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

**RSA No. 24 of 2016 (O&M)**
**Date of Decision: 06.05.2016**

**Bhagwan Singh and another**

**......Appellants**

**Vs.**

**Makhan Singh**

**.........Respondent**

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

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

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Present: Mr. Ranbir Singh Sekhon, Advocate,
for the appellants.

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**AMOL RATTAN SINGH, J. (ORAL)**

1. This is the second appeal by the plaintiffs in a suit filed by them seeking specific performance of the agreement dated 11.10.2007, stated to have been executed by the respondent-defendant in their favour, for the sale of land measuring 4 kanals, described in detail in the plaint, and for the specific performance of another agreement dated 07.01.2008, stated to have been executed by the defendant, qua another 4 kanals of land described in the plaint.

The appellants-plaintiffs (hereinafter to be referred the plaintiffs) made an alternative prayer seeking a decree for recovery of Rs. 8,40,000/- from the defendant. Of the said amount, Rs. 2,20,000/- was stated to have been paid by the plaintiffs by way of earnest money to the defendant and the remaining Rs. 6,20,000/- was sought by way of damages and compensation for non-execution of the sale deeds. They also sought interest @ 2% per mensem, on the aforesaid amount of Rs. 8,40,000/-.

Still further, they prayed that the defendant be permanently injuncted from interfering in their peaceful possession over the suit land measuring 8 kanals and from further alienating in any manner.

2. As per the plaintiffs, the defendant, being the owner of the suit land, had entered into the first agreement dated 11.10.2007 for the sale of 4 kanals of land to the plaintiffs, for a consideration of Rs. 8,40,000/-, of which Rs. 2 lacs was paid to him by way of earnest money. It was stated in the plaint that the land was to be transferred to the plaintiffs after the defendant had redeemed the mortgage existing on the said land.

Similarly, as regards the agreement dated 07.01.2008, earnest money of Rs. 20,000/- was stated to have been paid by the plaintiffs, in acknowledgement of which an endorsement was made on the reverse of the original agreement dated 11.10.2007.

It was alleged that possession of the land was delivered to the plaintiffs, who remained in possession thereof. A path leading to the land of the plaintiffs from *Killa* Nos. 14, 17 & 24, was also stated to have been given by the defendant to the plaintiffs.

Further, it was alleged that thereafter, though the plaintiffs remained ready and willing to perform their part of the contract, the defendant had not executed the sale deed and had, in fact, threatened to further alienate the suit land and to forcibly dispossess the plaintiffs.

3. Upon notice issued to him, the defendant filed a written statement taking preliminary objections with regard to the maintainability of the suit, stating that it was barred on the principle of *res judicata*, as the plaintiffs had earlier filed a suit for permanent injunction on the same grounds and cause of action, which was dismissed as withdrawn by them on 05.05.2010. (It needs to be noticed that the suit of which this second appeal has arisen, was instituted on 07.04.2010). A further preliminary objection with regard to non-joinder of necessary parties, was also taken.

On merits, the defendant denied the execution of the agreements and receipt of earnest money from the plaintiffs and alleged that the agreements were in fact forged and fabricated documents, which they had created in connivance with marginal witnesses.

It was further contended by the defendant that he had dealings with Gill Commission Agents and that he used to sell his crop through the said Agents. During the course of his dealings with the Commission Agents, one Papan @ Sukhwinder Singh, one of the partners in the firm of the Commission Agents, had been getting his thumb impressions on blank papers, *Bahi Khatas* and printed proformas, which had been used to create the agreements.

Delivery of possession of the suit land was also denied by the defendant.

4. Upon a replication having been filed by the plaintiffs, the learned Additional Civil Judge (Sr. Division), Ferozepur, framed the following issues:-

> 1. Whether plaintiffs are entitled to decree of specific performance of the agreements to sell dated 11.10.2007 and 07.01.2008 with regard to property in dispute as prayed for? OPP
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> 2. Whether the plaintiff was ready & willing and still ready & willing to perform his part of contract? OPP
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> 3. If issue No. 1 is not proved, whether the plaintiff is entitled for alternative relief of decree for recovery of Rs. 8,40,000/- as claimed? OPP
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> 4. Whether the agreements to sell dated 11.10.2007 & 07.01.2008 are forged and fabricate documents? OPD
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> 5. Whether the suit is bad for nonjoinder of necessary parties? If so, its effect? OPD
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> 6. Relief.

5. The plaintiffs examined themselves, one Swaran Singh, stated to be an attesting witness to the agreements, and Poonam Vij, the scribe to the agreements. They also relied upon the documents Ex. P-1 & P-2, as the original agreements in

question, a certified copy of the plaint filed in the injunction suit, as Ex. P-4, written statement to the said plaint as Ex. P-5 and a certified copy of the order dated 05.05.2010 as Ex. P-6. They also tendered a Jamabandi, as Ex. P-7 in their evidence.

6. The defendant stepped only into the witness box himself and closed his evidence.

In rebuttal, the plaintiffs examined one Lakhwinder Singh as PW-4 and closed their evidence.

7. In appraising the evidence, the learned Civil Judge found that PW-2-Swaran Singh was the attesting witness of both the agreements and PW-3, Poonam Vij, was the scribe, who was also a Notary Public and she had also attested the first agreement, Ex. P-1. She testified that she had read over and explained the same to the parties and after admitting the contents of the agreement to be correct, the defendant had put his thumb impressions in her presence. She also testified that the defendant was identified by Puran Singh (Numberdar) and Swaran Singh and she further proved her endorsement of the agreement as Ex. PW-3/1. She also placed on record the entry in her registration as Mark-A.

The defendant, when he stepped into the witness box, only reiterated the contents of his written statement. The learned Court found that firstly, though the defendant had contended that there were some cuttings on the documents, however, he had also stated that Commission Agents had taken his thumb impressions only on the *Bahi*. Hence, it was held that the contention that his thumb impressions were taken on blank stamp papers was not borne out of his own cross-examination. It was further held by the Court that it was highly improbable that the thumb impressions of the defendant could have been obtained by the plaintiffs in the office/seat of the Gill Commission Agency, because a person, who had been dealing with the Commission Agents would know the owners and would not have signed blank papers on the asking of any other person. Further, there having been no report by the defendant to the police or any other authority with regard to the misuse of blank papers, it was held that the execution of the agreements was proved.

8. Having held as above, however, the learned Civil Judge found that even though Rs. 2 lacs was paid by the plaintiffs, it had been agreed that the sale deed would be executed and registered only after the suit property had been got redeemed by the defendant from the bank, with which it was mortgaged. The Jamabandi, Ex. P-7, revealed that he had indeed mortgaged the property to a bank, for a sum of Rs. 3 lacs, which admittedly had not been redeemed.

Yet, the learned Court further found that even though there was no time frame stipulated for execution of the sale deed, however, even the plaintiffs made no attempt to have even issued a notice to the defendant that he should get the property redeemed and thereafter come present in the office of the Sub Registrar for execution and registration of the sale deed. Hence, it was held that the plaintiffs could not prove their willingness to execute the agreement.

Further, as regards the possession of the suit land having been handed over to the plaintiffs, the learned Civil Judge held that no prudent person would hand over the land to a prospective vendee, simply on payment of Rs. 2 lacs as earnest money and, further, the plaintiffs were not shown even in the revenue record to be in possession.

9. Thus, that Court came to a conclusion that a decree of specific performance could not be granted to the plaintiffs, they not having been able to show their readiness to execute the sale agreement and, as such, even as regards the alternative relief of recovery suit, they were only entitled to recovery of the earnest money paid by them, alongwith interest thereupon, which was fixed @ 9% per annum by the learned Civil Judge.

The suit was, accordingly, decreed by that Court to the above extent.

10. The plaintiffs, as also the defendant, both appealed against the aforesaid judgment and decree, before the learned District Judge, Ferozepur, who after appraising the evidence, as also the pleadings and arguments on behalf of the parties to the *lis*, agreed with the findings of the learned Civil Judge; further noticing that not even a finger print expert had been examined by the defendant to support his contention of the agreements being forged and fabricated.

It was also noticed that as regards the willingness of the plaintiffs to perform their part of the agreement, it was obvious that even they did not attempt to get the mortgage redeemed by making any payment or suggesting to the defendant that they would get the mortgage redeemed (with the mortgaged amount being treated as part of the consideration to be paid to the defendant). As such, it was also held by the First Appellate Court that the plaintiffs would not be entitled to any more relief than had been granted by the learned Additional Civil Judge.

However, in favour of the defendant, it was held that since he had received only Rs. 2 lacs on 11.10.2007 and not the entire amount of earnest money of Rs. 2,20,000/- on that date, interest @ 9% per annum would run on Rs. 2 lacs from 11.10.2007 till 06.01.2008, after which it would run on the entire amount of Rs. 2,20,000/-, from 07.01.2008 till the date it was realized by the plaintiffs.

11. With the above minor modification, the appeals filed by both the parties to the *lis,* were dismissed by the learned lower Appellate Court.

12. Before this Court, learned counsel for the appellants submits that the very fact that the appellants had earlier filed a suit for permanent injunction on 15.10.2008, seeking that their possession of the suit land be not disturbed, shows that they were willing and ready to perform their part of the agreement, together with the fact that the suit out of which these present proceedings arise, was also filed on 07.04.2010, i.e. within a reasonable time for the agreements to sell to be executed and, it

was only thereafter, that the suit for permanent injunction had been withdrawn. Hence, he submits that the willingness of the appellants to perform their part of the agreement was very clear and the Courts below have erred in not appreciating that fact.

13. Having heard learned counsel for the appellants, I am not inclined to agree with the argument, in view of the fact that simply by filing the suit, first for permanent injunction and then for seeking specific performance of the agreement to sell, did not prove willingness enough on the part of the appellants to execute the sale deed, by way of first getting the suit land redeemed of the mortgage entered into between the respondent and the Ferozepur Cantt Primary Co-operative Bank Limited, as has been held by the learned lower appellate Court. The amount of money taken on loan by the defendant, for which the suit land had been mortgaged, was Rs. 3,00,000/-. If the appellants, at any stage, had been serious to execute the sale deed, they could have offered to redeem the said mortgage by showing that they actually had money to do so and thereafter, require the respondent-defendant to execute the sale deed.

14. The said not having been done, I see no reason to interfere with the findings of the Courts below. Consequently, finding no merit in the appeal, it is dismissed *in limi*ne; however, with no order as to costs.

**(AMOL RATTAN SINGH)**
**JUDGE**

May 06, 2016
*'dk kamra'*