

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

**RSA No.200 of 2016 (O&M)
Decided on: 28.04.2016**

Nirmal Singh

....Appellant

Versus

Ram Sarup Singh @ Sarup Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. A.P. Kaushal, Advocate
for the appellant.

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

REKHA MITTAL, J.

The present appeal has been directed against the consistent findings recorded by the Courts below whereby suit filed by the respondents/plaintiffs for possession by way of specific performance of agreement to sell dated 05.09.2005 was decreed by the learned trial Court vide judgment and decree dated 24.05.2012 and the findings recorded by the trial Court have been affirmed in appeal by the Additional District Judge, Sangrur vide judgment and decree dated 15.09.2015.

The facts, in brief, relevant for disposal of the present appeal are that as per case set-up by the respondents/plaintiffs, Nirmal Singh-appellant and his brother Sukhdev Singh agreed to sell the suit

land @ Rs.78,000/- per bigha and executed an agreement dated 05.09.2005 in favour of the respondents. An amount of Rs.1,25,000/- was paid towards earnest money at the time of agreement and the remaining amount was agreed to be paid on 27.10.2005, the day the sale deed was to be executed and got registered. The agreement was scribed by Sh. Ashok Kumar Goyal, Advocate, Notary Public, Sangrur camp at Bhawanigarh and thumb-marked by the defendants in the presence of witnesses. Possession of the suit land was to be delivered at the time of execution and registration of the sale deed. The respondents always remained ready and willing to perform their part of the agreement, came to the office of Joint Sub-Registrar, Bhawanigarh for execution and registration of the sale deed on 27.10.2005, stamp papers for an amount of Rs.32,850/- were purchased, sale deed was got scribed on stamp papers but Nirmal Singh-defendant No.1 refused to thumb-mark the sale deed and stated that he would not sell the land to plaintiffs. The used stamp papers were returned to Treasury but the amount spent for purchase of stamp papers has not been returned to the plaintiffs till date. Defendant No.2 agreed to sell his share as per terms and conditions of agreement, fresh stamp papers were purchased on 31.10.2005 for an amount of Rs.16,650/-, sale deed of share of defendant No.2 for land measuring 02 bighas 12 biswas 10 biswasi to the extent of $\frac{1}{2}$ share was got registered by him in favour of the plaintiffs and received remaining amount of Rs.1,42,250/-.

Nirmal Singh-defendant No.1 filed the written statement controverting allegations of the plaint, denied execution of the

agreement to sell and his liability to execute the sale deed in favour of the plaintiffs with the averments that land measuring 02 bighas 10 biswas was under mortgage with possession with Ram Sarup @ Sarup Singh-plaintiff No.1 vide registered mortgage deed No.3342 dated 10.03.2004. The answering defendant asked Ram Sarup on 05.09.2005 to redeem the land and asked him to come to the office of Sub-Tehsildar, Bhawanigarh with original mortgage deed. It is further averred that a dispute arose between the parties with regard to payment of interest of Rs.14,500/- and as a result, Ram Sarup refused to execute the writing with regard to redemption of mortgage. Darshan Singh and Ram Sarup scribed some documents from Sukhdev Singh and they asked the answering defendant to thumb-mark the same as witness without getting the same read-over to him. He thumb-marked the same without enquiring about nature of said document due to the reason that Sukhdev Singh brother of the answering defendant was a party to the said document. He came to know about the alleged agreement, collusion of Sukhdev Singh with plaintiffs and fraud played by the plaintiffs only on receipt of summons and copy of plaint.

The respondents/plaintiffs preferred replication, reiterated the stand taken in the plaint while controverted the allegations raised in the written statement.

The learned trial Court, on due consideration of materials on records, in the light of rival submissions made by counsel for the parties accepted claim of the respondents/plaintiffs both in regard to execution of the agreement to sell by the defendant and his liability to

perform his part of the agreement and as a consequence, suit of the plaintiffs/respondents for possession by way of specific performance of agreement to sell was decreed. As has been noticed hereinbefore, the findings recorded by the learned trial Court have been affirmed in appeal without any variance.

Counsel for the appellant has submitted that as per allegations raised in the plaint, the amount of earnest money was paid by the plaintiffs to the proposed vendors in the presence of witnesses and scribe Sh. Ashok Kumar Goyal, Advocate, Notary Public, Sangrur. Sh. Ashok Kumar Goyal, Advocate, was examined as a witness and in his cross-examination, he has deposed that the money was not paid in his presence. The respondents examined only one of the attesting witnesses to the agreement namely Balbir Singh-PW4 but the said witness in his cross-examination has deposed that he did not know who scribed the agreement in question. It is argued with vehemence that the discrepancies in the case of the respondents/plaintiffs have not been seriously taken note of by the Courts below, therefore, the Courts have fallen into gross error and committed serious illegality in upholding plea of the respondents/plaintiffs *qua* the agreement to sell and their entitlement to seek specific performance thereof. Another submission made by counsel is that the land in question was in possession of Sh. Ram Sarup being a mortgagee vide registered mortgage deed dated 10.03.2004 and in these circumstances, there was no occasion for the respondents/plaintiffs to seek relief of possession by way of specific performance of the agreement.

I have heard counsel for the appellant, perused the records and find that the appeal sans merit and deserves to be dismissed.

Before advertng to the submissions made by counsel for the appellant, it is pertinent to note that civil dispute is decided on the basis of balance of probabilities and the plaintiff is not required to prove his case beyond shadow of reasonable doubt as the prosecution is obligated in criminal proceedings. Equally settled is that statement of a witness is to be appreciated in its entirety and by not picking up sentences from here and there divorced from the remaining part which may lead to miscarriage of justice. In the case at hand, to prove the agreement in question, respondents/plaintiffs examined Sh. Ashok Kumar Goyal, Advocate, Notary Public, Sangrur (scribe of the agreement), Balbir Singh, one of the attesting witnesses, Darshan Singh one of the plaintiffs, Navdeep Gupta, Handwriting and Fingerprints Expert, Patiala-PW5. It has also been proved on record that on the target date, the respondents/plaintiffs purchased the stamp papers for execution of the sale deed by taking into consideration the value of land agreed to be sold but later have purchased another set of stamp papers as Sukhdev Singh brother of the appellant agreed to execute the sale deed *qua* his share in the suit land. Keeping in view the evidence adduced by the respondents/plaintiffs when taken in its entirety, I find myself unable to accept the submissions made by counsel for the appellant that the aforesaid two discrepancies pointed out by him would either render the judgments of the Courts below erroneous much less perverse or raise a question of law much less a substantial one for

adjudication in second appeal.

This apart, the appellant has admitted his thumb-impressions on the agreement to sell with a plea that the respondents/plaintiffs have played fraud with him in collusion with his brother Sh. Sukhdev Singh-defendant No.1. As soon as the defendant/appellant has admitted his thumb-impressions on the document and has raised a plea of fraud, it was for the appellant to establish that plea to wriggle out of his liability under the agreement to sell. Counsel for the appellant has failed to point out any material on record much less cogent, convincing and tangible to accept plea of fraud that is required to be proved beyond shadow of reasonable doubt. In this view of the matter, I do not find any merit in the contentions of the appellant that the agreement to sell was either prepared on his blank thumb-impressions or the same is a result of fraud.

To be fair to the appellant, counsel has made a vain attempt to argue that as Ram Sarup-plaintiff was already in possession of the suit land on the basis of a registered mortgage deed executed in the year 2004, the respondents/plaintiffs should not have claimed relief of possession. The plea in this regard is misconceived and merits rejection. The suit has been filed by five persons out of which one is Ram Sarup @ Sarup Singh. The mere fact that Ram Sarup was in possession of suit land as a mortgagee would neither dis-entitle the plaintiffs to seek possession on the basis of agreement nor their plea for possession in any manner whatever can enure to benefit of the appellant. Conversely, had the respondents/plaintiffs not claimed possession of suit land, it

might have provided an opportunity to the appellant to raise an issue during execution proceedings that in absence of decree of possession, they cannot ask for delivery of possession as owner (*Kabza Malkana*). Analyzed from any angle, there is no merit in the contentions raised by counsel for the appellant much less there being any ground to differ with the findings of the Courts below.

For the foregoing reasons, the appeal fails and is accordingly dismissed *in limine*.

28.04.2016
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(REKHA MITTAL)
JUDGE