

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

**RSA-4893-2013 (O&M)
Date of decision : 25.10.2016**

Shamsher Singh

... Appellant

Versus

Hanuman Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sudhir Sharma, Advocate
for the appellant.

Mr. Shailendra Jain, Senior Advocate with
Ms. Peeyushi Diwan Jain, Advocate
for respondent Nos.4 and 5.

None for respondent No.1.

Mr. S.K. Mahajan, Advocate
for respondent Nos.2 and 3.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact and law, whereby the suit seeking specific performance of the agreement to sell dated 18.07.2001 agreed to be entered into with regard to the sale of plot bearing No.111, Sector 13, Hisar, for a total sale consideration of ₹ 2,30,000/- against the payment of earnest money of ₹ 1,80,000/-, has been dismissed by both the Courts below.

Mr. Sudhir Sharma, learned counsel appearing on behalf of the appellant-plaintiff submits that the time was not essence of the aforementioned agreement to sell as the vendor-Hanuman Singh was to obtain the NOC from the HUDA for selling the plot. The agreement to sell

was attested by two witnesses, namely, Roop Ram and Mahabir Parshad. The Courts below have declined to grant the discretionary relief, much less, even not granted alternate remedy of refund of earnest money, on the premise that the agreement to sell, aforementioned, has not been proved. In fact, Ex.P-10, Ex.P-14 and Ex.P-15 would reveal that an application was submitted by Hanuman Singh to the HUDA for obtaining the NOC that is in pursuance to the notice issued by HUDA, on a complaint made by the appellant-plaintiff. The appellant-plaintiff vide Ex.P-13 suffered a statement and defendant No.1 vide Ex.P-14. The aforementioned documentary evidence was summoned from the office of the HUDA, through the testimony of PW-6, namely, Ved Parkash.

He further submits that the aforementioned documents were confronted to defendant No.1, but he denied the signatures on the documents. Though the documents were duly entered in the office of the HUDA and brought on record, therefore, there could not be any element of interpolation or submissions of false application. During the stage of the appeal, an application, for additional evidence, to examine the admitted signatures of Hanuman Singh with the signature available on the file, was moved, but the same has erroneously been dismissed. As per Ex.P15, it has surfaced, that Hanuman Singh had agreed that he had executed a GPA in favour of Krishan Lal, who vide sale deed dated 07.02.2003 (Ex.P-18) had sold the plot for a total consideration of ₹ 1,20,000/- and further sold to defendant No.5 on 11.03.2004 vide Ex.P-19. Krishan Lal was working as Tehsildar and he managed to obtain an affidavit of the appellant-plaintiff that of having denied the agreement to sell. FIR was lodged in this regard and FSL report came that the alleged relinquishment deed did not bare the

signatures of Hanuman Singh. In fact the intention of the vendor, his associates and the other defendants was to defeat the rights of the plaintiff. Both the Courts below have erroneously, much less, perversely, declined to grant the discretionary relief, much less, alternate relief, thus, urges this Court for setting aside the findings under challenge.

Per contra, Mr. Shailendra Jain, learned Senior Counsel assisted by Ms. Peeyushi Diwan Jain, learned counsel appearing on behalf of the respondent Nos.4 and 5, submits that the appellant-plaintiff has failed to discharge the onus. No assistance of Expert has been taken to belie the signatures of Hanuman Singh on the agreement to sell, much less, on the documents i.e. Ex.P-10, Ex.P-14 and Ex.P-15. Even the witness of HUDA in cross-examination stated that the application for issuance of NOC was rejected as the signatures of Hanuman Singh did not tally with the admitted signatures.

He further submits that both the Courts below, by relying upon the statements of the attesting witnesses, observed that the agreement to sell has not been proved, thus, urges this Court for affirming the findings under challenge.

Mr. S.K. Mahajan, learned counsel appearing on behalf of the HUDA-respondent Nos.2 and 3 submits that the application for issuance of NOC was rejected on account of dissimilarity in the signatures of the allottee.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Sudhir Sharma viz-a-viz discretionary relief, for, it was incumbent upon the appellant-plaintiff to prove the signatures of Hanuman

Singh on the agreement to sell, particularly when it was specifically denied, much less, on the application (Ex.P-10) alleged to have been submitted for issuance of NOC. The objection taken, had been upheld by both the Courts below. Ex.P-13 is the statement of the appellant-plaintiff. Ex.P-14 is the statement of the respondent No.1, whereas Ex.P-15 is the application of Hanuman Singh. The said documents are on the paper of Haryana Urban Development Authority attested by Estate Officer, HUDA, Hisar and bears the following serial numbers:-

1. Ex.P-13 - Sr. No.000120
2. Ex.P-14 - Sr. No.000121
3. Ex.P-15 - Sr. No.000122.

The contents of Ex.P-14 and Ex.P-15 would reveal that Hanuman Singh admitted the execution of the agreement to sell, but stated that he had issued a power of attorney in favour of Krishan Lal for execution of the sale deed. The aforementioned objections had been assailed in the grounds of appeal by taking the aid of the provisions of Order 43 Rule 1-A of the Code of Civil Procedure, thus, the lower Appellate Court ought to have examined the aforementioned fact while rendering the judgment.

It is a matter of record that the aforementioned documents were confronted to Hanuman Singh, but he denied the signatures. It is very easy to a person to deny the signatures.

The appearance before the Sub-Registrar was not volunteer one, but both the parties appeared in pursuance to the notice dated 09.01.2004 (Ex.P-12) bearing Memo No.929-33 which was sent to both the parties i.e. Shamsher Singh and Hanuman Singh. Assuming for an

argument sake that the contents of the application (Ex.P-15) and the statement alleged to have been recorded by the concerned Officer of HUDA or somebody else impersonated, but the person, who impersonated, would not know the execution of the power of attorney in favour of Krishan Lal as that was a personal knowledge between Hanuman Singh and Krishan Lal and this fact was not in the knowledge of the appellant-plaintiff at that relevant point of time. The factum of execution of the power of attorney only surfaced at the time of filling of the suit. The documents coming from the record of the HUDA bearing serial numbers as indicated above, cannot be ruled out to be in genuine.

It is a common practice for a person, who appended his signatures to suffer or state by denying the same during court proceedings, though equally the onus shifted upon the appellant-plaintiff to prove the signatures, but this Court cannot remain oblivious of the aforementioned grievance as in the statement (Ex.P-14) and (Ex.P-15) i.e. there is categorical admission of the agreement to sell, had the signatures been proved perhaps the appellant-plaintiff would have been able to seek the discretionary relief. Since the plot in dispute has also exchanged two hands, I am of the view that the appellant-plaintiff is not entitled to discretionary relief. The Courts below ought to have examined, the aforementioned aspect, at least, or granted the alternate relief. The examination and the cross-examination of the attesting witnesses as a whole has to be seen, mere one line here and there in the cross-examination cannot be read into isolation to form a different opinion.

Keeping in view the aforementioned facts, I am of the view that the since, earnest money of ₹ 1,80,000/- had been deposited with the

HUDA by way of Draft and the same has not been refuted by Hanuman Singh at any point of time. Had he actually not submitted his statement or an application for NOC or as well as appeared in pursuance to the notice, he would have requested the HUDA to return the aforementioned amount, but kept mum on this aspect. It itself is a clincher to form an opinion that he had actually entered into agreement to sell. No evidence has been led on record to show that at any point of time, Hanuman Singh had borrowed a money from the appellant-plaintiff. The repayment of the aforementioned amount has also not been proved on record either through direct, cogent or corroborative evidence.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213”**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **“Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others” 2001(4) SCC 262**, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi 's case**

(supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in

force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the foregoing reasons, the appellant-plaintiff, in my view is not entitled to discretionary relief, but the judgment and decree of the Courts below are modified and the appellant-plaintiff is entitled to refund of the earnest money of ₹ 1,80,000/- along with interest @ 6% from the date of the execution of the agreement to sell. The aforementioned amount is ordered to be paid to the appellant-plaintiff by the defendant/respondent No.1-Hanuman Singh or his legal heirs within a period of three months from the date of the receipt of the certified copy of the order.

With the aforesaid observations, the appeal stands partly allowed.

25.10.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No