

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-4362-2015(O&M)

Date of decision : 26.10.2016.

Hargursimran Singh

... Appellant

Versus

Smt.Kulwinder Kaur and others

... Respondents

***CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH***

Present: Mr.Sunny Bhardwaj, Advocate  
for the appellant.

**AMOL RATTAN SINGH, J.(ORAL)**

1. This is the second appeal of the first defendant, in a suit filed by respondent no.1 herein (hereinafter referred to as a plaintiff), seeking possession of the suit property by way of specific performance of an agreement of sale dated 13.05.2008.

The facts, as taken from the judgments of the learned courts below, are that it was contended by the plaintiff in her suit that the present appellant (hereinafter referred to as a appellant), was the owner of 24 kanals of land fully described in the plaint, situated in village Hauz @ Gandhar, Hadbast no.219, Tehsil Fazilka. On 13.05.2008, the appellant entered into the aforesaid agreement for sale of the land to the plaintiff, for a consideration of ₹9,90,000/- and consequently, the instrument (agreement) was executed, with the total sale consideration having been received by the appellant from the plaintiff, in the presence of marginal witnesses to the agreement.

The appellant was stated to have agreed to execute and get registered the sale deed as and when desired by the plaintiff, with her giving him notice in that regard.

The agreement was stated to have been duly notarized with the Notary Public, Fazilka, who made an entry in that regard in his register, with the witnesses to the agreement also having signed in the register.

2. It was further contended that the plaintiff had always been ready and willing to perform her part of the contract but the appellant avoided getting the sale deed executed and registered, due to which a registered notice was contended to have been issued to the appellant on 01.01.2011, but with him having refused to execute the sale deed even thereafter, the suit was instituted on 11.05.2011.

It was further prayed in the plaint that if for any reason the Court found the plaintiff not entitled to a decree of possession by way of specific possession, then the plaintiff would be entitled to the alternative relief of recovery of ₹13,46,400/-, including the sale consideration of ₹9,90,000/- and damages to the tune of ₹3,56,400/-, for non-fulfillment of the agreement. Interest @ 12% per annum, running from the date of institution of the suit, till payment of the aforesaid amount in the case of grant of the alternative relief, was also prayed for.

3. It was still further contended that as a matter of fact, the appellant, after execution of the agreement dated 13.05.2008, had without any consideration alienated a part of the suit land by way of a sale to defendants no.2 & 3 (respondents no.2 & 3 herein), who were also actually fully aware of the agreement between the plaintiff and the present appellant.

Thus, it was the plaintiffs' contentions that all the defendants, i.e. the

appellant and respondents no.2 and 3 herein, had connived with each other to thwart the plaintiff's attempts to get the sale deed executed.

Still further, it was contended that the plaintiff did not know of the "misdeed" of the defendants, which she only came to know on 09.05.2011 when she obtained a copy of the 'jamabandi' (records of rights) from the Halqa Patwari.

4. Upon notice having been issued by the learned Civil Judge (Sr. Div.), Fazilka, respondents-defendants no.2 & 3 did not appear despite service and were proceeded against ex-parte.

The appellant appeared through his counsel and filed his written statement, raising the usual preliminary objections and further stating that no agreement had been executed to sell the suit land and no amount of consideration had been exchanged and that the instrument of agreement relied upon was a forged and fabricated document.

5. A replication having been filed by the plaintiff, the following issues were framed by the learned Civil Judge:-

*"1. Whether the defendant no.1 entered into an agreement to sell the suit land on 13.05.2008 in favour of the plaintiff?OPP*

*2. Whether the plaintiff is still ready and willing to perform his part of contract?OPP*

*3. If issues no.1 & 2 are proved, whether the plaintiff is entitled to the relief of possession by way of specific performance of agreement in question?OPP*

*4. If issue no.3 is not proved, whether the plaintiff is entitled to the relief of alternative relief of recovery along with interest? If so, at what rate?OPP*

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

*6. Whether the agreement in question is a forged and*

*fabricated document?OPD*

7. *Whether the suit is not maintainable in its present form?OPD*

8. *Relief.”*

6. The plaintiff examined the Notary Public before whom the agreement was stated to have been notarized, who proved the said agreement, Ex.P1, as also the relevant extract of his register, Ex.P2.

The marginal witness to the agreement, Kuljit Singh, also testified as PW2 in terms of the suit of the plaintiff, as did one Sucha Singh, PW3.

The plaintiff herself testified as PW4, further proving in addition to the aforesaid documents, the jamabandi for 2004-05 Ex.P3, a khasra girdawari for the period 2009-10 as Ex.P4, a notice Ex.P5 and a postal receipt, Ex.P6.

The death certificate of her husband, Nirmal Singh, was also proved by the plaintiff as Ex.P7 and a certificate of a sale deed dated 09.11.2006 was also produced by her as Ex.P8.

7. The appellant examined his father, Parampal Singh, as DW1, who filed his affidavit, after which evidence on behalf of the appellant-defendant was closed.

In rebuttal, the plaintiff tendered into evidence a copy of two more sale deeds dated 13.12.2010 as Exs.P9 and P10.

8. Arguments having been addressed in terms of the pleadings of the respective parties, the learned Civil Judge, upon considering them and appraising the evidence, found that the agreement had been duly proved by the testimonies of the plaintiff, the attesting witness and the Notary Public, Sh.Hari Dev Bhusri, Advocate. It was found that the plaintiff had

contended that the appellant had put off the execution of the sale deed on the pretext that he had to clear a loan taken against the property, but he himself did not step into the witness box and instead examined his father as DW1.

This witness, in his affidavit, other than denying the agreement, further took a plea that his son was not mentally well and that due to his mental condition the plaintiff and her family had obtained a signature on blank papers but had never paid any money to the appellant.

However, it was found by the learned trial Court that this plea had not been taken anywhere in the written statement and no medical record had been produced, to prove that the appellant was not in a fit mental state.

In his cross-examination, DW1 had admitted that his son had passed class 9 and had sold off the 3 acres of land that he owned.

Thus, with no evidence having been led with regard to alleged unstable/weak mental condition of the appellant, that contention was rejected by the Court.

9. It was further held that whereas the witnesses examined by the plaintiff had duly proved the execution of the agreement in question, the story of the signatures of the appellant having been obtained on blank papers, was not proved in any manner by the appellant, to substantiate his plea of fraud.

The notice dated 01.01.2011 was also found to have been duly served upon the appellant, to which he never replied.

10. The contention of the plaintiff that a part from the suit land had been alienated to the respondents-defendants no.2 & 3 was also accepted by the learned Civil Judge, the said defendants never having appeared and

having been proceeded against ex-parte and the transfer of the land to them having been proved by way of the 'jamabandi' for the year 2004-05 (Ex.P3), in which mutation nos.1814 and 1813 were found to be mentioned.

On the aforesaid reasoning, issue no.1 with regard to the agreement having been duly entered into, was held in favour of the plaintiff.

11. As regards the readiness and willingness of the plaintiff to execute the sale deed, the payment of the entire sale consideration of ₹9,90,000/- was also found to have been proved, as was the sending of the legal notice requiring the appellant to execute the sale deed.

The financial capacity of the plaintiff was also held to have been proved by the learned Civil Judge, on the basis of a sale deed, Ex.P8, executed by Nirmal Singh for a total consideration of ₹5,40,000/- (by which it was inferred that the plaintiff had the money to pay the defendant). (It needs to be noticed that at this point of the learned judgment of the Civil Judge, Nirmal Singh is described as the father of the plaintiff, whereas in the memo of parties before that Court, she is shown to be the wife of Nirmal Singh.)

On the aforesaid reasoning, the issue of readiness and willingness of the plaintiff to execute the sale deed was also held in her favour.

Having held as above, the plaintiff was also held entitled to a decree of specific performance of the agreement in question and consequently, deciding all other issues also in favour of the plaintiff, the suit was so decreed, directing the appellant herein to execute a sale deed in favour of the plaintiff within 3 months from the date of judgment, failing which she would be entitled to get it executed through a Court. The

appellant was also restrained from alienating the suit land to any other person.

Even having held as above, the suit against defendants no.2 & 3 was dismissed.

12. The present appellant having filed a first appeal before the learned lower appellate Court, that Court also, after noticing the pleadings, the evidence led and the arguments addressed before it, came to the same conclusion that the agreement of sale had been duly proved and with defendants no.2 & 3 not having appeared to contest the suit, they could not be held to be bonafide purchasers of a part of the suit land.

13. The plaintiff also filed a cross appeal, seeking modification of the judgment and decree of the lower Court as regards dismissal of the suit qua defendants no.2 & 3, taking a plea that as the sale deed in favour of the said defendants had not been set aside by the Civil Judge, they also be directed to join the present appellant in executing a sale deed qua the entire suit land, in favour of the plaintiff.

14. The learned Additional District Judge, finding that the agreement had been duly proved to have been executed and the suit having been decreed in favour of the plaintiff, with a direction to the present appellant to execute the sale deed qua the entire suit land in her favour, defendants no.2 & 3 would also be required to be given the same direction, a part of suit land having been sold to them.

Consequently, while dismissing the first appeal of the appellant, the appeal filed by the plaintiff was accepted and the judgment and decree of the learned Civil Judge was modified to the aforesaid extent, with defendants no.2 & 3 being also directed to execute a sale deed along

with the present appellant, qua the entire suit land, in favour of the plaintiff.

15. In this second appeal before this Court, Mr. Bhardwaj, learned counsel for the appellant, after spelling out the facts of the case, submitted that the learned Courts below have wholly erred in decreeing the suit of the respondent-plaintiff, firstly in view of the fact that the appellant not being in a mental condition to appear before the Court, had examined his father in his place, who testified in respect of the mental condition of the appellant, as also with regard to the fact that the appellant was taken advantage of by the plaintiff, by obtaining his signatures on blank paper.

Mr.Bhardwaj next submitted that the fact that the plaintiff did not file a suit seeking specific performance of the alleged agreement, for a period of 3 years from the date of the agreement, further strengthens the case of the appellant, as otherwise with the entire consideration paid as alleged, no person would wait so long, i.e. from 13.05.2008 to 11.05.2011, to file such a suit.

16. Having heard learned counsel, though the second argument does require consideration, however, as regards the first plea of the mental illness of the appellant, I find no reason to interfere with the findings of the Courts below, to the effect that other than the oral testimony of the appellants' father, with regard to the appellant allegedly being in a unstable/weak mental condition, not even a prescription from any doctor to that effect was led by way of evidence. Hence, it would seem that the averment was made only to try and avoid specific performance of the agreement entered into by the appellant.

Though otherwise the possibility of the appellant not being worldly wise may not be entirely unbelievable, but in the absence of any

evidence whatsoever led in that regard, this Court would not be able to record a finding other than that which was recorded by the Courts below, on that aspect.

17. Coming then to the second argument of learned counsel, to the effect that it is strange that for 3 long years, just before limitation was to actually expire, the suit was instituted, even after the entire consideration money was stated to have been paid by the plaintiff to the appellant.

Normally, in such a situation, even possession would be handed over to the vendee, even if for any reason the sale deed could not be immediately executed, such as the property being encumbered. However, though contended to be a defence taken by the appellant for non-execution of the sale deed, it was not proved. In fact, it is to be noticed here that normally in such a circumstance, this Court has not been in agreement with the plaintiff-prospective vendee, that a sale deed should be executed after the suit was instituted towards the fag end of limitation.

However, in the present case, with the agreement even shown to have been notarized, with the Notary Public duly testifying to that effect, and proving the entry in his register also with regard to such notarization and further, with an attesting witness to the agreement also having duly testified in terms of the suit of the plaintiff, further supported by the testimony of the plaintiff herself and yet another witness who stood for her, with no evidence to the contrary led by the appellant, other than the testimony of his father, this Court does not find any ground to interfere in the concurrent findings of the Courts below.

Of course, the concurrence of findings does not extend to the issue with regard to the suit against respondents-defendants no.2 & 3, with

the suit having been decreed against them only by the lower appellate Court. However, the reasoning of that Court also, after holding the agreement to have been duly proved along with willingness of the appellant to execute the sale deed, is not found to be erroneous.

It is further to be noticed here that the alleged bonafide purchasers of a part of the suit land, i.e. respondents-defendants no.2 & 3, even after the decree against them by the lower appellate Court, have not come in appeal against such decree. Hence, it would seem obvious that they are not actually affected by the decree and possibly, the sale transaction in their favour was only a sham transaction, as contended by the plaintiff.

18. Consequently, finding no reason to interfere with the judgments of the Courts below, this appeal is dismissed in limine, but with no order as to costs.

(AMOL RATTAN SINGH)  
JUDGE

October 26, 2016.  
*Davinder Kumar*

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| Whether speaking / reasoned | Yes |
| Whether reportable          | Yes |