

202 (2 cases)

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

Decided on: 18.08.2017

1. R.S.A. No. 3963 of 2010 (O&M)

Prem Singh and others **.....Appellants**
versus

Bahadur Singh through LRs **.....Respondents**

2. R.S.A. No. 2875 of 2011 (O&M)

Uttam Singh and others **.....Appellants**
versus

Prem Singh and others **.....Respondents**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Vipin Mahajan, Advocate,
for the appellant(s).

Mr. Sushil Saini, Advocate
for the respondent(s).

Rajbir Sehrawat, J.(Oral)

1. This judgment will dispose of two regular second appeals, i.e.

R.S.A No. 3963 of 2010 and **R.S.A. No. 2875 of 2011**. For
connivence, in this judgment, the parties would be referred as
'plaintiffs' and 'defendants' as is in the original suit.

2. **R.S.A. No. 3963 of 2011** has been filed by the defendants in the
original suit, challenging the judgment and decree passed by the

lower Appellate Court, whereby the suit for specific performance filed by the plaintiffs has been partly decreed and a decree for recovery of Rs. 40,000/- from the defendants, which was paid as earnest money by the plaintiffs, has been passed, by reversing the judgment and decree passed by the trial Court whereby the suit filed by the plaintiff was dismissed in *toto*.

3. **R.S.A. No. 2875 of 2011** has been filed by the legal representatives of the plaintiffs, against the judgment and decree passed by the lower Appellate Court, challenging the same and claiming that instead of partly decreeing the suit qua return of money, the lower Appellate Court should have decreed the suit filed by the plaintiff in *toto* and the decree for execution of the sale deed should have been passed.

4. The facts in these cases are that the plaintiffs filed a suit claiming that suit land, fully detailed in the headnote of the plaint, was owned by Dhirta Singh son of Ishar Singh and the defendants are his successors-in-interest. It was pleaded in the plaint that Dhirta Singh had left the village about 40 years ago, leaving behind his only son Ajaib Singh. Ajaib Singh also expired leaving behind the defendants as his only legal representatives. Since the mutation regarding inheritance was not got sanctioned by the defendants in their favour, hence the suit land was not shown under their cultivation. However, the defendants were interested in selling the land. They approached the plaintiff with the proposal to sell the land and entered into an agreement dated 03.09.2002 in favour of plaintiff to sell the suit land for the consideration of Rs. 1,10,000/-

and received an amount of Rs. 20,000/- as an earnest money. It was further agreed in the agreement that the sale deed, qua the suit land, would be executed and registered by the defendants in favour of the plaintiffs, on receipt of the remaining sale consideration. The target date for execution of the sale deed was fixed on or before 10.01.2003. In the agreement, it was agreed that since the mutation of the inheritance of Dhirta Singh had not been entered in favour of the defendants, therefore, the plaintiffs would bear the expenses of getting the mutation sanctioned in favour of the defendants. Pursuant to this agreement the plaintiffs managed to get the mutation No.1154 sanctioned in favour of the defendants qua the suit land. Once, the mutation qua the suit land was entered in favour of the defendant, to the knowledge of the other co-villagers, then a lot of people started approaching the defendants and offered them more price than that of the plaintiffs. Resultantly, the defendants became dishonest and started negotiating with other people and avoiding the plaintiff. Hence, the plaintiff had filed a suit for permanent injunction restraining the defendants from alienating the suit land in favour of any other person than the plaintiff and the temporary injunction was passed in favour of the plaintiff.

5. After defendants appeared in that suit, they filed written statement on 16.10.2002, denying the execution of the agreement in question. Therefore, the plaintiff withdrew that suit.

6. Therefore, they filed the present suit claiming specific performance of the agreement. Without prejudice to his right to get the main

relief of possession of the suit land, the plaintiff also claimed the alternate relief of a decree for recovery of Rs. 40,000/- as per the clause of the agreement. It was claimed that the cause of action arose in favour of the plaintiff on 16.10.2002, when the defendants filed a written statement denying the agreement in question in favour of the plaintiff.

7. Upon notice, the defendants appeared and filed written statement taking usual preliminary objections and it was claimed by the defendants in written statement that the suit of the plaintiff was barred under Order 2 Rule 2 of the Code of Civil Procedure because the plaintiff had withdrawn the earlier suit, without seeking any permission of the Court to file the fresh suit for the same cause of action. It was pleaded by the defendants that the plaintiff should have claimed specific performance of the agreement in the first suit itself or he should have sought permission to file the second suit for claiming specific performance. However, since none has been done by the plaintiffs, therefore, plaintiff shall be deemed to have waived off their claim qua the specific performance and the suit is patently barred under Order 2 Rule 2 of Code of Civil Procedure. On merits, it was denied that the land was not under their cultivation. It was further averred that no agreement was entered into with the plaintiff. The receipt of Rs. 20,000/- as earnest money was also denied by the defendants. It was claimed that the agreement was false, forged, fabricated, bogus document, without consideration and is a document result of fraud and collusion. It was further pleaded in the written statement

that, in fact, the defendants had executed an agreement to sell regarding the suit land in favour of Kashmir Kaur, Amrik Singh son of Teja Singh and Rachhpal Singh son of Ajit Singh at the rate of Rs. 90,000/- per kila and received Rs. 1,20,000/- in the presence of the witness from said Kashmir Singh, etc. at the time of execution of the agreement to sell on 17.04.2002. It was further pleaded that as per the terms and conditions of the agreement to sell dated 17.04.2002, the defendants had executed the sale deed in favour of said Kashmir Singh, etc. on 24.10.2002. It is further averred in the written statement that Avtar Singh son of plaintiff, who is serving in Punjab Police and was posted in District Sangrur, used to visit the defendants. Since at the time of agreement to sell with Kashmir Singh, etc. the mutation of inheritance was not entered in the name of the defendants, therefore, the defendants, asked the son of the plaintiff to help them in getting the mutation sanctioned in their favour regarding the suit land, since he was in police. After visiting Gurdaspur, the son of the plaintiff approached the defendants and asked them to put their signatures and thumb impression on some blank papers, saying that he needed the same for mutation purpose. Thereafter, the plaintiff, in connivance with his son, had got prepared a false and fabricated agreement to sell dated 03.09.2002. The defendants have never executed the alleged agreement in favour of the plaintiff. However, it was denied that the mutation was sanctioned in their favour, after incurring expenses by the plaintiff. It was further pleaded that after obtaining the signatures and thumb impressions of the defendants, plaintiffs

and his son did not take interest in mutation proceedings. The plaintiff became dishonest and by fabricating the agreement, he filed the suit against the defendants for restraining them from alienating the suit land. The defendants had filed written statement in that suit saying that there was no agreement to sell in favour of the plaintiff and, in fact, they had agreed to sell the suit land with Kashmir Singh, etc. Resultantly, the plaintiff got his suit dismissed as withdrawn on 22.01.2003 without obtaining any permission to file the present suit. Hence, prayer for dismissal of the suit was made.

8. Parties led their respective evidence.

9. After hearing learned counsel for the parties and perusing the record, the trial Court dismissed the suit filed by the plaintiff. While dismissing the suit filed by plaintiff, the trial Court recorded a finding that the plaintiff himself admitted in his statement before the Court that the defendants had given blank papers, duly thumb marked and signed by them, for getting the mutation sanctioned in their favour regarding the land in question. Still further the plaintiff admitted that the defendants had executed prior agreement to sell dated 17.04.2002 regarding the land in dispute question in favour of Kashmir Singh, etc. He further admitted that defendants had asked his son Avtar Singh to get the mutation sanctioned in their favour. In view of these facts, the trial Court held that after admitting these facts, the averments of the plaintiff that the defendants had executed the agreement to sell, Ex. P2 for selling the suit land in his favour, appears to be doubtful, and the claim of

the defendants appears to be correct. Besides this, while dealing with the evidence led by the parties, the trial Court recorded that even one of the material witness to the agreement has not supported the version of the plaintiff. He, rather, appeared as DW2 and stated that no such agreement was ever executed in favour of the plaintiff by the defendants. This witness also deposed that the plaintiff never gave Rs. 20,000/- as earnest money to the defendants. This material witness, Dalip Singh, DW2, was duly cross examined by the counsel for the plaintiff but nothing material could be brought out to impeach the testimony of this witness. Still further the trial Court held that even the evidence led by the plaintiff itself shows that the alleged agreement to sell is a sham transaction. To support this conclusion, the trial Court referred to the testimony of PW-2 Surinder Singh, the scribe of the alleged agreement, who has admitted that he did not know the parties personally. Further, this witness admitted that this agreement was not written as per the requirements of the writing an agreement. It is further recorded by the trial Court that this witness has admitted that on the first page of the agreement, there is less space on the 1st 4 lines and this had sufficient space in lines No. 9, 10 , 11 and that there is no explanation as to why this large space is left in the above said lines. It was further held by the trial Court that the plaintiff has also placed on record another document marked as 'D', allegedly, executed by the defendants on the same day i.e. 03.09.2002. On these documents, there are two thumb impressions of Prem Singh and Tarsem Singh on two different

blank places and then there are signatures of Kapoor Singh at different places. The plaintiff has failed to explain to as to why thumb impression/signatures of each defendants have been taken by the plaintiff on blank spaces. Taking of these thumb impressions/signatures on blank places supports the version of the defendants that the plaintiff had obtained their thumb impression/signatures on the blank papers, on the assurance of getting the mutation of the suit land sanctioned in their favour. In view of these facts, the trial Court held that alleged agreement to sell is a sham transaction. Therefore, the suit was dismissed. Aggrieved of the judgment and decree, the plaintiff filed an appeal before the lower Appellate Court.

10. The lower Appellate Court partly accepted the appeal and decreed the suit only qua the relief of return of earnest money with interest. The only reason given by the lower Appellate Court for decreeing the suit and recording the findings in favour of the validity of the agreement; is that the defendants had claimed that their signatures were obtained on the blank papers, whereas, the agreement in question has been written on stamp papers and not on blank papers. No other reasoning was given by the lower Appellate Court for reversing the decision of the trial Court. However, keeping in view the fact that this land had already been sold to some other persons, who had the agreement to sell in their favour prior to the agreement of the plaintiffs, the alternate relief of return of money was given to the plaintiff by the lower Appellate Court.

11.Learned counsel for the defendants has argued that the lower Appellate Court has wrongly reversed the well reasoned findings recorded by the trial Court and has gone wrong in law in holding in favour of the validity of the agreement. Learned counsel for the defendants argued that the lower Appellate Court has not even discussed the evidence led by the parties or the legal plea taken by the defendants, that the suit of the plaintiff was barred under Order 2 Rule 2 of the CPC. On the other hand, learned counsel for the plaintiff has argued that once the agreement is held to be proved then the relief of specific performance should have been granted.

12.Having heard the learned counsel for the parties and perusing the record available on the file, with the able assistance of the learned counsel for the parties, this Court is of the considered view that the arguments raised by the learned counsel for the defendants/appellants in **R.S.A. 3963 of 2010** deserves to be accepted. It has come on record that the plaintiff while appearing as witness before the Court has admitted having taken the signatures and thumb impressions of the defendants on the blank papers. He has not even given any explanation as to where these signatures on the blank papers have been utilized by his son. Hence, the trial Court has rightly held that the version of the defendants was correct and that the alleged agreement was a sham transaction. Learned lower Appellate Court has wrongly laid much emphasis on the fact that the defendants had claimed that their signatures/thumb impressions were obtained on blank papers

but the agreement is written on stamp papers. There is nothing contradictory in this plea of defendants. The thumb impression and signatures of the defendants are only on the blank portion of the stamp papers. Therefore, their plea that their signatures were obtained on blank papers and, therefore, the transaction was a sham transaction, cannot be discarded merely because of the fact that the thumb impression/signatures were put by them on stamp papers. Otherwise also, the factum of obtaining thumb impressions/signatures of the defendants on blank papers has been admitted by the plaintiff. Hence, the findings recorded by the lower Appellate Court in this regard is perverse.

13. Still further, the trial Court has rightly recorded a finding that from the evidence led by the defendants, it is clearly proved that no such agreement was entered into by the defendants. Even the alleged witness of the agreement to sell in question have deposed before the Court that no such agreement was entered into and that no money was paid by the plaintiff to the defendants in connection with any agreement to sell. Still further, even the scribe of the agreement has failed to give any satisfactory reply to the questionable aspect of the agreement qua its scribing. Still further he has categorically admitted that he did not know the parties personally. Hence, even on the basis of the evidence, it is proved that the agreement in question is a sham transaction. Hence, the findings recorded by the trial Court was rightly recorded. The reversal of the findings by the lower Appellate Court is totally perverse. These aspects mentioned above have not even been

taken into consideration by the lower Appellate Court while reversing the well reasoned judgment and decree passed by the trial Court.

14. Otherwise also it has come on record that the plaintiff had earlier filed a suit for permanent injunction during the subsistence of the agreement to sell claimed by him. He withdrew that suit without any liberty to file the fresh suit, by including the claim of specific performance in the plaint. Therefore, it is clear that when earlier suit was filed by the plaintiff for injunction against the defendants then the alleged agreement in question was very much subsisting to the knowledge of the plaintiff. The plaintiff also claimed in that the suit that the defendants were trying to sell it to somebody else. Therefore, it was incumbent upon him to include the relief of specific performance also in that suit only. Since he did not claim that relief in his earlier suit and withdraw that suit without any permission to file fresh suit, therefore, he shall be deemed to have waived off his claim qua that relief and the suit would be barred by Order 2 Rule 2 CPC, even if agreement in question were to be presumed to be correct.

15. In view of the above, the findings recorded by the lower Appellate Court are perverse and the same are reversed. Resultantly, the judgment and decree passed by lower Appellate Court in favour of the plaintiffs are set aside. The judgment and decree passed by the trial Court in his favour of the defendants are upheld.

16.No other argument was raised by the learned counsel for the parties.

17.In view of the above, **R.S.A. No. 3963 of 2010** filed by the defendants is allowed and **R.S.A. No. 2875 of 2011** filed by the plaintiffs is dismissed, being devoid of any merits.

18th August, 2017
shabha

[**RAJBIR SEHRAWAT**]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes