IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2490 of 2016
Date of Decision: 24.08.2016

Kewal Krishan ... Appellant

Vs.

Rakesh Kumar ... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?
3. Whether the order is speaking/reasoned?

Present:- Mr. Amandeep Singh Jawandha, Advocate, for the appellant.

Amol Rattan Singh, J.

This is the second appeal of the defendant in a suit filed by the respondent-plaintiff, seeking possession of the suit property by way of specific performance of an agreement dated 23.04.2008 entered into between the two parties, for the sale of land measuring 14 kanals 10 marlas, being half a share of 29 kanals of land comprised in various khasra numbers as given in the plaint. The land is stated to be situated in village Chak Megha Viran, Tehsil Jalalabad (West), District Ferozpur.

The sale consideration was stated to be fixed at Rs.8,00,000/- par acre (Rs.14,50,000/- for 14 K 10 Ms), of which Rs.13,00,000/- was stated to have been paid on the day of the agreement itself. The last date fixed in the agreement, for execution of the sale deed, was 08.12.2008, i.e. about seven and half months later.

The defendant was stated to be the owner in possession of the suit land at the time of execution of the agreement, which was stated to have been scribed by one Shri B.S.Thakur, Advocate, on the instructions of the appellant-defendant.

2. As per the case of the plaintiff, he remained present in the office of the Joint Sub-Registrar, Guruhar Sahai, on 08.12.2008, but allegedly the defendant did not come present to execute the sale deed.

A registered notice is stated to have been got sent to the appellant-defendant on 10.12.2008, despite which no further steps for execution of the sale deed were taken by him.

Consequently, the suit out of which this second appeal arises was instituted by the respondent-plaintiff on 08.01.2009, praying for a decree of specific performance, directing the appellant to execute the sale deed or, in the alternative for recovery of Rs.15,00,000/- from him, of which Rs.13,00,000/- was the earnest money stated to have been paid, alongwith interest of Rs.2,00,000/- (stated to be at the rate of 2% per month or 24% annually). He also prayed for a decree of permanent injunction restraining the appellant-defendant from alienating the suit land in any manner and interfering in his peaceful possession and lawful possession of the suit property.

3. Upon notice issued to him, the appellant-defendant appeared and filed a written statement taking preliminary objections that he had never executed any agreement in favour of the plaintiff and that the agreement

relied upon was inadmissible in evidence and further, that the plaintiff was guilty of concealment of material facts etc.

On merits, the appellant contended that in fact, his father and brother were agriculturist since 8 to 9 years to about 2/3 years prior to the filing of the reply and were selling their agricultural produce 'with the shop' running under the name and style of M/s Sham Chand and Sons, who were commission agents at village Baje Ke, Tehsil Guruhar Sahai.

The firm was actually constituted by the plaintiff and Sohan Lal, his brother, and during dealings with the firm, the plaintiff and his brother got signed many blank papers, cheques and a pronote from the appellant-defendant, his father and brother, which the respondent-plaintiff and his brother stated were to be obtained for security purposes but would never be used in any manner.

It was stated by the appellant in his written statement that he and his brother often remained in need for money for domestic and agricultural needs and therefore, under compelling circumstances, they had put their signatures on the papers but it was only when a legal notice was served upon the appellant, that they came to know that the plaintiff and his brothers had "forged, fabricated and converted one of those blank signed papers to a valuable security in the form of present agreement".

Hence, it was contended that the defendant had never, of his own free will, executed the agreement, nor was there any meeting of minds between the parties with regard to the sale of any land.

It was further stated by the appellant in his written statement that it being his sole agricultural land, which was his only source of income, he would never have entered into such an agreement to sell.

It was still further contended that it was highly improbable that any person would pay Rs.13,00,000/- as earnest money (out of Rs.14,50,000/-) and yet postpone the execution of the sale deed for almost 8 months, for merely Rs.1,50,000/-

4. No replication having been filed, the following issues were framed by the learned trial Court:-

> "1. Whether the plaintiff is entitled for possession by way of specific relief of the agreement to sell dated 23.04.2008 with regard to the suit property as prayed for? OPP
> 2. Whether the plaintiff was ready and willing and still ready and willing to perform his part of contract? OPP
> 3. If issue No.1 is not proved whether the plaintiff is entitled for the recovery of Rs.15 lacs alongwith interest @ 2% per annum as prayed for? OPP
> 4. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
> 5. Whether the suit of the plaintiff is not maintainable in the present form? OPD
> 6. Whether the plaintiff has got no cause of action and locus standi to file the present suit? OPP
> 7. Relief."

5. By way of evidence, the respondent-plaintiff examined Shri B.S.Thakur, Advocate, i.e. the scribe of the agreement as PW1 and further examined himself, one Kashmir Lal and Chan Singh, Registry Clerk, as witnesses. He also tendered documentary evidence in the form of his

affidavit, the original agreement, his application for marking his presence in the office of the Joint Sub-Registrar, the legal notice issued on his behalf and a postal receipt.

On the other hand, the appellant-defendant examined himself, one Mohan Singh and Arjan Kumar as defence witnesses.

6. Upon considering the aforesaid evidence and the pleadings, the learned Civil Judge found that the appellant-defendant had not disputed his signatures on the agreement and during cross-examination had categorically admitted them. However, that Court found it strange that when the total consideration was Rs.14,50,000/-, and of that sum Rs.13,00,000/- had been paid by way of earnest money, as to why there was any reason for postponement of the date of execution of the sale deed for almost 8 months, and that no prudent person, who paid so much consideration, would normally do so, when only Rs.1,50,000/- remained to be paid of the total consideration, especially when even no possession of the suit land was handed over on payment of the almost 90% of the total consideration.

The learned Civil Judge also found that during his cross-examination, the respondent-plaintiff had admitted, on a specific question put to him, that it was correct that the agreement to sell had been executed as a security and had also admitted that he was a partner in a firm of commission agents.

7. On the basis of the aforesaid evidence and circumstance, it was concluded by that Court that though the agreement was executed by the appellant-defendant in favour of the plaintiff, however, the agreement was

not actually a transaction for selling of land but by way of securing the loan given by the respondent-plaintiff to the appellant-defendant.

Consequently, the suit of the respondent-plaintiff was decreed to the extent of the alternative relief prayed for, of a recovery of Rs.13,00,000/-, but with interest only @ 9% per annum, running from the date of the agreement, i.e. 23.04.2008, to the date of decree, alongwith future interest @ 6% till the time of realisation of the decretal amount.

8. Against the aforesaid judgment and decree, the present appellant-defendant filed an appeal before the first appellate Court of the Additional District Judge, Ferozepur. That Court found that the allegation of forging and fabricated the agreement to sell, as pleaded by the appellant-defendant, could never be substantiated by him and with him having admitted his signatures, with a witness to the agreement to sell, also having testified to the correctness of the document, it could not be said that the agreement to sell was actually scribed on blank papers that had been signed by the appellant-defendant.

It was also found by that Court that the plaintiff had actually remained present in the office of Joint Sub-Registrar on 08.12.2008 and had served a legal notice, duly shown to have been received by way of a postal receipt by the defendant, and thereafter, the suit had been filed on 08.01.2009.

The first appellate Court also, further, came to the same conclusion as the trial Court, that the respondent-plaintiff had also actually admitted that the agreement was only a security document to secure the financial transactions between the parties, i.e. the amount of Rs.13,00,000/- loaned/advanced to the defendant by the plaintiff, and as such the learned Civil Judge had not committed any error in decreeing the alternative relief of recovery of the aforesaid amount, alongwith interest @ 9% per annum, which was also found to be wholly reasonable by the first appellate Court, alongwith future interest @ 6% per annum.

Consequently, the first appeal filed by the appellant-defendant was dismissed by the learned lower appellate Court.

9. In this second appeal, Mr. A.S.Jawandha, learned counsel for the appellant, reiterated the contentions made in the plaint, to the effect that the papers on which the agreement was scribed were actually blank papers obtained from the defendant, who had no choice but to sign them in view of the fact that he was selling his crop to the plaintiffs' firm and in that process he was taking some amount from him from time to time, but not to the extent of Rs.13,00,000/- as claimed by the respondent-plaintiff.

Hence, learned counsel submitted that the Courts below had wholly erred in not appreciating that fact.

10. Having considered the aforesaid argument, though the possibility of what learned counsel has submitted, cannot be ruled out, inasmuch as, possibly, the amount advanced to a small farmer, by the respondent-plaintiff, may not have been Rs.13,00,000/- as was claimed in the suit, however, once the appellant-defendant himself admitted even in his testimony, and in his written statement that he had, in fact, signed blank papers and had been taking advances/loans due to his need of money,

thereafter, the onus fell on the appellant-defendant to prove that the amount of loan taken was not Rs.13,00,000/- but was, in fact, less than that.

The respondent-plaintiff, on the other hand, having produced two witnesses other than himself, who testified that the agreement was signed in their presence, and in the presence of the parties to the agreement, i.e. the appellant and the respondent herein, with one of those witnesses being the scribe to the document and the other being an attesting witness thereto, in the opinion of this Court, the requirement of Section 68 of the Indian Evidence Act, 1872, was duly met and the signing of the agreement in the presence of the parties duly stood proved.

Though the appellant also stepped into the witness box himself and examined two other witnesses, who testified in terms of his written statement, one of those witnesses, i.e. DW3 Arjan Kumar, also admitted that the firm M/s Sham Lal and Sons, i.e. the firm of the respondent-plaintiff, had filed a suit for recovery against him and that he too "had an account" in the said firm from 2004 to 2007. He admitted that no signatures had ever been taken from him by the firm on blank papers.

Naturally, on the aforesaid evidence, the trial Court would have found this witness to be an interested witness in favour of the defendant, to the extent that he himself was facing litigation with the respondent-plaintiff. As regards Mohan Lal, another defence witness, his testimony was disbelieved in the face of the testimony of the attesting witness to the agreement, as also the testimony of the Advocate who had scribed the agreement or in whose office, as he testified, it had been scribed.

11. Thus, with the appellant-defendant not denying either his signatures, or the fact that he actually had been taking advances/loans from time to time from the appellant, the onus thereafter fell on him to show, after the attesting witness to the agreement testified to its veracity and it having been signed and understood by the appellant, that in fact, the amount of loan/advanced by him from the defendant was not Rs.13,00,000/- but less than that.

Therefore, in view of the fact that the agreement was proved to have been signed by the appellant-defendant, in the presence of the attesting witness, with the appellant understanding the contents thereof, I find no reason to interfere with the finding of the Courts below, especially as the relief of specific performance, of execution of the sale deed, has not been granted and it is only the alternative relief of recovery of earnest money, with interest, that has been decreed in favour of the respondent.

12. Consequently, finding no merit in this appeal, it is dismissed *in limine*, with no order as to costs.

August 24, 2016 **(AMOL RATTAN SINGH)**
dinesh **JUDGE**