

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 545 of 2014 (O&M)

Date of Decision: 25.07.2016

Baljit Kaur and others

.....Appellants

Vs.

Rattan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Naresh Kaushal, Advocate,
for the appellants.

AMOL RATTAN SINGH, J.

The plaintiffs in a suit filed for possession through specific performance, are in appeal against the judgment of the learned first appellate Court, reversing the judgment of the learned Additional Civil Judge (Senior Division), by which the alternative of refund of earnest money, plus an equal amount as damages, along with interest thereupon, was granted and the suit of the plaintiffs decreed to that extent.

2. The facts of the case, as taken from the judgment of the learned Additional Civil Judge (Senior Division), are that the plaintiffs, in their plaint, claimed that the husband of the first plaintiff (father of plaintiffs No. 2 to 4), entered into an agreement to sell with the sole defendant (respondent herein) on 25.10.2004, for the purchase of 8 kanals and 16 marlas of land (from the defendant).

It was claimed that as per the terms of the agreement, the total sale price was fixed at Rs. 3,00,000/-, with the defendant having been paid

Rs. 1,00,000/- on the date of the agreement. The last date fixed for execution of the sale deed and its registration, was stipulated, in the agreement to be 25.10.2005.

Subsequently, the defendant is stated to have been paid another Rs. 50,000/- on 05.12.2006, in respect of which an endorsement was made at the back of the agreement, in the presence of witnesses.

It was also stated that due to ill-health, the defendant was not able to execute the agreement even till 05.12.2006 and consequently, the time for execution of the sale deed was extended to 25.10.2007.

On that date, though the first plaintiff is stated to have come to the office of the Sub-Registrar, the defendant did not turn up.

It was further alleged that even till the time of filing of the suit, the plaintiffs were ready to get the sale deed executed and to bear all expenses for the same, but despite being requested many a time, the defendant did not execute the same.

2. Upon notice issued to him, the defendant filed a written statement, stating that he had never entered into an agreement with the husband of the first plaintiff and he did not even, in fact, know who Surjit Singh was. He even denied that the plaintiffs were Surjit Singhs' legal heirs (Surjit Singh having died, in the meanwhile).

It was also stated by the defendant that he is a small farmer and not in necessity to sell his land, having three sons who were all earning hands.

3. Yet further, it was alleged that the defendant wanted to marry his younger son and the date for the marriage was fixed as 17.11.2004. Accordingly, he (defendant Rattan Singh) asked a relative of his, one

Gurpal Singh @ Kirpal Singh, of a neighbouring village, for Rs. 20,000/-, on the promise of paying back Rs. 23,000/- to him. Gurpal Singh is stated to have agreed to the same and accordingly, the defendant and his wife went to Gurpal Singhs' village, Mamupur, on 24.10.2004 and received Rs. 20,000/- from him, upon which the defendant was also told to sign a pronote, or on any paper.

The written statement further stated that 24.10.2004 being a Sunday, Gurpal Singh came to the house of the defendant on 25.10.2004 and brought a blank stamp paper, which the defendant signed on Gurpal Singhs' assurance, at the place where he was asked to sign. Despite an assurance that a photocopy of the document would be supplied to the defendant, allegedly it was not supplied.

The defendants' contention further was that he had paid back Rs. 23,000/- to Gurpal Singh within two months, in installments, and at the time of paying the last installment, he had requested Gurpal Singh to return the original document to him, upon which Gurpal Singh told him that he would tear it off. However, allegedly in connivance with 'witnesses' and Surjit Singh (husband of the first plaintiff), Gurpal Singh got the alleged agreement typed on the stamp paper, though the defendant never went to the Tehsil complex for any such agreement.

4. As such, the entire agreement was denied by the defendant, claiming it to be a forged and factitious document, with the actual story, as contended, being the aforesaid.

It was further contended that the endorsement made at the back of the agreement, was also forged. Yet further, it was stated that Surjit Singh had actually died on 16.11.2006 in the PGI, Chandigarh and as such,

obviously his signatures could not have been made on the endorsement on 05.12.2006.

5. Upon a replication being filed by the plaintiffs, the following issues were framed by the learned Additional Civil Judge (Senior Division):-

“1. Whether defendant executed agreement to sell dated 25.10.2004 and received Rs. One lac as earnest money? OPP

2. If issue No. 1 is proved, whether Surjit Singh and after his death the plaintiff being his LRs have been ready and willing to perform their part of contract? OPP

3. Whether writing dated 05.12.2006 was executed and defendant received Rs. 50,000/- more? OPP

4. Whether plaintiff is entitled to possession of suit land by way of specific performance of the agreement? OPP

4-A If issue No. 4 is not proved, whether plaintiff is entitled for recovery of Rs. 3,00,000/- in the alternative? OPP

5. Relief.”

6. To prove his case, the plaintiff examined one Baljit Singh as PW-1, shown to be an attesting witness of the agreement, as also the aforesaid Gurpal Singh @ Kirpal Singh as PW-2, with plaintiff No. 1 Baljit Kaur also stepping into the witness box as PW-3.

The defendant examined one Jagtar Singh as DW-1, with the

defendant himself stepping into the witness box as DW-2. He also examined Devinder Parshad, a document expert, as DW-3.

7. Upon appraising the evidence, the pleadings and hearing the counsel for the parties, the learned Additional Civil Judge found that the signatures of the defendant, on the agreement (Ex. PW2/D) were not denied. The payment of earnest money was also stated to have been not denied. Thus, the contention on behalf of the defendant that he had simply borrowed Rs. 20,000/- from Gurpal Singh, who obtained his signatures on blank papers, was not believed by that Court, in view of the testimony of both the attesting witnesses, in support of the contents of the plaint.

Hence, it was held that the report of the document expert (DW3) also could not be believed, that the typist had deliberately made an attempt to accommodate the text of the document on preexisting signatures.

It was further held that the first plaintiff remained present on 24.10.2007 in the office of the Sub-Registrar but the defendant did not turn up. Yet, it was held that though the stipulated date for execution of the sale deed was a date prior to 25.10.2005, it was not mentioned anywhere on the writing Ex. PW2/C/A, as to when the date was extended from 25.10.2005 to 25.10.2006. Even on that date, i.e. 25.10.2006, the sale deed was not executed, as the plaintiff claimed that vide the endorsement dated 05.12.2006, the date was again extended to 24.10.2007.

The learned Civil Judge also noticed that Surjit Singh had died on 16.11.2016 and as such, he could not have given the amount of Rs. 50,000/- to the defendant on that date, as claimed by the plaintiffs. Therefore, the date of extension of the agreement, was not accepted by that Court.

8. It was finally held that the plaintiffs had also not proved willingness on their part to be always ready to execute the sale deed and consequently, the relief of specific performance was declined but they were held entitled to the alternative relief of recovery of Rs. 1,00,000/- paid as earnest money and further Rs. 1,00,000/- by way of damages. Future interest @ 6% per annum, on the total sum of Rs. 2,00,000/-, was also awarded, running from the date of the judgment till realization of the amount.

9. Cross appeals were filed by both, the plaintiffs and the defendant, before the learned first appellate Court.

That Court, after discussing the evidence and the judgment of the learned Civil Judge (Senior Division), also found that Surjit Singh had expired on 16.11.2006, as per his death certificate Ex. D-2 and hence, there could have been no question of his making any endorsement on 05.12.2006 on the document, i.e. the agreement. It was further held that even to the naked eye, it was obvious that the signatures of the defendant, Rattan Singh, on the endorsement, were forged, other than the fact that the report of the document expert (DW-3), also stated to the same effect.

The first appellate Court also held that the trial Court had wrongly observed that the defendant had admitted his signatures on the endorsement, whereas he had in fact subsequently denied them. The lack of any mention of the endorsement, in the testimonies of both the attesting witnesses, i.e. Baljit Singh and Gural Singh, was also noticed by the first appellate Court.

Yet further, it was held by that Court that the plaintiffs had actually not been able to produce any evidence as to where the earnest money of Rs. 1,00,000/- was arranged by them, to give to the defendant.

Consequently, it was held that the agreement itself could not be proved.

Finally, holding that even if the amount of Rs. 1,00,000/- is presumed to have been paid at the time of entering into the agreement, the very fact that the plaintiffs had indulged in forgery and had fabricated the document regarding the extension of the sale deed, they cannot be awarded any damages and as a matter of fact, their suit deserves to be dismissed.

On that premise, the appeal of the plaintiffs was dismissed and that of the defendant was allowed and the suit filed by the plaintiffs was dismissed with costs.

10. In this 2nd appeal, learned counsel for the appellants-plaintiffs has vehemently argued that the learned Addl. Civil Judge (Sr. Divn.), Kharar, had correctly appreciated the evidence to hold that the signatures on the agreement to sell had been proved to be those of the respondent-defendant (vendor) and of the late husband of the first appellant (plaintiff No.1-Baljit Kaur) and the learned lower appellate Court has, without appreciating that fact, reversed the findings, even though the attesting witnesses to the agreement had testified to its authenticity.

Learned counsel submits that even if the endorsement dated 05.12.2006 was not proved that does not destroy the “genuineness” of the agreement itself.

11. Having heard learned counsel for the parties, it is first to be noticed that a perusal of the judgment of the lower appellate Court, as also of the copy of the agreement to sell in question, produced in Court today, shows that without a doubt an endorsement is shown to have been made on the back of the first page of the agreement on 05.12.2006, that the date for execution of the sale-deed is extended from 25.10.2006 to 24.10.2007. The

said endorsement is shown to carry the signatures of two witnesses, Baljit Singh and Gural Singh, as also of the respondent (vendor) Rattan Singh and of the husband of the first appellant herein, Surjit Singh.

It came on record that Surjit Singh, as a matter of fact, had died on 16.11.2006, i.e. about 19 days prior to the date when the signatures are purported to have been made on the said endorsement, dated 05.12.2006. Very obviously, those signatures are forged, since the death of Surjit Singh on 06.11.2006, is not in doubt at all.

The learned appellate Court has further gone on to notice the report of the document expert, stating therein that the signatures of the respondent-vendor, on both the endorsements made on the agreement to sell, are not genuine.

Thus, even if it is accepted, without looking at the actual documentary and oral evidence led before the learned Civil Judge, that the agreement was executed and Rs. 1,00,000/- paid by the husband of the first plaintiff to the defendant, on the date of the agreement, in view of the fact that the learned Civil Judge has noticed that the defendant admitted to receiving the said amount, however, when very obviously at least the signatures of Surjit Singh are found to have been forged after he died, and it has been further proved, as held by the lower appellate Court, that one of the witnesses, Baljit Singh, was the co-brother of Surjit Singh, and Gural Singh @ Kirpal Singh was the driver of Baljit Singh, I see absolutely no reason to interfere with the judgment of that Court, because if a fraud is proved to have been attempted to be perpetuated at any stage, it obliterates whatever else may be said on merits for the plaintiffs-appellants.

Consequently, finding no merit in this appeal, it is dismissed in limine. In fact, heavy costs should be imposed upon the appellants in such circumstances; however, since the co-plaintiffs of the first plaintiff are stated to have been minors at the time when the suit was instituted, nothing further is said in that regard.

(AMOL RATTAN SINGH)
JUDGE

July 25, 2016
vcgarg/nitin

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No.