

In the High Court of Punjab and Haryana at Chandigarh

RSA No.875 of 2013(O&M)
Date of Decision: 11.2.2016

Gurbachan Singh and others

---Appellants

vs.

Pawan Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Manish Kumar Singla, Advocate
for the appellants

Mr. Harish Goyal, Advocate
for respondent No. 1

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?

Rekha Mittal, J.

The present regular second appeal has been directed against the judgment and decree dated 15.1.2013 passed by the Additional District Judge, Sangrur, dismissing the appeal preferred by Satnam Singh represented by his legal representatives, Gurbachan Singh and others whereby the judgment and decree dated 20.12.2010 passed by the trial court

in favour of respondent No. 1/plaintiff has been affirmed.

Respondent No. 1/plaintiff filed a suit for specific performance of the agreement to sell dated 24.8.2005 on the premise that Satnam Singh agreed to sell 8½ marlas of land for an amount of Rs. 85,000/-, received Rs. 63,000/- towards earnest money and the balance amount was agreed to be paid at the time of execution of sale deed on 25.8.2006. The respondent always remained ready and willing to perform his part of the agreement. As 25.8.2006 was not a working day in the office of the Sub Registrar, Khanauri, the respondent remained present in the office of the Joint Sub Registrar, Ghanauri on 24.8.2006 and 28.8.2006 as 26.8.2006 and 27.8.2006 were holidays. Satnam Singh did not turn up to get the sale deed executed and registered and committed breach of the agreement.

The defendant (predecessor-in-interest of the appellants) filed the written statement challenging maintainability of the suit in the present form, the respondent having no cause of action or locus standi to file the suit and guilty of suppressing the material facts from the Court. It is averred that he has constructed a house over the property in dispute for the past 12 years and is residing there with his family. About four years ago, he borrowed a sum of Rs. 28,000/- from the respondent and the respondent got his signatures on blank stamp papers and other papers, taking advantage of his illiteracy. Had the stamp papers been purchased on 24.8.2005, the answering defendant would have signed on the reverse of the stamp papers and register of the stamp vendor. After payment of entire loan amount, when he asked the respondent to return the papers bearing his blank signatures, he replied that he had already torn them off. It is pleaded that

the respondent has forged the agreement to sell and is not entitled to get the sale executed.

The respondent preferred replication, reiterating the averments raised in the plaint and denied the allegations set up in the written statement.

The controversy between the parties led to framing of following issues by the learned trial court:-

1. Whether the defendant executed an agreement to sell dated 24.8.2005 in favour of plaintiff for a total consideration of Rs. 85,000/- and received Rs. 63,000/- as part payment from the plaintiff?OPP
2. Whether the plaintiff is entitled to specific performance of the contract dated 24.8.2005?OPP
3. Whether in the alternative, plaintiff is entitled to recovery of Rs. 1,26,000/- i.e. Rs. 63,000/- as principal amount and Rs. 63,000/- as liquidated damages?OPP
4. Whether plaintiff is entitled to permanent injunction prayed for?OPP
5. Whether plaintiff has no locus stadi and cause of action to file the suit?OPD
6. Whether suit is not maintainable in the present form?OPD
7. Whether plaintiff has not come to the Court with clean hands, if so its effect?OPD
8. Relief.”

To prove his case, the respondent examined himself, Sachin Kumar PW2 and Achhru Ram PW3. To rebut evidence of the respondent, Satnam Singh appeared in the witness box as DW1 and examined Gurmel Singh DW2.

On a detailed and thorough consideration of the rival

submissions made by counsel for the parties in the light of materials on record, the learned trial court determined issues No. 1, 2 and 4 in favour of the respondent whereas issues No. 5 to 7 were decided against the defendant and suit of the respondent was ordered to be decreed.

Feeling aggrieved against the judgment and decree passed by the trial court, the matter was carried in appeal and the defendant remained unsuccessful.

Still feeling dissatisfied, the present appeal has been preferred by Gurbachan Singh and others, legal representatives of Satnam Singh, (since deceased).

Counsel for the appellants would contend that none of the attesting witnesses of the agreement to sell namely Darbara Singh and Des Raj has been examined. Darbara Singh was not examined on the pretext that he has been won over by the defendant and Des Raj was not examined that he is not alive. It is argued that Des Raj is alive even till today. It is further argued that the agreement to sell is the result of forgery and fabrication, manufactured on the signatures of Satnam Singh obtained on blank stamp papers when he had taken a loan of Rs. 28,000/- from the respondent. Satnam Singh returned the loan amount but the respondent cleverly retained the blank signed stamp papers and used it for fabricating the agreement to sell.

Counsel for the appellants has also assailed the findings in regard to readiness and willingness of the respondent to perform his part of the agreement with the submission that admittedly, the respondent did not appear before the Joint Sub Registrar, Ghanauri on the stipulated date i.e.

25.8.2006. In addition, counsel has submitted that as the agreement contains a clause for payment of liquidated damages i.e. double of the earnest amount of Rs. 63,000/-, the present case is a fit case wherein the respondents may be allowed the alternative relief if the findings in regard to the agreement to sell are affirmed. It is strenuously argued that specific performance of the agreement would create extreme hardship for the family of Satnam Singh (deceased) as he has left behind four sons who have large families consisting of daughters and minor children. Satnam Singh and his sons have built their houses on land measuring 17 marlas and the entire family consisting of more than 20 members is residing there.

Counsel for the respondent has supported the judgment passed by the learned trial court with the submission that the agreement to sell has been proved in accordance with law. Satnam Singh has admitted his signatures on the agreement to sell though with a plea that the same were obtained on blank stamp papers. It is argued that agreement was also signed by one of the sons of Satnam Singh namely Gurbachan Singh as a measure of approval/consent for his father's agreeing to sell land measuring 8 ½ marlas. There is no explanation by the appellants that if signatures of Satnam Singh were obtained on blank stamp papers as alleged, what was the occasion for Gurbachan Singh to put his signatures. Gurbachan Singh did not appear in the witness box to deny his signatures on the agreement Ex. P1.

Another submission made by counsel is that the story propounded by the appellants or for that matter by Satnam Singh that he had taken a loan of Rs. 28,000/- about four years ago, has no legs to stand as

the same is clearly falsified and belied from the testimony of Achhru Ram, Senior Assistant, Treasury Officer, Sangrur PW3, who has proved that the stamp papers on which the agreement has been scribed, were issued by the Treasury in July 2005. It is further argued that as per plea of Satnam Singh in the written statement, he appended his blank signatures four years prior thereto and the written statement was filed in the year 2006. No date, month or year of taking of loan of Rs. 28,000/- or return thereof has been mentioned in the written statement, sufficient to reject plea of the defendant that either he had taken any loan from the respondent much less having signed the blank stamp papers at that time.

To counter plea in regard to hardship of Satnam Singh or his family in the eventuality the agreement being specifically enforced, it is submitted that Satnam Singh sold half of land out of total land measuring 17 marlas and that also with approval of his son. No evidence has been adduced in regard to the members of the family of Satnam Singh. Further argued that in view of conduct of Satnam Singh who had spoken a blatant lie to wriggle out of the agreement to sell, he otherwise disentitles himself to seek indulgence of the Court in exercise of its discretion. In the last, it is submitted that as the respondent has proved his case in accordance with law, there is no reason to interfere in the consistent findings recorded by the courts below.

I have heard counsel for the parties and perused the records.

The substantial questions of law which arise for adjudication are

“1. whether agreement to sell can be proved in absence of

examination of one of the attesting witnesses?

2. *Whether the appellant can avoid specific performance on the ground of hardship?*

The agreement to sell does not require attestation by law. In the absence of any such requirement of law, non-examination of attesting witnesses of the agreement would neither enure to the benefit of the appellants nor cause prejudice to the case of the respondent.

There is no dispute about the settled position in law that civil disputes are decided by the court on the basis of balance of probabilities. To prove the agreement in question, the respondent appeared in the witness box and examined Sachin Kumar Sharma, Advocate, scribe of the agreement. Both of them were cross examined at length by the opposite counsel but failed to elicit any tangible and material facts in favour of the appellants. Not only this, the defendant has admitted his signatures on the agreement. The plea raised by the defendant that his signatures were obtained on blank stamp papers gets falsified and belied from the statement of Achhru Ram PW3, an official from the Treasury Officer, Sangrur whose testimony is based on record.

Satnam Singh in the written statement dated 19.12.2006 has raised a plea that about four years ago, he had taken a loan of Rs. 28,000/- from the plaintiff/respondent and his signatures were obtained on stamp papers. As has been rightly argued by counsel for the respondent, the plea raised by defendant in regard to taking loan of Rs. 28,000/- is vague for want of complete particulars in regard to date, month or year of the loan as well as of its return. It defies logic that a person would return the amount

before ensuring that the paper on which his signatures were obtained at the time of loan is returned to him so that the same is not misused and abused. The agreement to sell also bears endorsement of Gurbachan Singh son of Satnam Singh in token of his approval/consent. Gurbachan Singh did not appear in the witness box to corroborate the story propounded by his father. The very fact that Gurbachan Singh has withheld himself from the witness box goes a long way to show that plea raised by the defendant is without any foundation and bereft of truth. In this view of the matter, I do not find any error much less illegality in the consistent findings recorded by the courts below holding in favour of the respondent that the agreement to sell Ex. P1 was executed by Satnam Singh in respect of the suit land and he received Rs. 63,000/- towards earnest money.

The respondent has led sufficient evidence to establish his plea that he always remained ready and willing to perform his part of the agreement. The respondent appeared in the office of Sub Registrar, Ghanauri on 24.8.2006 and 28.8.2006 as 25.8.2006 was a non-working day in the tehsil office and 26 and 27.8.2006 happened to be holidays. The plea of the respondent in this regard gets substantiated from affidavits Exs. P2 and P3 got attested by him in token of his presence in the office of Sub Registrar, Ghanauri.

This brings the Court to the second question in regard to enforcement of agreement causing hardship to the family of Satnam Singh. Satnam Singh agreed to sell 8½ marlas of land out of total land measuring 17 marlas. There is no material on record in regard to number of family members left behind by Satnam Singh. There is no evidence on record if

sons of Satnam Singh do not own or possess any land besides 17 marlas out of which 8 ½ marlas was agreed to be sold. This apart, keeping in view conduct of Satnam Singh who had the cheek to deny the agreement by raising a baseless and unfounded plea attributing criminality to the respondent for having committed offence of forgery, Satnam Singh has deprived himself of seeking any relief in equity. In view of what has been discussed hereinabove, the questions formulated above are answered against the appellants and in favour of the contesting respondent.

In view of the above, finding no merit, the appeal is dismissed with costs.

(Rekha Mittal)
Judge

11.2.2016
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