

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

**R.S.A No. 5047 of 2014 (O&M)
Date of decision :08.02.2016**

Gurmail Kaur and others

..... Appellants

Versus

Gurmeet Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Raj Kumar Garg, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 03.04.2014 passed by the learned Additional District Judge, Patiala, vide which the appeal preferred against the judgment and decree dated 06.08.2012, passed by the learned Addl. Civil Judge (Sr. Division), Patiala, has been dismissed.

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

3. Plaintiff-respondent filed suit a suit for specific performance of agreement to sell dated 30.08.2003 on the allegations that the appellants had agreed to sell their share of land in the suit land measuring 54 Bighas 9 Biswas to the extent of 16 Bighas 6 ½ Biswas along with all the rights appurtenant thereto situated in village Reetkheri, Tehsil and

District Patiala at the rate of Rs.3, 50,000/- per acre to the plaintiff. Plaintiff paid Rs.5,50,000/- as earnest money at the time of execution of the agreement. The remaining sale consideration was to be paid at the time of execution and registration of the sale deed. However, on 02.05.2004, defendants i.e. Gurmail Kaur and Sher Singh further obtained a sum of Rs. 1 lac from the plaintiff towards the balance sale consideration. The target date for execution of the sale deed was fixed as 14.12.2004. On 14.12.2004, the plaintiff remained present in the office of Sub-Registrar, Patiala along with remaining sale consideration and the necessary funds to meet out the execution and registration charges of the sale deed. But, the appellant-defendants did not appear. Plaintiff also got marked his present in the office of Sub-Registrar, Patiala. Hence the suit.

4. Appellants-defendants contested the suit on the grounds *inter alia* that they never agreed to sell the suit land to the plaintiff. They also denied the receipt of the earnest money. They further pleaded that infact, they are the customers of Mohan Lal, commission agent, who runs his shop at Anaj Mandi, Sirhind Road, Patiala. They used to sell their agriculture produce at the shop of Mohan Lal. Mohan Lal had been obtaining signatures on some blank papers and blank pages of books/registers. They use to put their signatures in good faith. In May/June, 2003, Mohan Lal along with one more person came to their house and projected that as per the instructions of the Government every commission agent has to submit the list of his clients and the detail of agriculture land held by them. On that pretext, he obtained the signatures/thumb impressions on 4-5 blank papers and in a register

brought by him. They further pleaded that the instant suit has been filed by the plaintiff in collusion with said Mohan Lal. It was further pleaded that Balkar Singh was not even present at Patiala on 30.08.2003. They also denied having received Rs. One lac from the plaintiff. With this, they also raised certain and preliminary objections and pleaded for dismissal of the suit.

5. The plaintiff filed the replication controverting the pleas raised in the written statement and reiterating those of the plaint.

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

1. Whether the plaintiff is entitled to the specific performance of the agreement to sell dated 30.08.2003 in respect of the suit land? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether the plaintiff has been ready and will and is still ready to perform his part of the agreement? OPP
4. Whether in the alternative plaintiff is entitled to the recovery of Rs. 11 lacs with claimed rate of interest? OPD
5. Whether the suit of the plaintiff is not maintainable in the present form? OPD
6. Whether the plaintiff has not come to the Court with clean hands? OPD
7. Relief.

7. 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 06.08.2012.

8. Aggrieved with the aforesaid judgment and decree, the

defendants preferred the appeal and the same was also dismissed by the learned Additional District Judge, Patiala vide impugned judgment and decree dated 03.04.2014. Hence this Regular Second Appeal.

9. I have heard Mr. Rakesh Kumar Garg, Advocate, learned counsel for the appellants and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellants contended that the agreement to sell is the result of the fraud and fabrication. The defendants use to sell their agriculture produce at the shop of Mohan Lal, a commission agent. They use to take advance from the commission agent from time to time and he used to obtain their signatures on the blank papers in the books/registers, which they used to do in good faith. He contended that in the month of May/June, 2003, said Mohan Lal along with one more person went to the house of the appellants and obtained their signatures on blank papers and in a register on the pretext that they have to supply the information to the government about their customers and their land holdings. Thus, he contended that the valid execution of the agreement to sell is not established. The agreement has been fabricated by the plaintiff in collusion with Mohan Lal.

11. He further contended that the agreement is uncertain and is not enforceable. He contended that the sale price of the suit land is not mentioned in the agreement. He further contended that it is alleged that Rs.One lac was paid towards remaining sale price on 02.05.2004, but this fact is not mentioned by the plaintiff in his application Ex.P-3 and affidavit Ex.P-5, which were allegedly moved before the Sub-Registrar,

Patiala on 14.12.2004. Thus, the story put-forward by the plaintiff stands falsified. He further contended that Mohan Lal has taken active interest in the transaction. He has signed the agreement as an attesting witness. He appeared in the witness box as attesting witness and even accompanied the plaintiff to the office of Sub-Registrar on 14.12.2004 i.e. the date fixed for execution and registration of the sale deed. But, plaintiff has tried to conceal his presence and this version of the plaintiff stands falsified from the affidavit Ex.P-5 itself as it bears the signatures of Mohan Lal, commission agent. Finally, he contended that learned Courts below have not properly appreciated all these facts.

12. I have duly considered the aforesaid contentions.

13. This Regular Second Appeal has been directed against the concurrent findings recorded by the learned Courts below. The law is well settled that as per Section 100 Code of Civil Procedure, 1908 (for short 'CPC'), the High Court has limited jurisdiction. It can only interfere, if the Courts below have misdirected itself and misinterpreted the evidence. Some material evidence has been ignored and some evidence which was inadmissible has been taken into consideration or that their approach is perverse.

14. The contentions raised by learned counsel for the appellants when tested on appreciating the evidence/material available on record are devoid of merits. In order to establish the execution of the agreement to sell Ex.P-1, plaintiff himself stepped into the witness box as PW-1. He also examined PW-2 Mohan Lal, the attesting witness. Their statements have also been corroborated by PW-3 Yog Raj, Typist, the scribe of the

agreement. They have deposed that the contents of the agreement were read over and explained to the defendants. Thereafter, defendant Balkar Singh and Sher Singh appended their signatures and their mother Gurmail Kaur put her thumb impression. Plaintiff-Gurmeet Singh and PW-2 Mohan Lal have also consistently deposed about the taking of the earnest money of Rs. 5,50,000/- at the time of execution of the agreement to the defendants.

15. The signatures and thumb impressions on the agreement are impliedly admitted. The defendants have taken the plea that PW-2 Mohan Lal had obtained their signatures on blank papers and in the register when he visited their house in the month of May/June, 2003 on the pretext that he is to furnish the information about his customers to the government. Even, defendant-Balkar Singh while appearing in the witness box has admitted that agreement Ex.P-1 bears his signatures and that of the signatures of his brother Sher Singh and thumb impression of his mother. He has also admitted the signatures of his brother Sher Singh on the back of the agreement Ex.P-1 i.e. the endorsement for the purchase of the stamp papers as well as the endorsement Ex.PW3/B vide which Rs. One lac was obtained by his brother Sher Singh and his mother Gurmail Kaur on 02.05.2004. The plea put-forward by the defendants that Mohan Lal has obtained his signatures on the blank papers carries no substance as the defendants have signed on the stamp papers and not the blank papers. The endorsement for the purchase of stamp papers is also admittedly signed by Sher Singh one of the appellant. The plaintiff has also examined Dr. Inderjit Singh, the document expert. The report of this

witness establishes the thumb impression of Gurmail Kaur and the signatures of Sher Singh on the agreement. Similarly, PW-5 Navdeep Gupta, document expert has proved the signatures of Balkar Singh on the agreement Ex.P-1. As already mentioned, Balkar Singh while stepping into the witness box has admitted his signatures as well as the signatures of his brother Sher Singh and thumb impression of his mother on the agreement Ex.P-1. Thus, the plea raised by appellants that their signatures were obtained on blank papers carries no substance. So, from the evidence adduced by plaintiff, the due execution of the agreement to sell Ex.P-1 is fully established.

16. In the agreement to sell Ex.P-1, it has been particularly mentioned that the earnest money of Rs. 5,50,000/- has been received. The passing over of the earnest money also stands proved from the oral evidence adduced by the plaintiff.

17. Balkar Singh, one of the appellant has admitted the signatures of his brother Sher Singh on the endorsement Ex.PW3/B, which shows that on 02.05.2004, Sher Singh and Gurmail Kaur defendants have received a sum of Rs. One lac from Gurmeet Singh. This endorsement proves that after the execution of the agreement to sell Ex.P-1 on 02.05.2004 defendants further received a sum of Rs. One lac. Mere omission of the factum of payment of Rs. One lac on 02.05.2004 in the application Ex.P-3 and the affidavit Ex.P-5 of the plaintiff cannot render the endorsement Ex.PW3/B doubtful in any manner when the signatures of defendant Sher Singh under this endorsement is admitted by defendant-appellant Balkar Singh and the thumb impression of Gurmail

Kaur is also established under this endorsement from the oral as well as expert evidence. So, there is no escape from the conclusion that in addition to the earnest money of Rs. 5,50,000/-, plaintiff has also paid Rs. One lac on 02.05.2004, the part of the sale consideration to the defendants.

18. There is no substance in the plea raised by the learned counsel for the appellants that the agreement to sell Ex.P-1 is uncertain as in the agreement Ex.P-1, the total area of the land which has been agreed to be sold is clearly mentioned. The rate of the land per acre i.e. Rs. 3, 50,000/- has also been categorically mentioned. So, there can be no difficulty in calculating of the total sale price. Hence, it cannot be stated that agreement Ex.P-1 is fake, uncertain or unenforceable.

19. It is not disputed that both the parties were selling their produce through the commission agency of Mohan Lal. So, he was well acquainted with both the parties and if such a person is cited as a marginal witness to the agreement, there is nothing wrong in that as both the parties might have sought it proper to get the agreement to sell attested from a witness well known to both of them. Mere, this fact that Mohan Lal has accompanied the plaintiff to the office of Sub-Registrar, Patiala is also no ground to establish that he has manipulated the agreement to sell Ex.P-1. The plaintiff has gone to the office of the Sub-Registrar, Patiala on 14.12.2004 i.e. the date fixed for execution and registration of the sale deed. On that date, the presence of the witnesses was required to attest the sale deed. Thus, it may be possible that Mohan Lal might had accompanied the plaintiff for that purpose.

20. From the statement of plaintiff, the application Ex.P-3 and the affidavit Ex.P-5, it is established that the plaintiff had remained present in the office of Sub-Registrar, Patiala on 14.12.2004 i.e. the date fixed for execution and registration of the sale deed. The plaintiff has categorically deposed that he has called upon the defendants to execute the sale deed in the month of December 2004 and also offered the money for purchasing of stamp paper. The affidavit Ex.P-5 shows that he remained present in the office of Sub-Registrar, Patiala on 14.12.2004. It shows that the plaintiff was ready and willing to perform his part of agreement, but the appellants-defendants did not turned up in the office of Sub-Registrar, Patiala on 14.12.2004 and committed the breach of terms and conditions of the agreement.

21. Thus, keeping in view my aforesaid discussion, it is established that the defendants had executed the agreement to sell Ex.P-1 for the sale of the suit land to plaintiff Gurmeet Singh. They received Rs. 5,50,000/- as earnest money on the date of execution of the agreement and Rs. One lac on 02.05.2004. Plaintiff is also proved to be ready and willing to perform his part of contract, whereas defendants had committed breach thereof. So, the plaintiff is certainly entitled for the relief of the specific performance of the agreement to sell Ex.P-1. Thus, the concurrent findings arrived at by the learned Courts below requires no interference in the second appeal while exercising the limited powers under Section 100 CPC.

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

23. Consequently, the present appeal having no merits is hereby

dismissed with no orders as to costs.

February 08, 2016
s.khan

(DARSHAN SINGH)
JUDGE