

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

RSA No.1586 of 2014

Date of decision: 03.03.2016

Darshan Singh

... Appellant

Versus

Bhagwan Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Surinder Garg, Advocate
for the appellant.

AMOL RATTAN SINGH, J.

1. This is the second appeal filed by the defendant in a suit filed by the respondent-plaintiff, which was decreed in her favour.

In the suit filed by the respondent, she had sought permanent injunction against the appellant-defendant, restraining him from alienating in any manner, land measuring 3 kanals 18 marlas, i.e. 78/960th share out of a total of 48 kanals of land, described in the detail in the plaint, situated in village, Moranwali, Tehsil and District Faridkot. She also sought that he be restrained from interfering in her peaceful possession of the property and to not dispossess her, except in due course of law.

2. As per the suit, the appellant-defendant had agreed to sell the suit property to the plaintiff-respondent on 04.12.1999 and had also handed over possession thereof to her, with 31.12.2001 stipulated as the

last date to execute the sale deed.

The appellant was shown by the respondent, in her plaint, to have received Rs.41,000/- as earnest money, of which Rs.40,000/- was received in cash at the time of execution of the agreement and thereafter Rs.1000/- received by him against a receipt on 25.12.2001.

It was further stated that upon receipt of the aforesaid Rs.1000/-, the date for specific performance was agreed to be within one year of the final decision of a civil case pending between the shareholders.

It was further contended in the plaint that the appellant-defendant was negotiating alienation of the suit property with other persons, with intent to defraud her (respondent-plaintiff) out of the agreement made with her.

It was alleged that the plaintiff was always ready and willing to perform her part of contract and had, in fact, requested the appellant-defendant to get the sale deed executed in her favour after receiving the remaining sale consideration in terms of the agreement but he refused to do so and, one day prior to filing of the suit, he allegedly threatened her that he would sell it to some other person and dispossess her.

Consequently, the suit was filed by the appellant on 26.05.2010.

3. Upon notice being issued to him, the appellant-defendant denied the agreement to sell and stated that the claim of the respondent-plaintiff was based on a forged and fabricated document, never executed

by him and that she having come to the Court with unclean hands, the suit was not maintainable.

It was further alleged that actually the appellant had agreed to mortgage the suit land with the respondent-plaintiff for a sum of Rs.40,000/- for two years, but she in connivance with the scribe and marginal witnesses, taking benefit of the appellants' illiteracy, succeeded in getting the agreement to sell executed, by keeping him in dark and thus she played a fraud on him.

It was further pleaded by the appellant in his written statement that he never received Rs.41,000/- from the respondent-plaintiff and only Rs.40,000/- was received, as mortgage amount, for the suit land. After two years, he had approached her many a time to get the mortgage redeemed and to take possession thereafter but she had put it off on one pretext or the other and as such, in fact, she (respondent-plaintiff) was in unauthorized and illegal possession of the suit land.

4. The appellant, in fact, filed a counter claim on the same set of facts as were taken in his written statement and claimed possession of the suit land by way of redemption of the mortgage, further seeking possession/damages of Rs.15,000/- per annum alongwith interest @ 18% from December 2001 onwards.

5. The respondent filed a replication to the written statement and a written statement to the counter claim of the appellant-defendant, taking preliminary objections of improper Court fee etc. Obviously, in the written statement to the counter claim, she reiterated the contents of her plaint, while denying that the agreement was actually in respect of a

mortgage of the suit land.

6. The following issues accordingly framed by the trial Court:-

- “1. Whether plaintiff is entitled for permanent injunction, as prayed for? OPP
2. Whether suit is not maintainable in the present form? OPD
3. Whether plaintiff has got no locus-standi to file present suit? OPD
4. Whether suit of the plaintiff is based on forged and fabricated documents? OPD
5. Whether plaintiff has not come to the court with clean hand and concealed material facts? OPD
6. Whether counter-claimant/defendant is entitled for possession and declaration, as prayed in counter-claim? OPD
7. Whether counter-claimant/defendant is entitled for permanent injunction, as prayed for? OPD
8. Whether proper court fee has not been affixed on the counter-claim? OPP
9. Whether defendant has no locus-standi to file counter-claim? OPP
10. Whether counter-claim is not maintainable? OPD
11. Relief”

7. The respondent-plaintiff examined herself as PW1, Gulshan Kumar Manchanda, Advocate, stated to be scribe of the agreement to sell, as PW2 and one Dharam Singh son of Harpal Singh, attesting witness to the said agreement, as PW3.

She also tendered a copy of the 'jamabandi' for the year 2009-10 in evidence, other than the agreement dated 04.12.1999 as

Ex.P1, one writing/note of the same date made by the appellant-defendant as Ex.P2, the receipt dated 25.12.2001, shown to be made on the back of the agreement, as Ex.P3, a writing/note dated 25.12.2001 made beneath the said receipt as Ex.P4 and a copy of the entry dated 04.12.1999, made in the deed-writers' register, as Ex.P5.

8. The appellant only examined himself as DW1, but could not produce any other witness, despite the grant of many opportunities in that regard.

9. In the light of the testimony of the respondent-plaintiff (PW1) and the scribe of the sale deed and its attesting witness (PWs2 and 3 respectively), the learned Civil Judge came to the conclusion that the documentary evidence led by the respondent-plaintiff, fully proved her case, also in view of the fact that as per the note dated 04.12.1999 (wrongly shown as 04.12.2001 in the judgment of the Civil Judge), the appellant-defendant had himself, in his own hand, stated that he had agreed to sell the suit land and had received Rs.40,000/- in respect of the same. Similarly, on 25.12.2001, he had again made an endorsement, Ex.P3, to the effect that he had received Rs.1000/- on that date, and had further stated that since a civil suit existed between co-sharers, relating to the suit land alongwith other land, he was not in a position to execute the sale deed upto 31.12.2001 and therefore, with the consent of the purchaser (respondent-plaintiff), he had agreed to execute the sale deed within one year of the final decision of the civil suit.

10. As regards the counter claim of the appellant, the learned Civil Judge found that other than his solitary statement, there was no

other evidence whatsoever, to show that the agreement was actually by way of a mortgage of the suit land by him to the respondent-plaintiff.

It was also found by the learned Civil Judge, that though the appellant had admitted his photograph on the agreement dated 04.12.1999 (Ex.P1), he denied his signatures on the photographs. In cross-examination, he stated that both Exs.P1 and P2 might be bearing his signatures. Thereafter, he even denied his signatures on the written statement, counter claim and the Power of Attorney (the Vakalatnama Ex.PX)executed by him in favour of his Advocate.

11. It was also found by the first Court that though in his cross-examination the appellant had stated that he had paid Rs.40,000/- to the respondent-plaintiff and that she had not returned his documents despite such payment, he had not filed any complaint to the police or any other authority in that regard, nor had he filed any suit for any declaration in his favour.

He also did not remember as to whether, in his written statement, he had got written anything with regard to re-payment of Rs.40,000/- to the respondent-plaintiff. However, he admitted that she was in possession of the suit land.

12. On appraisal of the above evidence, the learned Civil Judge came to the conclusion that the document dated 04.12.1999 was actually an agreement to sell the suit land upon receipt of Rs.40,000/- as earnest money by the appellant-defendant, with 25.12.2001 set to be the date by which the sale deed was to be executed, but on account of pendency of a civil suit between the co-sharers, the date for execution of the sale deed

was extended, to an indefinite date, i.e. within one year after the final decision in the civil suit. In the meanwhile, the appellant also received another Rs.1000/- on 25.12.2001 towards the payment of consideration money.

Thus, with the appellant not even able to prove his counter-claim in any manner whatsoever, other than his own testimony, the suit of the respondent-plaintiff was decreed in her favour by the learned Civil Judge, thereby granting her a decree of permanent injunction, restraining the appellant from interfering in her peaceful possession of the suit property and restraining him from further alienating it.

13. The learned District Judge, Faridkot, in the first appeal filed by the appellant before that Court, also discussed the entire evidence, including the testimony of the scribe to the agreement, Shri Gulshan Kumar Manchanda, Advocate, to the effect that he had scribed it on 04.12.1999, at the instance of the appellant, in favour of the respondent, after which it had been read over to the appellant, in the presence of witnesses including a Panch of village Moranwali, i.e. Chanan Singh, and Kala Singh of village Chahal, other than the attesting witness Dharam Singh. He also testified that he had made an entry in his register regarding the same and had proved the same entry.

Thereafter, while discussing the lack of evidence led by the appellant, to prove his counter-claim, further discussing the testimony of the appellant himself, admitting that he was not illiterate, having studied upto 5th class, and admitting to having received Rs.40,000/-, the appeal was dismissed on the same reasoning as it was by the learned Civil

Judge. It was held further by the first Appellate Court that the contention of the appellant that he had returned the amount of Rs.40,000/-, which he claimed to be the mortgage amount for the suit land, six years ago, had not been proved by him in any manner, including his own silence thereupon afterwards.

14. Mr. Surinder Garg, learned counsel for the appellant before this Court, in effect reiterated the arguments made before the Courts below, including the fact that the agreement to sell was actually a forged and fraudulently executed document.

However, he obviously could not deny the fact that when the appellant himself stepped into the witness box he could not prove, in any manner whatsoever, that he had actually returned Rs.40,000/- which he claimed to have taken by way of a loan, by mortgaging the property to the respondent-plaintiff. On the other hand, with the entire evidence as discussed hereinabove, led by the respondent-plaintiff, in support of her case, learned counsel again could come up with no argument to rebut the findings of the Courts below, except to state that the appellant, not being a fully illiterate man, had been taken for a ride.

15. Having heard learned counsel for the appellant, whereas this Court obviously cannot wholly discount the possibility of what the learned counsel has argued, however, it is not possible to reverse the findings of the courts below on any ground, in view of the fact that the appellant could not produce a single witness, even from his own village, to support his case, to the effect that he had actually mortgaged the land to the respondent-plaintiff for a sum of Rs.40,000/-. Having admitted to

his signatures on an agreement (though not on the photographs), which was proved to be an agreement to sell by its wordings, and having further admitted to having received Rs.40,000/- and thereafter not being able to prove his signatures to be false on any documents produced in evidence by the respondent-plaintiff, the plain argument of the learned counsel before this Court, cannot be accepted. This is all the more for the reason that the appellant even tried to deny his signatures on the pleadings set up by him before the courts below, as also on the 'Vakalatnama' that he signed in favour of his counsel, as already noticed while discussing the judgments of the Court below.

16. In view of the above, the appellant obviously has no legs to stand on, whatsoever.

Therefore, finding no error in the findings arrived at by the learned courts below, the present appeal is dismissed *in limine*, with no order as to costs.

03.03.2016

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(AMOL RATTAN SINGH)
JUDGE