

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

RSA No.5582 of 2014 (O&M)

Date of Decision.05.08.2016

Mangta Singh

.....Appellant

Vs.

Mohinder Singh

.....Respondent

Present: Mr. J.S. Brar, Advocate
for the appellant.

Mr. Parveen Kumar Garg, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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AMIT RAWAL J.

The appellant-defendant is aggrieved of the judgments and decrees rendered by the Courts below whereby the suit seeking for specific performance of the agreement to sell dated 28.07.2005 in respect of the land measuring 22 kanals, agreed to be sold, for consideration of ₹11,27,500/- against the payment of ₹3 lacs as earnest money, has been decreed.

Mr. J.S. Brar, learned counsel appearing on behalf of the appellant-defendant submits that though the respondent-plaintiff sought the specific performance of the aforementioned agreement on the ground that the target date was 29.12.2005, the fact remains that it was a forged and fabricated document. The plaintiff examined many witnesses to prove execution of the document but few of the witnesses in cross-examination spilled the beans and feigned ignorance about acceptance of the execution

of agreement to sell. PW1, Mohinder Singh, stepped into the witness box

and proved on record the agreement to sell Ex.P1 and the photograph pasted as Ex.P1/A, affidavit as Ex.P2 and original application as Ex.P3. PW2, Jagdev Singh, stated that on receipt of ₹3 lacs as earnest money, the defendant executed an agreement to sell in favour of the plaintiff. PW-3, Sant Singh, Nambardar was also examined, who attempted to make statement in consonance with averments in the plaint but the fact remains that the aforementioned agreement was surrounded with mysterious and suspicious circumstances, as the agreement written on a stamp paper and typed by a petition writer, would not mean that the document cannot be forged. PW-3, Sant Singh, Nambardar had been present at that time but he is not figuring in the photograph affixed on the agreement to sell. In examination-in-chief, he deposed that he put thumb impression but appraisal of the agreement revealed that it was signed by him. He even did not know who purchased the stamp papers and from whom it was purchased and also feigned ignorance about the advocate before whom he was produced. The photograph pasted on the agreement to sell need not be read in evidence as no negative had been proved on record. Even the plaintiff's witness could not state what was the denomination of the currency notes, alleged to have been given as earnest money. It has surfaced in the cross-examination of PW-2 and PW-3 that the earnest money was not paid by the respondent-plaintiff to the appellant-defendant. There is stark contradiction in the statements of witnesses, as one of the witnesses, stated that the money was paid at the residence and another witness stated that the money was paid at some other place.

He further submits that the Courts below did not consider the entry in the deed writer's register which is sought to be placed on record by

way of additional evidence. Previous to Sr. No.661, the entries made at Sr. Nos.659 and 660 were dated 20.10.2005 and the entry at Sr. No.661 was made subsequent thereto, as narrated by the deed writer, whereas the agreement to sell was stated to be dated 28.07.2005. He further submits that the trial Court did not consider the fact that appellant-defendant, being an illiterate and rustic person of 70 years of age, could not prove the documents Annexures A-1 to A-3 in evidence "despite due diligence" and failed to consider the above-mentioned documents which were relevant and material for proper adjudication of the case. In support of this contention, he relies on judgment of the Supreme Court in **State of Orissa and another Vs. Fakir Charan Sethi (dead through LRs) and others 2015(1) SCC 466.**

All these material contradictions have erroneously and perversely been ignored and the judgments and decrees passed by both the Courts below are not sustainable in the eyes of law and thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law as culled out in the memorandum of appeal.

On the contrary, Mr. Parveen Kumar Garg, learned counsel appearing on behalf of the respondent-plaintiff submits that the appellant-defendant has failed to prove on record as to how his signatures were appearing in the agreement to sell. No expert has been examined to prove the alleged forgery and fabrication, whereas the attesting witnesses were consistent and coherent with regard to the execution of the agreement between the parties to the *lis*. The appellant-defendant has also failed to prove identity of Sant Singh rather as per photograph he was present. On the contrary, the plaintiff has approached the office of Sub Registrar on the

date fixed for execution and registration of agreement to sell on 25.12.2005 and the suit has been filed on 03.01.2006 with promptitude.

He further submits that from the statement of PW-4 Kulwant Rai, stamp vendor, it is evident that Mangta Singh purchased stamp papers in the sum of ₹300/-, which was entered in the register at Sr. No.2484 of even date. The relevant entry has been proved as Ex.P4. PW-6, Babu Singh has been examined, who stated that he purchased 19 kanals 19 ½ marlas of land from the plaintiff for a consideration of ₹4,50,000/- which was paid by him on the same day and the copy of the sale deed has been proved as Ex.P4. and thus, urges this Court for dismissal of the aforementioned appeal by upholding the judgments and decrees passed by both the Courts below.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no substance and force in the submissions of Mr. Brar, learned counsel appearing for the appellant. PW-5, Harjit Singh, deed writer stated that on 28.07.2005, Mangta Singh got typed the agreement to sell from him which was read over and explained to him and thereafter, he appended his thumb impression and witnesses also attested the same by putting signatures/thumb impressions and in his presence a sum of ₹3 lacs was paid by the plaintiff to the defendant. In this regard, a detailed cross-examination has been done but the appellant-defendant has failed to assert any truth or contrary to what has been stated in examination-in-chief.

As regards the statement of the appellant-defendant qua denial of the execution of the agreement, he has not examined any expert, much less, imploring of fraud and misrepresentation and circumstances of appending thumb impression on the agreement to sell. The register of the

stamp vendor has also been proved on record but no attempt was made to get compared the thumb impression on the stamp vendor's register and on the deed writer's register.

The additional evidence sought to be placed on record is an afterthought. Photocopy of the same has been attached but there is no certificate from the stamp vendor as to whether photocopy of the annexures sought to be placed on record was actually of the register or not. At this stage, this Court can not grant the liberty to the appellant to bring on record such documents by way of additional evidence. This fact was in the knowledge of the appellant-defendant, could have very well be brought on record at the stage of trial, much less, before the lower Appellate Court. Bringing on record such documents cannot rule out the possibility of interpolation in the text and altogether altering the position of the suit. The *ratio decidendi* culled out in the judgment of the Supreme Court in **State of Orissa and another Vs. Fakir Charan Sethi** (supra) would not apply to the present case as the appellant/defendant has failed to even cause any dent or doubt in the mind of this Court regarding the alleged forgery in the register of the stamp vendor. The fact remains that the agreement to sell has been scribed by the deed writer on the same date. The appellant-defendant also failed to prove the identify of Santa Singh whether his presence was being sown in the photograph or not, as there were four persons in the photograph.

All the witnesses have deposed in the same term. Mere contradiction in deposition of one witness with regard to appending his signatures instead of thumb impression cannot be fatal to the case of the respondent-plaintiff. In my view, the respondent-plaintiff has proved the readiness and willingness which is in consonance with the provisions of

Section 16(c) of the Specific Relief Act and both the Courts below, noticing the fact of execution of agreement to sell, much less, the payment of earnest money proved, have rightly exercised the jurisdiction under Section 20 of the Specific Relief Act as the aforementioned suit was filed with promptitude.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for consideration. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 05, 2016
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	Yes