

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

**RSA No.4258 of 2014 (O&M)
Date of Decision: 05.08.2016**

Jai Bhagwan and another

.....Appellants

Vs

Naresh Yadav

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sumit Sangwan, Advocate
for the appellants.

Mr. Charu Sharma, Advocate for
Mr. Arun Singhal, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J

CM No.9868-C of 2014

For the reasons mentioned in the application, delay of
29 days in re-filing of the appeal is condoned.

Application stands disposed of.

RSA No.4258 of 2014

[1]. Defendant/appellants are in Regular Second Appeal
against judgments and decrees passed by the Courts below
decreeing the suit of the plaintiff.

[2]. Brief facts as gathered from the record are that plaintiff filed suit for possession by way of specific performance of agreement to sell dated 27.07.2007 on payment of balance sale consideration of Rs.1,15,000/- in respect of land measuring 1 *Kanal 5 Marlas* which was the 2/3rd share of land measuring 1 *Kanal 7 Marlas* comprised in *Khewat* No.254/233, *Khatoni* No.296, Rect. No.62, *Killa* No.22/2/1 (1-7) and land measuring 0 *Kanal 2 Marlas* comprised in *Khewat* No.131/118, *Khatoni* No.146, Rect. No.62, *Killa* No.26 (1-10) and land measuring 0 *Kanal 5 Marlas* being 1/3rd share of 0 *Kanal 15 Marlas* comprised in *Khewat* No.1086/1027/1, *Khatoni* No.1344/1885, Rect. No.33, *Killa* No.24 (0-15) as per jamabandi for the year 2003-04 situated in village Nara, Tehsil and District Panipat.

[3]. Plaintiff alleged that the defendants were owners in possession of the suit land and they entered into agreement to sell dated 27.07.2007 for a sale consideration of Rs.8 lacs per acre. Defendants received an amount of Rs.10,000/- as earnest amount. Target date for registration of the sale deed was fixed on or before 01.01.2008. Possession of the land was to be given to the plaintiff at that time. It was agreed that the mutation of inheritance would be got sanctioned in favour of plaintiff on or before the target date. If the defendants would not be able to get the sale deed executed and registered in favour of the plaintiff,

then the plaintiff would have all the right to get the same executed through the process of Court at the cost of the defendants. On coming to know that the defendants were bent upon to alienate the suit land to some other person, plaintiff filed a civil suit for permanent injunction seeking to restrain the defendants from alienating the suit land. Civil Court passed an order of *status quo* on 09.10.2007. On the target date i.e. 01.01.2008, plaintiff visited the office of Sub-Registrar in order to perform his part of obligation, but the defendants did not turn up. Plaintiff got his presence marked by way of producing affidavit before the Executive Magistrate on 01.01.2008. Ultimately suit came to be filed on this background.

[4]. Defendants contested the suit on all counts. Execution of agreement to sell dated 27.07.2007 was denied. Payment of earnest money was also denied. It was alleged that the plaintiff by taking benefit of good relations between them obtained the signature of defendant No.1 and thumb impression of defendant No.2 on some blank papers and thereafter prepared the forged agreement to sell dated 27.07.2007 in collusion with the scribe and witnesses. Defendants further alleged that in the month of July 2007, defendant No.1 borrowed an amount of Rs.10,000/- from the plaintiff for purchasing a buffalo and promised to return the same with interest upto 20.10.2007. Amount was repaid with

interest and the defendants asked for return of the signed papers, but the same were not returned on one pretext or the other.

[5]. After completion of pleadings, parties went to trial on the following issues:-

- “1). Whether the agreement to sell dated 27.7.2007 was executed between plaintiff and defendants and defendants received an amount of Rs.10,000/- as earnest money?
OPP*
- 2). Whether the plaintiff was/is still ready to perform his part of contract by making payment of remaining sale consideration?
OPP*
- 3. In case issue nos.1 and 2 referred above are decided in favour of plaintiff, then whether the plaintiff is entitled to relief of possession by way of specific performance on the grounds as alleged in the plaint? OPP*
- 4. Whether the present suit is not maintainable in the present form ? OPD*
- 5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?
OPD*

6. *Whether the plaintiff has not come to the court with clean hands? OPD*
7. *Whether the plaintiff has no cause of action and locus-standi to file the present suit? OPD*
8. *Relief.”*

[6]. Plaintiff got himself examined as PW-1 and Dharam Singh appeared as PW-2. After tendering documents Ex.P-1 to Ex.P-6 plaintiff closed his evidence. On the other hand, defendant No.2 appeared as DW-1 and did not produce any documentary evidence in defence. Evidence of the defendants was closed.

[7]. After appraisal of the evidence, trial Court decreed the suit partly in favour of plaintiff with costs, thereby entitling him to get the sale deed executed in his favour in respect of land comprised in Rect. No.62, *Killa* No.22/2/1 and Rect. No.62, *Killa* No.26 only. Defendants were directed to execute the sale deed in favour of plaintiff in respect of above said land after receiving balance sale consideration within three months from the date of passing the decree by the trial Court on 27.09.2011.

[8]. Defendants remained successful in appeal before the lower Appellate Court which was dismissed vide judgment and decree dated 28.11.2013.

[9]. I have heard learned counsel for the appellants to some extent.

[10]. Plaintiff while appearing as PW-1 reiterated the stand taken by him in the plaint. He denied suggestion that the defendants had taken loan of Rs.10,000/- for purchasing a buffalo. He also denied the suggestion that the defendants had returned such amount with interest in the month of October 2007. Plaintiff also denied that he obtained signatures/thumb impressions of the defendants on some blank papers. In support of agreement to sell, he got examined Dharam Singh PW-2 who deposed that he put his signature on agreement to sell executed between the parties as witness.

[11]. Defendant No.2 Shri Dutt appeared as DW-1 and asserted that the amount of Rs.10,000/- was taken by the defendant as loan from the plaintiff for purchasing a buffalo. He admitted that no writing was done in respect of this transaction. He stated that his signature and thumb impression of his brother were taken by the plaintiff on some blank papers and stamp papers. He admitted his signature on Ex.P-1 at point 'A'. This witness also denied the suggestion of the plaintiff that loan of Rs.10,000/- was not given to them. He further stated that he has not received any receipt regarding payment of Rs.10,000/-. The

witness also stated that on 13.02.2007, they received Rs.90,000/- as token money.

[12]. *Jamabandi* for the year 2003-04 Ex.P-4 and Ex.P-5 and mutation No.3982 (Ex.P-6) proved that the defendants were owners in the possession of the suit land. Execution of agreement to sell dated 27.07.2007 (Ex.P-1) was proved with reference to evidence. Though the defendants have admitted their signature and thumb impression on the document, but in different context. They alleged fraud having been played by the plaintiff upon them. Defendants did not deny their signature and thumb impression, therefore, the onus shifted upon them in the event of proving agreement to sell by the plaintiff.

[13]. It is a settled principle that onus to prove a relevant fact is always on a party, who asserts in affirmative. Initial onus to prove agreement to sell was discharged by the plaintiff, thereafter the party, who alleged fraud was bound to prove factum of fraud by leading cogent evidence. Defendants were also bound to prove on record that the signature obtained by the plaintiff on blank paper and stamp paper were in fact towards security for the loan so advanced to them.

[14]. The plea of fraud has to be proved like a criminal case. Fraud is liable to be pleaded and proved. Defendants have

admitted their signature/thumb impression on the document and took up the plea of fraud played upon them. In such situation the onus shifted upon them to prove that the fraud was played upon them by the plaintiff. No evidence was led by the defendants. Even the agreement can be a oral agreement. Mere non-registration of agreement to sell was not sufficient to disapprove the case of the plaintiff. The agreement to sell to cover share in the land at three different places comprised in Rect. No.62, *Killa* No.26, Rect. No.62, *Killa* No.22/2/1 and Rect. No.33 and *Killa* No.24. Mutation (Ex.P-6) clearly proved that the defendants were owners in possession of land comprised in Rect. No.62, *Killa* No.22/2/1 and Rect. No.62, *Killa* No.26. *Jamabandi* for the year 2003-04 demonstrated that the land comprised in Rect. No.33, *Killa* No.24 was not owned by the defendants. Therefore, plaintiff was entitled to get the sale deed executed and registered in respect of Rect. No.62, *Killa* No.22/2/1 and Rect. No.62, *Killa* No.26 only. Plaintiff was not entitled to get the sale deed executed in respect of Rect. No.33, *Killa* No.24 as the same was not found under the ownership of the defendants.

[15]. The earnest money paid was required to be considered as a part sale consideration for the land of which the defendants were found to be owners in possession. Except the bald statement of defendant No.2, no evidence was led by the

defendants. Factum of signature and thumb impression of the defendants was proved on agreement to sell (Ex.P-1). In the absence of any evidence to rebut the due execution of agreement to sell. No fraud or mis-representation could be presumed.

[16]. The substantial questions as projected in para No.6 of the grounds of appeal cannot be taken notice of as the ingredients of fraud have not been pleaded and proved by the defendants. Question Nos.(i) to (iii) are revolving around allegation of fraud which was not proved by the defendants by leading any evidence. Question No.(iv) cannot be answered inasmuch as that once the execution of agreement to sell was proved, normal course is to grant decree for specific performance. The Courts below have rightly found that agreement to sell can be honoured in respect of land for which defendants were found to be owners in possession. Qua the land comprised in Rect. No.33, *Killa* No.24, the Courts below have rejected the claim of the plaintiff. No hardship was pleaded and proved by the defendants, therefore, questions Nos.(iv) cannot be appreciated in the light of aforementioned facts.

[17]. Question No.(v) and (vi) do not arise for consideration as the findings recorded by the Courts below are correct

findings based on proper appreciation of the evidence. No misreading of evidence was done by the Courts below, nor findings can be treated to be perverse by any stretch of imagination. No grave and manifest injustice can be presumed on that score.

[18]. Having considered the controversy in the light of aforesaid facts, this Court found that no indulgence can be granted in this appeal and the same is accordingly dismissed.

August 05, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No