

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3496 of 2015 (O&M)
Date of Decision : 11.03.2016

Harbans Singh

....Appellant

Versus

Harsimar Kaur and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. K.S. Dhillon, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal by defendant no. 1-Harbans Singh against the concurrent judgments of Courts below whereby suit of plaintiff-Harsimar Kaur Aujla was decreed “for possession by specific performance of agreement to sell dated 17.10.2008 in respect of the land measuring 16 *kanals* 6 *marlas* as fully detailed and described in the headnote of plaint, situated in the area of village Hussainabad, *Hadd Bast (H.B.)* No. 16, *Tehsil* Nakodar, alongwith all rights thereto and share in *Rasta*, electric motor tubewell of 7.5 horsepower (H.P.) and all other incidental rights thereto, subject to the plaintiff depositing the amount of balance sale consideration in the Courts within a period of two months”. The charge of defendant no. 2-Punjab National Bank on the land was allowed to continue till the time bank dues are cleared.

2. Plaintiff's case, in brief, is that vide agreement to sell dated 17.10.2008, defendant no. 1 agreed to sell land measuring 16 *kanals* 6 *marlas* alongwith all incidental rights pertaining to the land including share in the passage, electric motor tubewell of 7.5 H.P. The price of land was fixed as ₹17 lacs out of which ₹14 lacs

was paid as earnest money. The date for execution and registration of sale deed was fixed as 17.10.2010, which turned out to be a holiday and plaintiff appeared before the Sub-Registrar on 18.10.2010 alongwith remaining sale consideration but defendant no. 1 failed to turn up to perform his part of contract. Plaintiff waited for defendant no. 1 from dawn to dusk and then got his presence marked in the office of Sub-Registrar by swearing an affidavit before Executive Magistrate, Nakodar. Thereafter, plaintiff approached defendant no. 1 with a request to execute the sale deed and get it registered as per agreement dated 17.10.2008 but defendant no. 1 kept on putting off the matter and finally refused to execute the sale deed and get it registered resulting in filing of this suit on 20.10.2010.

3. Defendant no. 1 denied execution of agreement to sell dated 17.10.2008 and receipt of ₹14 lacs as earnest money. He contended that plaintiff is his real sister and he neither ever intended to sell property to his sister nor signed any document in her favour. The agreement, if any, produced and proved was dubbed as result of fraud, misrepresentation, concealment of facts and without consideration, not binding on the right of defendant no. 1.

4. Defendant no. 2 is Punjab National Bank and suit property was mortgaged with it by defendant no. 1 for the loan advanced to him.

5. Learned Additional Civil Judge (Senior Division), Nakodar held execution of agreement to sell dated 17.10.2008 and payment of earnest money as duly proved. The plea of defendant

no. 1 that he had not executed any agreement was discarded on the ground that firstly, he had not put in appearance and Kulwinder Kaur, his wife, who appeared as his general power of attorney (GPA), could not prove the plea taken by defendant no. 1. No evidence was produced by defendant no. 1 to prove that agreement in question is the result of fraud, misrepresentation or undue influence etc. It was also proved that plaintiff was always ready and willing to perform her part of contract.

6. The appeal filed by defendant no. 1 was also dismissed by learned Additional District Judge, Jalandhar.

7. I have heard learned counsel for the appellant and perused the lower Court record with his assistance.

8. Learned counsel for the appellant has argued that the appellant-defendant no. 1 has denied execution of agreement and has taken alternate plea that in the event of execution of agreement is proved, it was result of fraud, misrepresentation, undue influence etc. Though, defendant no. 1 has not appeared and his attorney has not stated anything about details of fraud, misrepresentation, concealment of facts relating to agreement to sell dated 17.10.2008, still from the statement of plaintiff this fact is proved that defendant no. 1-Harbans Singh has not executed any agreement. In support of above submission, he has referred to statement of PW-1 Charanjit Singh, marginal witness of agreement (Ex. P-1), who has stated that at the time of agreement 5/6 persons were present at the spot, namely; Joginder Singh, Harsimarjit Kaur, Charanjit Singh (PW-1), Ajit Singh, Manjit Kumar, deed writer and none else was present at that time which shows that defendant no. 1-

Harbans Singh was not present at the time of execution of agreement. He has further referred to some discrepancies in the statement of plaintiff's witness in order to make out a plea that agreement dated 17.10.2008 is the result of fraud. PW-1 Charanjit Singh, *Namberdar*, marginal witness of agreement, has stated that stamp papers were purchased by Harbans Singh at the spot while plaintiff while appearing as PW-2 has stated that stamp papers were bought by Joginder Singh. PW-1 Charanjit Singh has stated that agreement was scribed at about 11.00/11.45 a.m. and its execution was completed in 45 minutes but on the other hand plaintiff while appearing as PW-2 has stated that agreement was executed by 11.00 a.m./12.00 noon and its execution was completed by 2.50/03.00 p.m. and scribe Manjit Kumar, deed writer, has stated while appearing as PW-4 that agreement was scribed at about 02.00 p.m. PW-1 Charanjit Singh has stated that stamp papers purchased by defendant no. 1-Harbans Singh were of one or two pages while plaintiff has stated that it was of 4-5 pages but the agreement was written on stamp papers comprising of 3 pages.

9. The payment of earnest money is also not proved as plaintiff has stated that she had brought money from abroad through cheque which she got encashed and then made the payment. However, no evidence to corroborate her statement to this effect was produced.

10. All the above facts and circumstances show that agreement dated 17.10.2008 was a forged and fabricated document.

11. Plaintiff, in order to prove execution of the agreement, has examined marginal witness Charanjit Singh as PW-1. She herself appeared as PW-2 and examined the scribe as PW-4. All these witnesses have proved that agreement was scribed at the instance of defendant no. 1-Harbans Singh. The discrepancies regarding point of time and number of pages of stamp papers on which agreement was scribed are minor discrepancies, not material to draw inference that agreement is the result of fraud or misrepresentation as alleged by defendant no. 1-appellant. From the testimonies of witnesses, who were present at the time of execution of agreement, it is proved that agreement was duly executed by defendant no. 1-Harbans Singh. Statements of plaintiffs and her witnesses are also un-rebutted as defendant no. 1 himself did not step into witness-box to deny his signatures on agreement. His wife Kulwinder Kaur appeared as DW-1 and denied the agreement and signatures of defendant no. 1-Harbans Singh on the agreement. She was not present at the time of agreement and GPA was given by defendant no. 1 in her favour on 05.09.2011 i.e. during pendency of suit. On perusal of lower Court file it appears that the appellant has made an attempt to prove that agreement does not bear his signatures by taking permission of the Court to examine handwriting expert. Permission was allowed vide order dated 02.04.2012. Defendant no. 1-appellant then engaged a document expert who moved application on 08.09.2012 for permission to take photographs and inspect the case file. Permission was allowed to him for taking the photographs. Thereafter, defendant no. 1-appellant sought adjournment to place

on record the report of handwriting expert but the same was not produced. All this shows that defendant no. 1-appellant availed the service of an expert but avoided to produce his report on file and this led to inference that report was not placed on file obviously for the reasons that it may not have supported the contention of defendant no. 1-appellant that agreement does not bear his signatures. It cannot be disputed that defendant no. 1-appellant could take an alternate plea that agreement is the result of fraud and misrepresentation etc. while denying execution of the agreement but in this case, execution of the agreement is duly proved. Defendant no. 1-appellant had not been able to lead any evidence to prove his alternate plea that agreement is the result of fraud, misrepresentation, concealment of facts and without consideration etc. The witnesses examined by plaintiff duly prove the payment of earnest money. Plaintiff was not required to prove bank record regarding withdrawal of money and payment of the same to defendant no. 1-appellant. Even otherwise, plaintiff is real sister of defendant no. 1-appellant who has not pleaded any reason for her to fabricate the agreement to sell the suit property.

12. On perusal of judgments of Courts below I do not find any legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

March 11, 2016
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(SURINDER GUPTA)
JUDGE