

**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH.**

**RSA No.575 of 2013**

**Date of decision: 12.02.2016**

**Harjit Singh**

**... Appellant**

**Versus**

**Jagir 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?

Present: Mr.Naveen Batra, Advocate,  
for the appellant.

**AMOL RATTAN SINGH, J.**

1. This is the second appeal filed by the appellant-plaintiff, who had filed a suit for joint possession by way of specific performance of an agreement to sell dated 30.05.2004, by which the respondent is stated to have agreed to sell 8 kanals out of 61 kanals and 2 marlas of land (described in detail in the plaint before the learned Civil Judge), situated in the revenue estate of village Dhakki, Tehsil and District Hoshiarpur.

The appellant-plaintiff sought execution of the sale deed in terms of the agreement or, in the alternative, to recover Rs.2,50,000/- alongwith future interest @ 12% thereupon, which was the consideration stated to have been paid by him at the time of signing the agreement.

2. His case before the learned Civil Judge (Senior Division), Hoshiarpur, was that on the aforesaid date, it had been agreed between the

parties that the total consideration for the suit land would be Rs.2,50,000/-, of which Rs.2,15,000/- was received as earnest money by the respondent-defendant. The sale deed was to be executed on or before 30.05.2005. It was further stated to have been agreed upon, that in case the defendant refused to execute the sale deed, then the appellant-plaintiff could get it executed by depositing the balance consideration in a Government treasury and on failure of the defendant to get the suit land mutated in his favour, double the amount of sale consideration would be paid by him to the appellant-plaintiff.

As per the plaint filed, the appellant remained ready and willing to perform his part of agreement, and having the balance consideration and necessary expenses to be incurred for the execution of the sale deed, he was also present in the office of the Joint Sub Registrar, Bhunga, on 30.05.2005 and got his presence also marked there, vide application No.2173.

However, it was further pleaded, that the respondent did not get the mutation entered in his own name, from that of his father, in terms of the agreement. Though a mutation was sanctioned but it was not in the names of the natural heirs of deceased Kartar Singh, i.e. the respondent and his siblings. Thereafter, the respondent also refused to execute the sale deed.

3. The above pleadings are stated to be as per an amended plaint filed by the appellant, to which no written statement was filed and the reply filed to the original plaint was taken to be the reply of the respondent-defendant by the learned Civil Judge.

The stand taken by the respondent was that he had actually entered into an agreement to sell with the appellant on 02.06.2003, for land measuring 8 kanals falling in Khata No.81/116, khasra No.17//12/2, khasra

Nos.13,14,15/1, 17/2, 18 and 19.

On the other hand, in the agreement on the basis of which the appellant sought specific performance (dated 30.05.2004), he had set up a case for purchase of land falling in khasra Nos.8-R/11/2, 19, 20, 21, 22, 9-R/6, 15, 16, 25/2, 13-R/2/2, 9/2, 12/1 and 12/4.

As per the respondent, the sale consideration in respect of that land, subject matter of the agreement to sell dated 02.06.2003, was Rs.2,50,000/- and the sale deed was to be registered on 02.06.2004. However, on that date, the appellant requested the respondent to extend the date of registration and allegedly got his thumb impression on blank papers for that purpose and later, allegedly in connivance with revenue staff, he forged the subsequent agreement dated 30.05.2004.

4. The appellant did not file any replication but in his application to amend the plaint, he took a new plea of adjusting the earnest money passed under the agreement to sell dated 02.06.2003, towards the subsequent agreement dated 30.05.2004 (the land described in the latter was actually the land to be transferred by sale).

Eventually, the following issues were framed by the learned Civil Judge:-

- “1. Whether plaintiff is entitled for joint possession and for recovery of Rs.2,50,000/- alongwith interest as prayed for? OPP
2. Whether present suit is not maintainable? OPD
3. Whether plaintiff has not come to the court with clean hands? OPD
4. Whether alleged agreement to sell is a fraudulent deed and is forged and fabricated document? OPD
5. Whether present suit is bad for non-joinder of necessary parties? OPD

6. Relief.”

5. The appellant examined PW1 Sardara Singh, a Clerk of the office of Sub-Tehsil, Bhunga, who deposed with regard to his presence before the Joint Sub Registrar, on 30.05.2005.

He next examined Mohinder Singh (PW2) and Sewa Singh (PW3), who are stated to have been marginal witnesses to the agreement dated 30.05.2004, who, on affidavit, supported the stand of the appellant.

PW4 Sukhdev Singh deposed to being a scribe of the agreement dated 30.05.2004 and proved entry thereof as Ex.PW3/A.

The appellant himself appeared as PW5 and deposed in terms of his pleadings, further proving on record an earlier agreement dated 02.06.2003 (Ex.P4).

6. The respondent examined himself as DW1 and also supported his stand in the written statement, and further examined one Chandan Sharma as DW2, who was an official in the office of the Deputy Commissioner, Hoshiarpur and testified with regard to Ex.D1, pertaining to the register of a Stamp Vendor, Rajwant Singh, who sat in the complex of the Sub-Tehsil.

7. After considering the evidence, the learned Civil Judge found that the appellant initially did not even refer to the agreement dated 02.06.2003 and after the written statement was filed, he admitted to the same but still insisted that the subsequent agreement was also entered into. The trial Court, firstly, held that the appellant had concealed material facts with regard to the initial agreement to sell and also found that though the said agreement was admitted to by both the parties, the earnest money exchanged on that date (02.06.2003) was Rs.32,000/- and not Rs.2,50,000/-

or Rs.2,15,000/-. Subsequently, on 17.07.2003, another payment of Rs.64,000/- was made and yet again on 07.08.2003 another payment of Rs.48,000/- was made. Thus, a total of Rs.1,44,000/- was paid by the appellant to the respondent, towards consideration in respect of the first agreement to sell. However, the appellant did not whisper a word about his presence before the Sub-Registrar on 02.06.2004, which was the target date to get the sale deed executed, in terms of the agreement dated 02.06.2003.

8. It was further found, from the argument of the counsel for the appellant, that the land which was the subject matter of the first agreement was owned by one Bhan Kaur but that land was eventually escheated in favour of the State, as the will in respect of that land was found to be a forged document.

Thereafter, that land not being saleable to the appellant, another Rs.71,000/- was paid to the respondent, in respect of the land which is subject matter of these proceedings.

9. The appellant of course led evidence in support of the second agreement dated 30.05.2004, but the consideration paid by him to the respondent, in different stages, pursuant to the earlier agreement dated 02.06.2003, not even having been whispered about in the pleadings, the evidence was held to be beyond the pleadings and was not accepted.

Considering the testimonies of PWs2 and 3, i.e. Mohinder Singh and Sewa Singh, witnesses to the agreement dated 30.05.2004, the learned Civil Judge found that Mohinder Singh, who is the brother of the appellant, in his affidavit Ex.PW2/A, stated that earnest money of Rs.2,15,000/- was paid by the appellant to the respondent in his presence on 30.05.2004 while executing the agreement to sell. PW3 Sewa Singh also

took the same plea on affidavit. However, Mohinder Singh in his cross-examination admitted that the money transaction had not taken place in his presence and that he had also put his signatures on the agreement to sell and thereafter, had gone away, whereas the parties to the agreement came later.

Similarly, PW3 Sewa Singh, in his cross-examination, replied that in his presence only a sum of Rs.20,000/- was given by the appellant to the respondent, thereby again falsifying his own examination-in-chief, as also Mohinder Singhs' affidavit.

Further, the learned Civil Judge even found discrepancies in the statement of the scribe to the agreement dated 30.05.2004. Finally, having found the witnesses not creditworthy, the agreement dated 30.05.2004 was held to be a doubtful agreement, leading the Court to come to the conclusion that the thumb impression of the respondent was, in fact, obtained by the appellant on a blank paper, on the pretext of extending the date of the previous agreement dated 02.06.2003.

10. Hence, holding the two witnesses of the appellant to be completely doubtful witnesses, coupled with the fact that the earlier agreement was not even referred to in the plaint initially filed by the appellant, though not denied upon after that stand was taken by the respondent in his reply, the suit of the appellant was dismissed.

11. The learned first appellate Court agreed with the finding of the trial Court, to the effect that the suit had been filed by suppressing material facts and further held, while discussing the law on the subject of admissibility of evidence beyond pleadings, when the facts are not otherwise in dispute, that it was for the appellant to prove due execution of the original agreement dated 02.06.2003, rather than making a wholly

concocted story of a subsequent payment of Rs.2,15,000/- at the time of executing another agreement dated 30.05.2004. He not having pleaded anything with regard to his willingness to execute the first sale deed, and thereafter, giving wholly contradictory pleadings, disproved in the cross-examination of the witnesses, it was held that the trial Court was not in error in dismissing the suit.

12. It was further held by the learned lower appellate Court, that consideration in respect of the second agreement not having been paid, the contract itself was void.

Still further, it was held that just because the appellant proved his presence before the Sub Registrar on 30.05.2005, by production of a witness from that office, did not make the second agreement (dated 30.05.2004) a genuine agreement.

Yet further, the learned first appellate Court found that in fact another suit between the appellant and the respondent, qua the agreement dated 02.06.2003, was also pending before the learned Civil Judge (Junior Division), in which the land belonging to the aunt of the respondent, Bhan Kaur (referred to earlier), was the subject matter. It was held that since consideration was claimed (and found) to have been paid pursuant to the agreement of 2003, then it was for the appellant to pursue his remedy in that suit, rather than to concoct a wholly new story in the form of a second agreement of 2004.

It was also found that thumb impressions of the respondent were not obtained at the time of the sale of the stamp paper of the second agreement to sell, further making the that agreement doubtful.

Hence, agreeing with the finding of the trial Court and in view

of the further reasoning given by himself, the learned District Judge, Hosiarpur, dismissed the appeal filed by the appellant.

13. Before this Court, learned counsel for the appellant submitted that since consideration had been paid for the land, pursuant to the agreement dated 02.06.2003, and that agreement undoubtedly could not be executed for the reason that the land in question actually could not be mutated in the name of the respondent, then the appellant was very much within his right to take that consideration money to be consideration for purchase of the land which was subject matter of the agreement to sell dated 30.05.2004.

However, learned counsel, on query, could not deny the statements of the two alleged witnesses to the second agreement of 2004, during their cross-examination. He also could not refute the findings of the courts below with regard to the suspicious circumstances of the second agreement to sell. Further more, the fact that another suit seeking specific performance of the agreement dated 02.06.2003, also had been filed, was obviously a matter of fact which could not have been denied.

14. Having considered the aforesaid argument, as also the reasoning given by the courts below, I find no fault in the detailed reasoning adopted by both the courts, as regards the second agreement to sell being a highly suspicious document, not worthy of being relied upon as a genuine agreement between the parties, especially in the face of the statements made by the alleged witnesses to the agreement.

Undoubtedly, the appellant may have had a genuine grievance (subject to the findings in the separate litigation in that respect), with regard to the first agreement not having been fulfilled by the respondent. However,

whatever relief he may be able to obtain in that litigation (if any), the second agreement most definitely does not inspire confidence as being a genuine document. Had the 2<sup>nd</sup> agreement actually taken place, all that had to be done, was to give the reason for execution of the second agreement, i.e. failure on the part of the respondent to be able to complete the contract agreed to by the first agreement. Giving that background, it could not have been easily stated (in the 2<sup>nd</sup> agreement) that the consideration already paid for the sale of the land that was subject matter of the agreement of 2003, would be considered to be consideration paid for the land that was subject matter of the second agreement. That not having been done and the specific allegation of the respondent being that his thumb impression (he obviously being illiterate) was obtained on blank papers on the pretext of extending the date for execution of the sale deed in furtherance to the first agreement, has to be a statement which is to be accepted in the light of the admissions made by the alleged witnesses of the agreement, in their cross-examination, one such witness being the brother of the appellant.

Although, the reasoning given with regard to the discrepancies in the statement of the scribe, Sukhdev Singh (PW4) are not necessarily a correct conclusion, however, the rest of the reasoning of the learned Civil Judge, and thereafter the more detailed reasoning of the learned District Judge, cannot be found fault with.

15. Consequently, agreeing with the findings of the learned Courts below, I find no merit in this appeal, which is dismissed *in limine*, with costs of Rs.1000/-, to be deposited with the High Court Legal Service Committee.

12.02.2016

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(AMOL RATTAN SINGH)  
JUDGE