

RSA-4833-2015(O&M)

1

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-4833-2015(O&M)

Date of decision : 22.01.2015

Gurbhej Singh and others

... Appellants

Versus

Jaspal Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajesh Kumar Girdhar, Advocate
for the appellants.

REKHA MITTAL. J.

The present appeal has been directed against concurrent findings recorded by the Courts below whereby the suit filed by the respondent for possession by way of specific performance of agreement to sell dated 01.07.2006 in respect of land measuring 11 kanals 14 marlas, detailed in the head note of the plaint has been decreed by the learned trial Court and the judgment and decree passed by the trial Court has been affirmed in appeal.

The facts relevant for disposal of present appeal are that the respondent-plaintiff filed the suit for specific performance of agreement to sell dated 01.07.2006 on the plea that the appellants agreed to sell the suit land @ ₹12 lacs per killa. A sum of ₹6 lacs was paid to the vendors as earnest money at the time of execution of agreement. The sale deed was

agreed to be executed and registered on 30.06.2007. On 02.07.2007, the respondent remained present in the office of Sub Registrar, Amritsar along with balance sale price and ancillary expenses as 30.06.2007 happened to be a holiday being Saturday. The appellants did not turn up to perform their part of the agreement and committed breach thereof. A legal notice dated 17.03.2008 was served upon the appellants requesting them to execute the sale deed after receiving the balance sale price but to no response.

The appellants-defendants filed their written statement jointly raising preliminary objections to challenge maintainability of the suit and the respondent having not approached the Court with clean hands. They have altogether denied execution of the agreement to sell or receipt of earnest money with the averments that the alleged agreement is a forged, fabricated and fraudulent document. It is averred that respondent was working as financier and used to finance motor-cycles and scooters. One Kashmir Singh got his vehicle financed from the respondent and returned the loan amount. Gurbhej Singh wanted to purchase motor-cycle by getting it financed through the respondent and the respondent obtained signatures / thumb impressions of the appellants on blank paper on the ground that he required that paper as security. Gurbhej Singh went abroad and did not get his vehicle financed through the respondent.

The respondent filed the replication reiterating his version set up in the plaint while controverting the allegations raised in the written statement.

The learned trial Court after bestowing its thoughtful consideration to the rival submissions made by counsel for the parties in the light of pleadings, issues framed and evidence adduced came to hold that the appellants executed the agreement in question for sale of their property and the respondent always remained ready and willing to perform his part of the agreement and thus, he is entitled to a decree for specific performance of said agreement. The appellants were also restrained from alienating the suit land to a third party.

The judgment and decree passed by the trial Court was affirmed by the Court in appeal as the appeal preferred by the appellants came to be dismissed by the Additional District Judge, Amritsar.

Counsel for the appellants would contend that the agreement in question propounded by the respondent is nothing but the result of fraud played upon the appellants whose signatures / thumb impressions were obtained on blank paper as Gurbhej Singh one of the appellants approached the respondent for availing facility of finance to purchase a motor-cycle. It is further argued that the respondent used those blank signatures / thumb impressions to prepare the agreement in question and has been successful in obtaining decree for specific performance of the agreement. It is further argued that in the agreement to sell Ex.P1, there is a recital that in case the executants returned the amount of ₹6 lacs taken by way of advance, the document would be treated as invalid. According to learned counsel, the aforesaid stipulation in the agreement is more than sufficient to substantiate the contention of the appellants that they never

entered into an agreement to sell the suit land rather on the contrary, the agreement was executed by way of a collateral security for repayment of the amount intended to be taken by Gurbhej Singh for purchasing a motor-cycle. It is further argued that the courts below have failed to appreciate the contents of the agreement in right perspective and as a result fell into serious error by holding in favour of the respondent.

I have heard counsel for the appellants, perused the records but do not find any merit in the appeal.

The appellants have admitted that their thumb impressions and signatures were obtained but with the plea that those signatures and thumb impressions were given on blank paper as Gurbhej Singh wanted to avail some loan from the respondent. It is not the plea of the appellants that Gurbhej Singh actually obtained any loan or got a motor-cycle financed through the respondent. On the contrary, the plea is that Gurbhej Singh did not get any finance from the respondent as he had left for some foreign country. It is difficult to accept to reason that even if Gurbhej Singh wanted to get a motor-cycle financed through the respondent, he would give his thumb impression or signatures on a blank stamp paper without approaching any dealer for purchase of a motor-cycle. This apart, if Gurbhej Singh wanted to avail some financial assistance from the respondent, where was the occasion for all the appellants including Balraj Lair, Sarabjit Kaur daughters and Lakhwinder Kaur widow of Major Singh to append their signatures / thumb impressions on blank stamp papers. The very fact that the agreement in question bears the thumb

impressions and signatures of all the appellants numbering 5 on all the three pages of the agreement written on stamp papers, the Courts below have rightly rejected plea of the appellants that the agreement in question is the result of forgery, fabrication much less fraud. As the appellants have altogether denied the execution of the agreement in question or availing any loan facility, they cannot take any advantage to their contention from a recital in the agreement as has been pointed out by counsel for the appellants. The matter would have been different had the appellants admitted the execution of agreement in dispute but raised a plea that they had taken a loan of ₹6 lacs from the respondent and the agreement was executed as a collateral security for repayment of the said loan amount. In this view of the matter, I do not find any merit in the contentions of the appellants either to hold that a substantial question of law arises for adjudication or there is an error much less illegality committed by the courts below in allowing claim of the respondent-plaintiff.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine. No order as to costs.

(REKHA MITTAL)
JUDGE

January 22, 2016.
Davinder Kumar