

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

**R.S.A No. 5500 of 2015 (O&M)
Date of decision :09.02.2016**

Sohan Lal and another

..... Appellant

Versus

Bakhsho

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.D.K.Bhatti, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 24.08.2015 passed by the learned Additional District Judge, Jalandhar, vide which the appeal preferred against the judgment and decree dated 07.10.2014, passed by the learned Addl.Civil Judge (Sr. Division), Phillaur, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Appellant-defendant no.1 Kamaljit agreed to sell the suit property to the plaintiff vide agreement to sell dated 18.08.2009 for a sum of Rs.6,25,000/-. He agreed to execute and got registered the sale deed in favour of the plaintiff on 05.11.2009. On that date, plaintiff remained present in the office of Sub-Registrar, Phillaur for execution and registration of the sale deed. But, defendant did not turned up despite due message. The plaintiff got her presence marked in the office of Sub-Registrar by filing an

application. She was always remained ready and willing to perform his part of contract and is still ready. But, defendant neglected to perform his part of contract. Hence the suit.

4. Appellant-defendant Kamaljit contested the suit on the grounds *inter alia* that the agreement to sell is forged and fabricated document. He has never received any consideration. The property in dispute is ancestral property of his father namely Sohan Lal. He is not the owner of the property in dispute. The agreement to sell dated 18.08.2009 is an act of fraud and misrepresentation. The witnesses of the agreement are the relatives of the plaintiff. With these pleas, he pleaded for dismissal of the suit.

5. Appellant-defendant Sohan Lal was impleaded as a party in the suit on the basis of his application. He also filed the separate written statement pleading *inter alia* that he is owner in possession of the property in dispute. Defendant no.1-Kamaljit is neither owner nor in possession of the suit property. The alleged agreement is false, forged and fabricated document. Defendant no.1 has not received any consideration for the alleged agreement to sell dated 18.08.2009. The property in dispute is owned by him. He has spent huge amount on the construction thereof.

6. Plaintiff filed replications to the written statements filed by both the defendants.

7. From the pleadings of the parties, the following issues were framed by the learned trial Court on 28.02.2014:-

1. Whether plaintiff is entitled to relief of possession by way of specific performance of agreement to sell in favour of plaintiff on 18.08.2009 as prayed for?OPP
2. Whether plaintiff is and was ready and willing to

perform his part of contract?OPP

3. Whether plaintiff is entitled for relief of permanent injunction as prayed for?OPP
4. Whether plaintiff is entitled to alternative remedy of recovery Rs. 6,35,000/- alongwith interest?OPP
5. Whether suit of the plaintiff is not maintainable in the present form?OPD
6. Whether plaintiff has no locus standi to file the present suit?OPD
7. Relief.

8. On appreciating the evidence and material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the plaintiff vide impugned judgment and decree dated 07.10.2014.

9. Aggrieved with the aforesaid judgment and decree the defendants preferred the appeal and the same was also dismissed by the learned Additional District Judge, Jalandhar vide impugned judgment and decree dated 24.08.2015. Hence this Regular Second Appeal.

10. I have heard Mr. D.K.Bhatti, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

11. Initiating the arguments, learned counsel for the appellant contended that appellant Kamaljit was not the owner nor in possession of the suit property. So, he was not competent to execute the agreement to sell for the sale of the said property. He further contended that the suit property is ancestral property of appellant-Sohan Lal. The same is situated within the '*lal dora*' of the village. It is a double story constructed house. The same was constructed by him spending huge amount. Learned counsel for the appellant further contended that PW-3 has admitted in the cross-examination

that the disputed property is the ancestral property of appellant-Sohan Lal. Thus, he contended that appellant no.1-Kamaljit had no right to transfer/sell the same in favour of the plaintiff. He contended that learned Courts below have wrongly discarded the evidence adduced by appellant-defendant Sohan Lal to prove his ownership qua the suit property.

12. He further contended that the alleged agreement to sell is the result of fraud and misrepresentation. Defendant-appellant Kamaljit has not received any earnest money nor he signed the agreement to sell. The attesting witnesses are the relatives of the plaintiff. Thus, he contended that the findings of learned Courts below are erroneous.

13. I have duly considered the aforesaid contentions.

14. The plea of fraud and misrepresentation raised by the appellants is not available to the defendant-appellant Sohan Lal as he was not party to the agreement. This plea was only available to appellant-defendant Kamaljit. But, he has not stepped into the witness box. So, there is no evidence on record to establish that the agreement to sell dated 18.08.2009 has been obtained by the plaintiff-respondent by playing the fraud upon defendant-appellant Kamaljit or as a result of misrepresentation as that no consideration was received by him.

15. Even otherwise, in order to establish the execution of the agreement to sell dated 18.08.2009, plaintiff-respondent has examined PW-1 Sham Sunder, the scribe of the agreement. He categorically deposed that agreement Ex.P-1 was scribed by him at the instance of Kamaljit. He also proved the extract of his register Ex.P-2. He further deposed that Kamaljit has told him that he is owner of the property and payment was made in his

presence. Then, there is the statement of PW-3 Gurbachan Ram, the attesting witness of the agreement. He has further supported the case of the plaintiff regarding the execution of the agreement to sell by appellant-Kamaljit in favour of the plaintiff. He also deposed about payment of Rs. 6,25,000/- as sale consideration by the plaintiff to defendant-appellant Kamaljit in his presence and further deposed that the possession of the one room on the ground floor was given to the plaintiff. Plaintiff herself stepped into the witness box as PW-2 and fully supported the version mentioned in the plaint. Learned counsel for the appellants has not been able to point out any inconsistency in the statements of these witnesses qua the execution of agreement to sell Ex.P-1 by appellant-Kamaljit. All the three witnesses have also consistently deposed about the payment of the sale price. As already mentioned, appellant-defendant Kamaljit, the executant of the agreement has not stepped into the witness box to rebut the aforesaid evidence and to negate its execution and receipt of consideration. DW-2 Amarjit and DW-3 Manpreet Singh have identified the photographs of appellant-defendant Kamaljit on agreement to sell Ex.P-1. DW-3 Manpreet Singh has further stated that defendant had never moved any application in the Panchayat regarding any fraud committed by Bakhsho regarding the said agreement. Thus, from the aforesaid evidence, the execution of the agreement to sell Ex.P-1 for the sale of the suit property by appellant-defendant Kamaljit in favour of the plaintiff-respondent is fully established.

16. Appellant-defendant Kamaljit is estopped to deny his title. He has executed the agreement to sell Ex.P-1 for the sale of the suit property representing himself to be the owner of the suit property. So, now he cannot

deny his title. From the aforesaid evidence, it is established that he has received the sale consideration at the time of execution of the agreement. So, his conduct estopps him to raise the plea that he had no title to the suit property.

17. Appellant-defendant Sohan Lal has claimed that he was the owner of the suit property, which was his ancestral property and he has raised the construction therein. But, no documentary evidence has been adduced by appellant-defendant Sohan Lal with respect to the ownership of the suit property and construction thereupon except the identity card issued by the Election Commission of India, which certainly is not the document of title. Appellant-Sohan Lal is assailing the validity of the agreement simply on the ground that defendant-Kamaljit was not the owner of the suit property and rather he was the owner of the suit property being his ancestral property. So, it was incumbent upon him to establish his ownership qua the suit property. In order to discharge his onus appellant-defendant Sohan Lal has stepped into the witness box as DW-1 and reiterated the version mentioned in the written statement. He has examined DW-2 Amarjit and DW-3 Manpreet Singh, who have also corroborated his version. Thus, the entire case of appellant-defendant Sohan Lal is based on the oral evidence. DW-3 Manpreet Singh has admitted in the cross-examination that he has never seen the document of title with appellant-Sohan Lal. DW-2 Amarjit has stated in the cross-examination that appellant-Kamaljit is resident of his village. House of appellant-Kamaljit Singh is situated within the '*lal dora*'. He further deposed that appellant-Sohan Lal has two houses in the village Samrai, Tehsil Phillaur, District Jalandhar. Now, Sohan Lal is residing in

Chubara of the property in dispute. As per the admission of this witness, Sohan Lal has two houses in the village and the house of appellant-Kamaljit is situated within the '*Lal Dora*' of the village. Meaning thereby, this fact is not disputed that appellant-Kamaljit has a house in the '*Abadi Deh*' of the village.

18. Learned counsel for the appellants has also relied upon the admissions in the statement of PW-3 Gurbachan Ram to contend that he has admitted that the suit property is the ancestral property of appellant-Sohan Lal. It is the settled principle of law that the statement of a witness is to be read as a whole and no conclusion can be drawn by picking up of a sentence from the statement in isolation. PW-3 in the cross-examination has stated that appellant-Kamaljit has produced one document of ownership at the time of writing. Those were the stamp papers. Name of appellant-Kamaljit was mentioned on those stamp papers. Sohan Lal has given the right of ownership. He further deposed that proof of ownership was in favour of Kamaljit. No doubt, he has admitted that it was the ancestral property of Sohan Lal, but he further deposed that partition took place between Sohan Lal and his sons. But, he has not been able to tell the date of partition. So, there is no clear cut admission in the statement of PW-3 Gurbachan Ram that appellant-Sohan Lal was the owner of the suit property, rather he has stated that the partition has taken place between Sohan Lal and his sons. If that is so, then Sohan Lal cannot claim that he was the owner of the suit property. The plaintiff has also produced the evidence to show that appellant Kamaljit had got installed the electric connection in his name in the suit property. His ration card was also issued on the address of this property. He

was in possession of the suit property. Whereas, appellant-Sohan Lal had no document to show his ownership and possession qua the suit property except the voters identity card. Thus, in these circumstances, the ownership of appellant Kamaljit qua the suit property cannot be disputed and appellant-defendant Sohan Lal has not been able to establish that the suit property was owned and possessed by him.

19. Learned counsel for the appellant has not assailed the findings of the learned Courts below with respect to readiness and willingness on the part of the plaintiff-respondent to perform her part of contract.

20. So, the concurrent findings arrived at by the learned Courts below requires no interference in this second appeal while exercising the limited powers under Section 100 CPC.

21. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

22. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 09, 2016

s.khan

(DARSHAN SINGH)
JUDGE