defendants are in second appeal against the concurrent judgments and decree passed by the Courts below in a suit for specific performance.

2. Plaintiff filed a suit for specific performance of agreement to sell dated 05.08.2010 executed by defendants No.1 and 2 in favour of plaintiff. The suit property was a house having specific dimensions. The total sale consideration was settled to be Rs.8,00,000/- and earnest money to the tune of Rs.50,000/- was paid by the plaintiff at the time of agreement to sell dated 05.08.2010. The

target date for execution of sale deed was fixed on or before 05.02.2011 after receiving the balance sale consideration from the plaintiff. Plaintiff alleged that on 25.10.2010, the defendants were in need of money and they approached the plaintiff for the said purpose. On the request of defendants, plaintiff paid further sum of Rs.3,90,000/- and the possession of one Bethak was delivered to the plaintiff. A writing to this effect was made on 25.10.2010 on the back of the agreement to sell. The plaintiff came into possession of the one Bethak. The plaintiff was a tenant in the shop about 10 years ago. The rate of rent was fixed at Rs.700/- per month. The plaintiff was running a Karyana/General Store by virtue of right dated 25.10.2010. The plaintiff came into possession of portion ABCM in addition to the shop marked as FGHN. The defendant had received Rs.4,40,000/- up to 25.02.2010 from the plaintiff. Plaintiff always remained ready and willing to perform his part of contract. On 07.02.2011, the plaintiff approached the defendants and requested them to reach the office of Sub Registrar, Ferozepur, for execution of the sale deed in his favour as 05.02.2011 and 06.02.2011 were holidays. The defendants did not turn up. The plaintiff got issued legal notice dated 11.02.2011 to the defendants. The defendants

denied the claim of the plaintiff and they also filed a suit for permanent injunction.

3. The suit was contested by the defendants. The claim of the plaintiff for physical possession of portion marked ABCDEFGH on the ground floor and IJKL on the first floor was denied. The claim of the plaintiff vis-a-vis physical possession of room ABCM and FGHN was also denied by the defendants. It was asserted by the defendants that Smt.Shakuntala Devi, the grandmother of the defendants was the owner of residential House No.44, who executed a will dated 27.01.2003 in favour of defendants. Jugal Kishore was the only son of his parents and he suffered a paralytic attack about 12 years ago. The mother of defendants Smt.Shashi Bala deserted the family about 6 years back. The father of the defendants died about two years ago because of his ill health. Defendants had to leave their study and they started doing labour works. The plaintiff was inducted as tenant by their father Jugal Kishore in one shop at the rate of Rs.700/- per month. The plaintiff was running a Karyana shop in the said shop. The plaintiff was avoiding to pay rent and was not vacating the same despite requests by the defendants. Ultimately, defendants accepted the proposal of the plaintiff for selling the shop

and one Bethak to him on front side for an amount of Rs.8,00,000/- and taking undue advantage of the position of the defendants, the plaintiff paid them Rs.50,000/- on 05.08.2010 and obtained their signatures on blank papers with a promise to get the agreement executed and would return the blank papers. Plaintiff further agreed to get the sale deed executed qua the shop and Bethak on balance sale consideration on or before 05.02.2011. The approximate value of the property was claimed to be Rs.15-17 Lacs, therefore, question of selling the entire property to the plaintiff for a meagre amount of Rs.8 Lacs did not arise at all.

4. After completion of pleading by both the parties, the issues were framed by the trial Court. Both the parties led evidence and the trial Court decreed the suit of the plaintiff vide judgment and decree dated 06.08.2014 and the defendants were directed to execute the sale deed in favour of the plaintiff within specified time on payment of balance sale consideration. The defendants remained unsuccessful in appeal before the lower appellate Court which was dismissed vide judgment and decree dated 27.11.2015 with partly modification in the judgment and decree of the trial Court.

5. I have heard arguments of learned counsel for the

appellants.

6. The defendants have admitted due execution of agreement to sell dated 05.08.2010 which was proved by Rinku PW-1. The factum of total sale consideration being 8 Lacs and payment of Rs.50,000/- as earnest money was proved. The endorsement dated 25.10.2010 on the back side of agreement to sell was also proved by the testimony of PW-3 Ravinder Kumar, who specifically deposed that defendant-Anit Paul after receiving an amount of Rs.3,90,000/- in his presence from the plaintiff, endorsed the same vide Ex.P-4 in his own handwriting on the back of agreement to sell dated 05.08.2010. The agreement was not disputed even by the defendants in the written statements. The defendants had also admitted the tentative date for execution of sale deed. They also admitted the factum of receiving further amount of Rs.3,90,000/- by making endorsement on the back of the agreement to sell but they have taken a stand in the written statement that the agreement dated 05.08.2010 was in respect of shop and one Bethak. The defendants alleged that their signatures were obtained on blank papers by taking advantage of illiteracy and a forged agreement was prepared in respect of entire House No.44.

7. The controversy was crystallized from the cross-examination of witnesses. Though the defendants had taken the stand that their signatures were obtained on the blank papers but no such suggestion was put by the defendants to PW-1 i.e. attesting witness to agreement to sell. Even DW-1 Anit Paul in his cross-examination did not deny his signatures on the agreement to sell Ex.P-1. Signatures on Ex.P-1 were admitted by DW-1 himself as well as his brother Pawan Paul. The alleged plea of signatures having been obtained on blank papers could not be substantiated by the defendants by extracting any admission of fact in the cross-examination of the plaintiff witnesses. No such suggestion was put to the witnesses by the defendants. The conduct of the defendants was not suggestive of the fact that any such incident took place and they never filed any police complaint for seeking initiation of any criminal proceedings for the offence of forgery. Anit Paul-appellant had admitted in his cross-examination while appearing as DW-1 that he never filed any complaint against the plaintiff for getting his and his brother's signatures on blank papers. The statement of defendant-Anit Paul was found to be contrary and unreliable as per stand taken in the written statement. The factum of receiving an amount of

Rs.3,90,000/- was an admitted fact but Anit Paul while appearing as DW-1 had denied the receiving of Rs.3,90,000/- from the plaintiff and making of endorsement dated 25.10.2010.

8. The witness also denied the factum of giving possession of one Bethak to the plaintiff at the time of execution of endorsement dated 25.10.2010. The aforesaid facts were so glaring and were found to be contrary to the pleaded case of the defendants in the written statement. The cross-examination of Anit Paul as DW-1 had abruptly changed the stand in the testimony which was contrary to the pleaded case in the written statement. Legal notice Ex.P-6 and receipt there of were admitted before filing of the suit. The reply to legal notice Ex.P-6 was suggestive of the fact that the defendants had never aware of the contents of the agreement to sell dated 05.08.2010. The defendants could not plead contrary things both in written statement and oral evidence.

9. The readiness and willingness on the part of the defendants were lacking whereas readiness and willingness of the plaintiff were proved by the document Ex.P-3 vide which the presence of the plaintiff was marked before the Sub-Registrar on 07.02.2011 which was a tentative date for execution of the sale deed

as 05.02.2011 and 06.02.2011 were found to be holidays being Saturday and Sunday. Defendants did not produce any evidence denying the execution of agreement to sell and factum of receiving earnest money as well as receiving of an additional amount of Rs.3,90,000/- on 25.10.2010. The stand of the defendants in the written statement as well as in the evidence was found affirmative by the Courts below. As a matter of fact a lawful agreement to sell dated 05.08.2010 was executed between the parties. The plaintiff was entitled to the possession by way of specific performance of agreement to sell.

10. The question of law as framed by the appellants in the grounds of appeal are vague enough to cover the controversy. The appellants tried to project a case of fraud as per question No.1. The plea of fraud has to be pleaded and proved like criminal case. The factum of agreement to sell and receiving of earnest money of Rs.50,000/- on 05.08.2010 and additional amount of Rs.3,90,000/- on 25.10.2010 was an admitted fact as per written statement of the defendants. The alleged fraud was not proved nor any evidence was led by the defendants in this regard. Therefore, question No.1 as framed by the appellants did not arise at all. Questions No.2 and 3

are the questions of fact and therefore, did not arise for any consideration at the hands of this Court. No questions of law much less substantial question of law arises in the present appeal and the same is totally found to be bereft of merit and as such, the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

24.10.2016
anil

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>