

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3944 of 2015 (O&M)

Date of Decision : 15.07.2016

Baljit Kaur

....Appellant

Versus

Amrik Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Anil Kumar Sharma, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal by Baljit Kaur against the judgment and decree passed by Additional District Judge, Ludhiana whereby judgment and decree passed by Civil Judge (Junior Division), Ludhiana was set aside and suit of plaintiff was decreed for specific performance of agreement to sell dated 06.04.2009 and appellant was directed to execute the sale deed in favour of plaintiff-respondent within three months.

BRIEF FACTS

2. In later part of judgment, parties will be referred as plaintiff and defendant as per civil suit.

3. Case of plaintiff, in brief, is that defendant-appellant agreed to sell plot measuring 37.5 sq. yards out of *khasra* no. 645/1 and 646/1 situated at village Barewal Awana, H.B. No. 157, *Tehsil* and District Ludhiana for a sale consideration of ₹2,60,000/- and received ₹1 lac as earnest money. The date for execution and registration of sale deed was fixed as 25.07.2009 and possession was to be delivered at the time of execution of sale deed. 25.07.2009 and 26.07.2009 being Saturday and

Sunday were holidays, plaintiff intimated the defendant to come present on 27.07.2009 i.e. Monday in the office of Sub-Registrar, Ludhiana for execution and registration of sale deed. He remained present in the office of Sub-Registrar on 27.07.2009 but the defendant did not turn up and in order to mark his presence, plaintiff got attested an affidavit before the Executive Magistrate and then issued a legal notice dated 28.07.2009 through his counsel calling upon the defendant to execute the sale deed within a week. Plaintiff has always been ready and willing to perform his part of the contract but the defendant did not execute the sale deed resulting in filing of instant suit on 08.08.2009.

4. In the written statement, defendant admitted execution of agreement and receipt of ₹1 lac as earnest money. She took plea that on 24.07.2009, she informed plaintiff to come present in the office of Sub-Registrar, Ludhiana for execution and registration of sale deed but plaintiff was not ready with balance sale consideration. She again requested plaintiff to come to the office of Sub-Registrar on 27.07.2009 but plaintiff was again not ready with balance sale consideration. Under a settlement earnest money of ₹1 lac was returned to plaintiff and agreement was cancelled. When she asked plaintiff to return original agreement, he posed that the same has been misplaced.

5. Plaintiff reasserted his case in replication, contested, controverted and denied the plea raised by defendant in the written statement. Pleadings of parties led to framing of the issues as follows:-

- (i) Whether the defendant entered into an agreement to sell dated 06.04.2009 in favour of the plaintiff? OPP

- (ii) Whether the plaintiff remained always ready and willing to perform his part of the contract? OPP
- (iii) Whether the plaintiff is entitled for the relief of possession by way of specific performance of agreement to sell dated 06.04.2009? OPP
- (iv) If issue no. 3 is not proved, whether the defendant is liable to pay ₹2 lacs to the plaintiff as alternative relief with interest? OPP
- (v) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP
- (vi) Whether the suit of the plaintiff is not maintainable in the present form? OPD
- (vii) Whether the plaintiff has no *locus standi* to file the present suit? OPD
- (viii) Whether suit is bad for mis-joinder and non-joinder of the necessary parties? OPD
- (ix) Relief.

6. Learned Civil Judge (Junior Division), Ludhiana dismissed the suit with the observation that writing (Ex. DA), which states that the agreement was cancelled, bears signatures of plaintiff. On appeal, Ist Appellate Court set aside the finding of learned Civil Judge (Junior Division), Ludhiana with the observation that writing (Ex. DA) is a suspicious document. Only witness to this document (Ex. DA) is Tarlochan Singh, who has not specifically deposed that this document was signed by plaintiff-Amrik Singh. It was observed that document

(Ex. DA) was not duly proved.

7. The defendant had come up with the plea that plaintiff did not have ready money with him to pay balance sale consideration on 27.07.2009. Plaintiff rebutted the above plea by examining official of Punjab and Sind Bank to prove on record statement of account of plaintiff showing balance of ₹1,65,898/- in his bank account.

8. Learned counsel for the appellant while referring to writing (Ex. DA) has stressed that as per this writing plaintiff-Amrik Singh had cancelled the agreement and received earnest money. Learned Ist Appellate Court has committed grave error while discarding this document which bears signatures of plaintiff.

9. Learned Ist Appellate Court has discarded writing (Ex. DA) for the reasons as follows:-

- (i) It is not duly proved;
- (ii) plaintiff served notice dated 28.07.2009 (Ex. PW-3/3) on defendant through his counsel calling upon her to execute the sale deed but the notice was not replied. Had plaintiff cancelled the agreement, the defendant-appellant would have grabbed the first available opportunity to shot back reply to notice alleging that the agreement had already been cancelled;
- (iii) The defendant on service of notice in suit appeared before the trial Court on 01.10.2009 but did not file any written statement till 12.12.2009. On 12.12.2009, she did not appear and was proceeded *ex parte*. She

again appeared and moved application seeking setting aside of *ex parte* order dated 12.12.2009 and filed written statement on 31.05.2010, where she propounded the writing (Ex. DA);

- (iv) writing (Ex. DA) is undated and bears no stamp. This document has been shown as affidavit and there is 3/4 inches gap between signatures of plaintiff and last para of affidavit, which is lying blank. While this document has been typed, names of witnesses were not typed;
- (v) the defendant had failed to discharge onus heavily placed on her to prove the genuineness of signatures on writing (Ex. DA) by producing any direct evidence or by examining handwriting expert. The defendant had taken permission of Court to examine handwriting expert and also got the file examined by the expert but failed to produce his report or examine expert;
- (vi) there was specific clause in agreement that in the event of failure of plaintiff to get the sale deed executed, earnest money would stand forfeited. Case of defendant-appellant is that plaintiff did not have money to pay balance sale consideration. In that event earnest money stood forfeited and defendant-appellant was not required to refund the same to plaintiff. Readiness and willingness of plaintiff to perform his

part of the contract is duly proved and he has been able to prove that he had sufficient amount in his bank account to pay balance sale consideration to the defendant-appellant.

(vii) The defendant-appellant had not sought return of original agreement while returning the earnest money.

10. On perusal of lower Court record and judgment of Ist Appellate Court, I find that the reasons advanced by learned Ist Appellate Court are cogent and convincing while recording the finding of fact that the plea taken by defendant-appellant about cancellation of agreement to sell is false and frivolous. It is evident that plaintiff had not lost any time in seeking the relief of specific performance of agreement. The date for execution and registration of sale deed was fixed as 25.07.2009. It is not disputed that 25.07.2009 was Saturday and 26.07.2009 was Sunday, which were holidays. On 27.07.2009, plaintiff appeared before the Sub-Registrar to get the sale deed executed. He has proved that he was having enough money to pay balance sale consideration. On the next day i.e. 28.07.2009, he issued notice to defendant-appellant informing her of her non-appearance on 27.07.2009 in the office of Sub-Registrar and calling upon her to execute the sale deed in his favour within one week. The present suit was filed on 08.08.2009 i.e. within 10 days thereafter.

11. The story propounded by appellant that the agreement was cancelled vide writing (Ex. DA) is highly suspicious and has been rightly rejected by Ist Appellate Court. It is improbable and unbelievable that vendor under an agreement will be so generous to refund the earnest

money despite the fact that she was not bound to return the same and that too without asking the proposed vendee to return the original agreement. Appellant-Baljit Kaur has shown her further generosity when she says that after 28.06.2009, she never asked plaintiff to return the original agreement. Even after notice (Ex. PW-3/3), issued on 28.07.2009, the appellant neither replied the same nor asked plaintiff to return the original agreement. So far as writing (Ex. DA) is concerned, it has been rightly discarded by Ist Appellate Court being a forged, false and fabricated document. This writing was scribed in the shape of an affidavit but below the solemn information signatures of plaintiff-Amrik Singh are missing. It was not got attested from oath commissioner or any other authority. It bears no date or stamp. There is no evidence as to who scribed it. It was not scribed in the presence of DW-1 Tarlochan Singh, who has stated that this writing was not scribed in his presence. Learned Ist Appellate Court has rightly observed that there is gap of 3/4 inches below para 4 where writing ends and signatures of plaintiff and this 3/4 inches space is blank. If the writing was got typed there is no reason as to why names of witnesses were not got typed.

12. It is not the case where appellant had not attempted to prove that writing (Ex. DA) bears the signatures of plaintiff-Amrik Singh. She had moved application for permission to handwriting expert Dr. Inderjit Singh, who took photographs of writing (Ex. DA) for comparison of signatures of plaintiff with his admitted signatures. The permission was allowed by learned Civil Judge (Junior Division) vide order dated 09.05.2012. The file was also inspected. Perusal of interim order-sheet

shows that on 15.05.2012, counsel for defendant-appellant sought adjournment to examine expert witness. He was directed to place on record the report of expert, one week before the next date but no report was produced or expert was examined. Learned Civil Judge (Junior Division), Ludhiana had compared the signatures of plaintiff-Amrik Singh on Ex. DA with his admitted signatures and concluded that these talley with the signatures of Amrik Singh on agreement to sell, affidavit and other signatures on record but while recording this finding has failed to take into account the other facts and circumstances as discussed above.

13. On careful perusal of lower Court record and judgment of Ist Appellate Court, I find that it has committed no error of law or fact while setting aside the judgment and decree passed by learned trial Judge who failed to appreciate the facts of the case in proper spirit. It is not a case where finding of fact recorded by Ist Appellate Court is based on misreading of evidence or wrong appreciation of evidence on record calling for any interference in this appeal. No substantial question of law, requiring determination arises in this appeal, which has no merit.

Dismissed.

July 15, 2016
jk

(SURINDER GUPTA)
JUDGE