

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4817 of 2016

Date of Decision:22.09.2016

Jamna Bai

... Appellant

Vs.

Sohan Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Navneet Kaur Sran, Advocate
for the appellant.

Amol Rattan Singh, J.

This is the second appeal by the defendant in a suit filed by the respondent plaintiff (hereinafter to be referred as “the plaintiff”), seeking specific performance of an agreement to sell 2 kanals of land, entered into on 21.09.2010, the said 2 kanals being 40/147th share out of land measuring 7 kanals and 7 marlas, situated in Guruhar Sahai Samali, Tehsil Jalalabad, District Ferozepur. The plaintiff had further sought a decree of permanent injunction restraining the appellant from alienating the suit land to any other person. In the alternative, a decree for recovery of Rs.3 lacs, as double the amount of earnest money paid by the plaintiff to the appellant, was prayed for along with interest, damages etc.

2. As per the plaintiff, the appellant-defendant being the owner of the suit property, had agreed to sell it to him vide the aforesaid agreement, for a total sale consideration of Rs.12 lacs per acre, or Rs.3 lacs for the 2 kanals that were subject matter of the agreement. A sum of Rs.1.5 lacs, by way of earnest money, had been received by the appellant and the date stipulated for

execution and registration of the sale deed was fixed as 20.09.2011, i.e. one year later. The plaintiff contended that he had gone to the office of the Joint Sub-Registrar, Guruhar Sahai, along with the balance consideration and other expenses but the appellant did not come there to execute the sale-deed. He, therefore, got his presence marked from the Joint Sub-Registrar on an application made by him, and thereafter he had always remained ready to perform his part of the contract but with the appellant-defendant not agreeing to do so despite requests, the suit was filed.

3. Notice having been issued to the appellant, she appeared and filed her written statement and other than usual preliminary objections, on merits she admitted that she had executed the agreement in favour of the plaintiff. However, thereafter, she contended that the plaintiff-respondent was in dire need of money and had, therefore, asked her to refund the earnest money paid by him as he could not arrange for the balance sale consideration. Accordingly, she had refunded Rs.88,000/- to him on 08.09.2011, for which a receipt was written out on the back of the photostat copy of the agreement, in the presence of witnesses. The plaintiff also duly signed the said receipt and stated that the agreement now stood cancelled.

The appellant requested the plaintiff to return the original agreement to her, which he agreed to do after receipt of the remaining amount of earnest money.

Thereafter, it was further contended by the appellant, that she requested the plaintiff to call the marginal witnesses to the agreement for receipt of the remaining earnest money, upon which he allegedly told her that as he had “entered into the bargain”, therefore, there was no need to call them. After that, despite the appellant allegedly having requested the

plaintiff many a time with regard to the return of original agreement, he kept avoiding her on one pretext or the other and instead filed the suit.

4. Upon the plaintiff having filed a replication to the written statement, the following issues were framed by the learned Civil Judge (Sr. Divn.), Guruhar Sahai:-

“1. Whether the plaintiff is entitled for decree of specific performance of contract and entitled for decree of possession ?

OPP

2. Whether the plaintiff is entitled for consequential relief of permanent injunction as prayed for?OPP

3. Whether the suit of the plaintiff is not maintainable in the present form?OPD

4. Whether the plaintiff has no cause of action to file the present suit?OPD

5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD

6. Whether the plaintiff has concealed the material and patent facts from the Courts?OPD

7. Whether the present suit is false and frivolous ?OPD

8. Relief.”

5. The plaintiff examined himself as PW-1 and one Chan Singh, a Registration Clerk, as PW-2, and also tendered documentary evidence, including the jamabandi (record of rights) for the year 2008-09.

The appellant examined herself as DW-1, Anil Kumar Gupta, a hand writing and finger print expert as DW-2, her husband Jaimal Singh as DW-3 and one Paramjit Singh as DW-4.

6. Having appraised the aforesaid evidence and the pleadings of the parties, the learned Civil Judge found that as regards the agreement to sell dated 21.09.2010, it was an admitted document by the appellant which therefore stood proved, and that the presence of the plaintiff in the office of the Sub-Registrar was also duly proved by the endorsement on his application dated 21.09.2011, supported by the testimony of the registration Clerk (PW-2).

The plaintiff had also stated that he was ready and willing to perform his part of the contract.

As regards return of the amount of Rs.88,000/-, though the payment of the said amount was duly shown to be endorsed on the photostat copy of the agreement on 08.09.2011, however, that Court held that there was no writing to suggest the purpose of paying the said amount to the plaintiff.

It was further found that the witnesses to the receipt of the said amount, were not the same as those who had witnessed the agreement dated 21.09.2010.

The plaintiff, in his cross examination, had admitted that his daughter had been married about one year earlier in the month of April, but he denied his signatures behind the photostat copy of the agreement to sell, i.e. on the endorsement dated 08.09.2011.

7. The Civil Judge further found that though, as per the version of the appellant-defendant, Rs.62,000/- out of the earnest money of Rs.1.5 lacs, remained to be paid to the respondent-plaintiff for cancellation of the contract, and he had allegedly refused to return the original agreement to her, yet, she had not issued any legal notice, or filed any suit, or even complained against such non-return of the original agreement, despite the alleged refund

of Rs.88,000/- out of the earnest money, to the plaintiff.

Consequently, holding that no reliance could be placed on the endorsement (Ex.DW-2/G), and the agreement to sell in any case having been proved with the admission of the appellant-defendant, the suit of the plaintiff was decreed in his favour, directing the appellant-defendant to get the sale deed registered within one month from the date of the deposit of the balance consideration in Court by the plaintiff.

8. In the first appeal filed by the present appellant (defendant), the learned Additional District Judge, Ferozepur, having appraised the evidence and considered the judgment of the learned Civil Judge and arguments made before him, also, firstly, came to the conclusion that as regards the agreement, it already stood proved (by the admission of the appellant), and that the readiness to perform his part of the contract by the plaintiff was also proved, with his presence in the office of the Joint Sub-Registrar.

As regards the endorsement with regard to the return of Rs.88,000/-, it was found that it was not scribed by any regular deed-writer but by DW-3, Jaimal Singh (husband of the appellant) and was attested by Jeet Singh, Paramjit Singh and Gurmit Singh, all residents of Village Fatehgarh Tarobari, i.e. a place other than the village to which both the parties to the *lis* belong (Basti Labh Singh Wali, Tehsil Guruhar Sahai), and that the writing was also not done at Guruhar Sahai and further, there was no explanation as to why the endorsement had not been made at the back of the original agreement (Ex.P-1).

It was further found that of the three witnesses to the endorsement, Jeet Singh was appellants' brother, Paramjit Singh was the son of her brother and Gurmit Singh was also a resident of the same place as Jeet

Singh and Paramjit Singh. (It needs to be noticed here that at this place in the judgment of the lower appellate Court, the place of residence has been given as Mandi Ladhuka, District Fazilka, whereas earlier he referred to it as Village Fatehgarh Tarobari).

Giving the aforesaid reasoning, the learned first appellate Court then accepted the reasoning of the learned Civil Judge, to the effect that there was also no recital contained in the endorsement (DW-2/B), to the effect that the agreement actually stood cancelled, on account of a return of a part of the earnest money.

9. As regards the testimony of the handwriting and finger print expert (DW-2), it was held that the “science of comparison of handwriting is not perfect science” and generally it is seen that a handwriting expert toes the line of the party that engages him.

Lastly, it was held that the evidence of the handwriting expert could not be given weightage over and above other evidence.

Holding as above, the first appeal of the present appellant was dismissed by the learned lower appellate Court.

10. Before this Court, Ms. Navneet Kaur, learned counsel for the appellant, submitted that there would be no reason for the respondent-plaintiff to have returned Rs.88,000/- out of the earnest money of Rs.1.5 lacs, other than the reason that the agreement dated 21.09.2010 was actually repudiated by him and as such, the learned Courts below have wholly erred in not appreciating that basic issue.

Learned counsel further submitted that the handwriting expert having testified to the effect that the signature on the endorsement (Ex.DW-2/B), with regard to the return of the aforesaid amount was that of the

plaintiff, no further evidence was required with regard to the return of the money in any case.

11. Having heard learned counsel and having considered the judgments of the Courts below, I find myself unable to agree with either of the two arguments raised by the learned counsel.

No doubt, at first blush, with the return of Rs.88,000/- out of the earnest money of Rs.1.5 lacs, with the total sale consideration being Rs.3 lacs, the inference is that the prospective vendee (the plaintiff) had repudiated the contract for purchase/sale of the suit property. However, I find myself in agreement with the judgment of the learned first appellate Court, to the effect that the circumstances accompanying the endorsement with regard to the return of Rs.88,000/- are too suspicious to sustain the aforesaid inference.

Firstly, as that Court has observed, the endorsement is admittedly on the reverse side of the photostat copy of the agreement dated 21.09.2010 and not on the original agreement, which again admittedly, was in the possession of the plaintiff. Consequently, two of the three witnesses to the endorsement being the brother and nephew of the appellant and the third person also stated to be from the village of these two persons, with no witness from the native village of the appellant and defendant, i.e. Basti Labh Singh Wali, Tehsil Guruhar Sahai, nor there being any attesting witnesses of the agreement present and further, the plaintiff having appeared before the Joint Sub-Registrar on the date fixed, i.e. 20.09.2011, for execution of the agreement, I also agree with the learned Courts below that simply because a handwriting expert opined that the signature on the endorsement was that of the plaintiff, such opinion does not override the evidence pointing against the genuineness of the endorsement.

This is further so, as stated by the Courts below, that in fact even the endorsement does not testify that Rs.88,000/- paid by the appellant to the plaintiff, actually amounted to cancellation of the agreement and as such, the inference that would appear at first blush in favour of such interpretation, has to be negated in the light of the other reasoning given by the Courts below, as also the fact that it was the plaintiff who instituted a suit for specific performance of the agreement dated 21.09.2010, with not even a legal notice issued by the appellant to the plaintiff, with regard to return of the original agreement.

12. It is to be further noticed by this Court that the appearance of the plaintiff-respondent before the Joint Sub-Registrar, on the date fixed for execution of the sale deed, i.e. 20.09.2011, was only 12 days after the alleged endorsement was made on the reverse side of the photostat copy of the agreement with regard to the return of Rs.88,000/-. Hence, with all factors put together, i.e. the endorsement being not made on the original but on the photostat copy of the agreement to sell, the witnesses to such endorsement being the brother and nephew of the appellant along with another person of their village, with not even one person belonging to the village of both the parties being a witness to that endorsement, and further, there being not even a recital that with the return of Rs.88,000/- , the agreement stood cancelled, and yet further, with no action taken at all by the appellant, with regard to asking for the return of the original agreement or executing any document cancelling the agreement, and lastly, the respondent having appeared before the Sub-Registrar 12 days after the alleged return of part of the earnest money, all factors, in the opinion of this Court, would sustain the finding of the Courts below, to the effect that the endorsement could not be believed to

be genuine.

Consequently, finding no merit in this appeal, it is dismissed in limine, but no order as to costs is made.

C.M. No.12448-C of 2016

In view of the fact that the appeal itself has been dismissed in limine on merits, without notice having been issued to the respondent, the question of condoning the delay of 14 days in filing the appeal is rendered academic and is not gone into.

September 22, 2016
vcgarg

(AMOL RATTAN SINGH)
JUDGE

1. Whether Reportable?	Yes
2. Whether speaking/reasoned?	Yes