

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

**R.S.A No. 801 of 2014 (O&M)
Date of decision : 21.04.2016**

Surjeet Singh

..... Appellant

Versus

Kuljeet Kaur

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.H.S.Dhandi, Advocate
for the appellant.

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

DARSHAN SINGH,J

The present appeal has been preferred by the appellant-defendant against the judgment and decree dated 21.08.2013 passed by the learned Additional District Judge (Fast Track Court), Rupnagar, whereby the appeal filed by the appellant against the judgment and decree dated 29.09.2012 passed by the learned Civil Judge (Sr. Division), Rupnagar, 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 Kuljeet Kaur filed the suit for possession by way of specific performance of the agreement to sell dated 11.11.2005 in respect of the suit land measuring 3 Kanals 11 Marlas as detailed and described in the head note of the plaint situated in the revenue estate of village Rambag, H.B. No. 257, Teh. Chamkaur Sahib, District Ropar.

4. As per the case of the plaintiff-respondent, appellant-defendant agreed to sell the suit land vide agreement to sell dated 11.11.2005 at the rate of Rs.5,40,000/- per acre. He received a sum of Rs. 60,000/- as earnest money on the date of execution of the agreement. The date for execution of the sale deed was fixed as 10.05.2006. On 04.05.2006, appellant-defendant received a further sum of Rs. 1,50,000/- from the plaintiff and date for execution of the sale deed was extended up to 10.09.2006. The endorsement to this effect was made on the agreement to sell. The plaintiff has always been ready and willing to perform his part of contract. He also served the legal notice. But, defendant fail to execute the sale deed. Hence, the suit.

5. Appellant-defendant contested the suit on the plea that agreement to sell in question is result of fraud. The plaintiff has made up the false story just to create the evidence. In-fact, defendant never entered into an agreement to sell his land with the plaintiff nor received any earnest money from her. He further pleaded that he never received any legal notice sent by the plaintiff. Certain legal and preliminary objections were also raised.

6. Plaintiff filed the replication controverting the pleas raised in

the written statement.

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

1. Whether the defendant executed an agreement to sell dated 11.11.2005 in favour of the plaintiff regarding the land measuring 3K-11M as fully detailed in the heading of the plaint?OPP
2. Whether the plaintiff is entitled for specific performance of the agreement to sell dated 11.11.2005?OPP
3. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
4. Whether the suit is not maintainable?OPD
5. Whether the plaintiff has no locus standi to file the present suit?OPD
6. Relief.

8. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff-respondent, vide impugned judgment and decree dated 29.09.2012.

9. Appellant-defendant preferred the appeal. The same was dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 21.08.2013. Hence this Regular Second Appeal.

10. I have heard Mr. H.S.Dhandi, Advocate, learned counsel for the appellant and have meticulously gone through the record of the case.

11. Initiating the arguments, learned counsel for the appellant contended that the agreement to sell dated 11.11.2005 was never executed by the appellant for the sale of his land. He contended that the said document is the result of fraud and its due execution is not proved. He contended that agreement to sell Ex.P-1 only bears the thumb

impression. Whereas, the witnesses examined by the plaintiff and even the plaintiff herself has stated that the defendant-appellant has signed the agreement in Punjabi.

12. He further contended that there was no reason for the extension of the time for registration of the execution of the sale deed when almost the entire sale consideration was already allegedly paid. He contended that the endorsement regarding extension of time has only been procured to create evidence. Thus, he contended that when the execution of the agreement to sell dated 11.11.2005 Ex.P-1 is not proved, the plaintiff-respondent was not entitled for the decree for its specific performance.

13. He further contended that the plaintiff has stated that the alleged agreement to sell was executed by one Surjeet Singh son of Basakha Singh, whereas appellant is Surjeet Singh son of Nasib Singh son of Arjun Singh. So, even the identity of the person who had executed the agreement to sell is not established. Learned Courts below have failed to consider this material fact.

14. I have duly considered the aforesaid contentions.

15. The plea raised by learned counsel for the appellant that the appellant-defendant has not signed the agreement and the agreement contains only the thumb impression is totally misconceived and against the record. The perusal of the agreement to sell Ex.P-1 shows that appellant-defendant Surjit Singh has signed in Punjabi as well as thumb marked the agreement to sell dated 11.11.2005 on every page. PW-4 Darshan Singh is the attesting witness of the agreement to sell. He has

categorically deposed that the contents of the agreement were read-over to the defendant in simply Punjabi language and after admitting the contents of the same to be correct and true, the defendant has first signed and thumb marked the agreement and then, the plaintiff signed over it. He and other witnesses also signed the same.

16. From the bare perusal of the agreement to sell Ex.P-1, it is evident that it bears the signatures of Surjeet Singh in Punjabi as well as the left thumb impression on all the pages including the endorsement dated 04.05.2006 vide which the appellant has received a sum of Rs. 1,50,000/- and the date for registration and execution of the sale deed was extended to 10.09.2006. The same is the position of the extract of the register of the petition writer Ex.P7/A. The relevant entry with respect to the agreement in question bears the signatures of Surjeet Singh in Punjabi as well as the left thumb impression. So, from the aforesaid evidence, it comes out that the appellant has signed the agreement dated 11.11.2005 and the endorsement dated 04.05.2006 in Punjabi and also affixed his left thumb impression.

17. PW-3 Mangal Sain, the scribe of the agreement has categorically deposed in his affidavit that the contents of the agreement were fully read-over to the parties by him in presence of the attesting witnesses. Defendant received Rs.60,000/- as earnest money from the plaintiff in his presence as well as the presence of the attesting witnesses and plaintiff. He also signed the agreement in token of acceptance of the same in his presence and the presence of attesting witnesses. Similar, statement has been made by PW-4 Darshan Singh, the attesting witness of

the agreement. PW-6 Pirthipal Singh, Lambardar, Morinda is the attesting witness of the endorsement dated 04.05.2006 Ex.P1/A, vide which the appellant-defendant has received the part of the sale consideration of Rs. 1,50,000/- and time to get the sale deed executed and registered was extended to 10.09.2006. he has categorically deposed that contents of the endorsement were fully read-over and explained to the parties in his presence. After admitting the same to be correct, the defendant signed the same in Punjabi. Plaintiff also signed the same in English. He signed the same as a witness. He also deposed that the appellant has received Rs.1,50,000/- from the plaintiff in his presence. Thus, the execution of the agreement to sell Ex.P-1 and the endorsement Ex.P1/A is established from the evidence adduced by the plaintiff-respondent.

18. In the written statement, appellant-defendant has raised the plea that the agreement is false, fabricated and is result of fraud. He has also pleaded that he never received the alleged amount of earnest money and never entered into alleged agreement to sell with the plaintiff. So, the case of the appellant-defendant is of total denial. The appellant-defendant has not examined any expert witness to show that the agreement to sell Ex.P-1 and the endorsement Ex.P1/A do not bear his signatures and left thumb impression. The bald statement of the appellant-defendant without any corroborative evidence cannot be acted upon to discredit the cogent and convincing evidence adduced by the plaintiff-respondent to establish the due execution of the agreement to sell Ex.P-1 and the endorsement Ex.P1/A. It is settled principle of law that the plea of fraud has to be proved like the criminal charge. The appellant-defendant has not even

pleaded the particulars of fraud as required under Order 6 Rule 4, Code of Civil Procedure, 1908. The vague plea of fraud raised by the appellant-defendant supported by his sole serving statement carries no substance. He has not rendered any explanation as to how his signatures and thumb impression appeared on the agreement to sell Ex.P-1 and endorsement Ex.P-1/A. Thus, the appellant-defendant has failed to prove the plea of fraud and fabrication of the agreement raised by him. Whereas, the execution of the agreement to sell Ex.P-1 and the endorsement Ex.P-1/A as already discussed stands fully established from the evidence adduced by the plaintiff-respondent.

19. I do not find any substance in the plea raised by learned counsel for the appellant that the identity of the executant of the agreement to sell is not established. The agreement to sell Ex.P-1 has been executed by Surjeet Singh son of Nasib Singh son of Arjun Singh. The plaintiff-respondent has also filed the suit against Surjeet Singh son of Nasib Singh son of Arjun Singh. Even, in the written statement filed by the appellant, the description of the defendant has been given as Surjeet Singh son of Nasib Singh son of Arjun Singh. It is also not the case of appellant-defendant in the written statement that the agreement to sell Ex.P-1 and the endorsement Ex.P-1/A was executed by another person known as Surjeet Singh son of Basakha Singh. Rather, he has simply raised the plea of total denial and fraud. If, he was not the executant of the agreement and some other person namely Surjeet Singh son of Basakha Singh had executed the agreement, he could have easily proved this fact by leading the expert evidence as the science of thumb/

finger print is the exact science. But, for the reasons best known to the appellant-defendant, he did not dare to do so. Mere, some mistake in the cross-examination of the plaintiff-respondent that agreement was executed by Surjeet Singh son of Basakha Singh cannot be made a ground to ignore the documentary evidence available on record.

20. From the statement of the plaintiff and her husband, it is established that the plaintiff was ready and willing to perform her part of contract. She went to the office of Sub-Registrar along with balance sale consideration on the appointed date for registration and execution of the sale deed. But, defendant did not turned up. The plaintiff has placed on record the affidavits Ex.P-5 and Ex.P-6 dated 07.09.2006 and 11.09.2006 respectively to corroborate the oral evidence. Even, the legal notice Ex.P-3 was issued. Once the execution of the agreement to sell is established and it is also proved that the plaintiff-respondent was ready and willing to perform her part of contract, the plaintiff-respondent was certainly entitled for the relief of specific performance of the agreement to sell dated 11.11.2005.

21. Consequently, the concurrent findings recorded by the learned Courts below does not call for any interference by this Court exercising the limited jurisdiction in the Regular Second Appeal.

22. Resultantly, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

April 21, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**