

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

105

Regular Second Appeal No.4884 of 2013 (O&M)
Date of Decision: April 11, 2016

Chinda Ram

...Appellant

Versus

Satnam Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sarju Puri, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J.

CM No.13152-C of 2013

Prayer in this application is for exemption from filing the true typed copies of judgments and decree passed by the Courts below.

Application is allowed.

Exemption from filing the true typed copies of judgments and decree passed by the Courts below is granted subject to just exceptions.

RSA No.4884 of 2013

Challenge in this appeal is to the judgment and decree dated 17.07.2012 passed by the Additional Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar, whereby the suit filed by the respondent-plaintiff for possession by specific performance of contract of agreement dated 13.06.2006 with direction to the appellant-defendant to execute the sale deed in favour of the respondent-plaintiff and get the same registered on payment of the remaining amount of sale consideration qua land measuring 8 kanals and 7 marlas as detailed in the headnote including engine, bore, fan, tubewell etc. situated in village Gunachaur, Tehsil and District Nawanshahr, stands decreed, appeal against which preferred by the

appellant-defendant has been dismissed by the Additional District Judge, Shaheed Bhagat Singh Nagar, on 15.07.2013.

2. It is the contention of learned counsel for the appellant that a fraud has been played upon the appellant-defendant by the respondent-plaintiff as in the garb of helping him in a situation where he was facing a litigation from his own children, who had filed a suit for maintenance, certain blank papers were got signed from the appellant by the respondent-plaintiff with whom he was employed as a driver. Taking benefit of the fiduciary relationship, the respondent has converted those blank papers into an agreement to sell dated 13.06.2006. Further taking benefit of the fact that the appellant was also a drunkard, the papers were got signed and therefore, it cannot be said that a valid agreement to sell was executed by the appellant in favour of the respondent which can be utilised for the purpose of getting a decree for specific performance of contract of agreement.

3. Assertion has also been made that the Court, instead of passing a decree of specific performance, should have granted the alternative relief of recovery of ₹10,00,000/- which included refund of ₹5,00,000/- of earnest money and ₹5,00,000/- as damages, especially in the light of the fact that the appellant-defendant has no other property except the suit property which includes his house, exercising the powers under Section 20 of the Specific Relief Act, 1963. In support of these contentions, counsel has placed reliance upon the judgment of the Supreme Court in *Krishna Mohan Kul alias Nani Charan Kul and another Versus Pratima Maity and others 2004(1) ICC 67* and the judgment of this Court in *Lakhbir Singh Versus*

Mohan Singh and another 2007(1) R.C.R.(Civil) 791.

4. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments but do not find any reason to interfere with the well reasoned and considered impugned judgments passed by the Courts below.

5. The first contention, as has been raised by the counsel for the appellant, is that the fiduciary relationship has been exploited by the respondent-plaintiff as the appellant was employed with him but this plea cannot be accepted as it was never pleaded by the appellant in his defence. Further, nothing has come on record which would indicate that any undue benefit has been obtained by the respondent by taking benefit of this fiduciary relationship of employer-employee. Merely because the appellant was an employee of the respondent, would not prove any benefit having been taken by the respondent.

6. Similar is the position with regard to the appellant being fond of drinking liquor. The said plea again was not taken in the written statement. The pleas, as has been sought to be projected by the counsel for the appellant, are self-contradictory. At the first place, he asserts that the respondent, who is the employer, had taken undue benefit of the fiduciary relationship and in the pretext of helping the appellant in a suit filed by his children for maintenance, had made certain payments and obtained the signatures and thumb impressions of the appellant on certain blank papers. On the other hand, he is asserting that he was a drunkard and the signatures and thumb impressions were obtained when he was not in his senses. Both these pleas are self-contradictory and further none of these pleas have been

taken in the written statement and thus, has rightly been rejected by the Courts below.

7. That apart, the facts of this case speak for itself. The respondent had filed a suit based upon an agreement to sell dated 13.06.2006, where the appellant appeared and admitted his photograph on the agreement to sell Exhibit P-2 as also his signatures and thumb marks. In a suit for maintenance which was filed by the children of the appellant, a compromise has been entered into between him and his children which was settled in the Lok Adalat in which the appellant made a statement Exhibit P7/1 admitting the execution of an agreement to sell and the receipt of earnest money from the respondent to the extent of ₹5,00,000/-. It has also been admitted that a compromise was entered into in the said suit for maintenance and the appellant made a statement in the Lok Adalat on 02.09.2006 admitting the claim of the respondent. Initially the Civil Judge (Junior Division) had stayed the alienation of the suit property but while disposing of the matter in the Lok Adalat, the Court permitted the appellant to execute the sale deed in pursuance to the agreement to sell. This factum leads to the conclusion that indeed an agreement to sell was duly executed by the appellant in favour of the respondent-plaintiff. Had it not been so, he would not have given such a statement before the Lok Adalat nor would have been a permission granted to executed the sale deed by the Court.

8. It may be added here that the due execution of the agreement to sell dated 13.06.2006 Exhibit P-2 stands proved by the evidence of the Deed Writer, who had scribed the same as also the receipt Exhibit P-3 about the earnest money having been paid to the appellant and his due acceptance.

The subsequent receipts Exhibit P-4 and P-5 have been proved by

Kulwinder Singh. Statement Exhibit P-7, Exhibit P-7/1 given before the Lok Adalat and the award Exhibit P-8 passed on the basis of the said statements have been duly proved by the statement of Shri Gurcharan Singh, Advocate, who appeared as PW-5. The respondent-plaintiff has also proved that he was always ready and willing to perform his part of the contract as he has specifically stated that he had gone to the office of the Sub Registrar and got his presence marked. The respondent has proved his case to the hilt and, therefore, the pleas as taken by the appellant, have been rightly considered and rejected by the Courts below.

9. The judgment relied upon by the counsel for the appellant qua the factum of taking benefit of the fiduciary relationship i.e. *Krishna Mohan Kul (supra)* would not be applicable to the case in hand as mere relationship of employer-employee would not be enough and further the respondent has been able to prove that there was no fraud, misrepresentation or undue influence exercised by him upon the appellant taking benefit of his dominant position being an employer.

10. As regards the contention of the counsel for the appellant that the Court should have exercised its discretionary powers under Section 20 of the Specific Relief Act, 1963 and has relied upon the judgment of this Court in *Lakhbir Singh's case (supra)*, suffice it to say that the said judgment would not be applicable to the present case as the said case is distinguishable on facts. There the appellant was a *bona fide* purchaser without notice and the sale in favour of the appellant was valid as he was a *bona fide* purchaser for consideration and without notice. Further there was no evidence on record by which it could be proved that the respondent, in

whose favour the agreement to sell was executed, was ready and willing to perform his part of agreement which is the very essence of a suit for specific performance. Present is not such a case and, therefore, the principles enunciated therein, would not be applicable to the facts of the present case.

11. The Courts have rightly considered this plea in the light of the pleadings and the evidence brought on record which cannot be faulted with.

12. No other point has been raised or argued by the counsel for the parties.

13. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

14. In the light of the dismissal of the appeal, the application for stay i.e. CM No.13153-C of 2013, stands disposed of as infructuous.

April 11, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE