

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103

RSA No.4918 of 2010 (O&M)

Date of decision: 07.09.2017

Sahibditta

..... Appellant

Versus

Jaimal Chand and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sandeep Punchhi, Advocate
for the appellant.

Mr. Ashok Verma, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff is in Regular Second Appeal against the judgment and decree dated 25.02.2010 passed by the First Appellate Court.

Plaintiff filed a suit for specific performance of agreement to sell dated 17.05.2002 (Ex.P-1). It was pleaded that 59 kanals and 4 marlas of land was agreed to be sold @ ₹ 1,10,000/- and earnest money of ₹ 3,00,000/- was received. It was further asserted that as per the agreement, due date for execution and registration of sale deed was fixed as 15.05.2003.

Defendant contested the suit and asserted that the agreement to sell is result of fabrication by the plaintiff.

Learned trial Court after appreciating the evidence available on the file found that the agreement to sell is proved on the file as the defendant admits his signatures on the agreement as well as on an

endorsement. The suit filed by the plaintiff was decreed for specific performance of agreement to sell.

Defendant filed the first appeal. The First Appellate Court has reversed the finding of the trial Court on three grounds:-

- (i) The space between the lines on the first page and the second page of the agreement to sell is different.
- (ii) Name of father of the defendant has been mentioned as Chanda Ram whereas it is Chamba Ram.
- (iii) Plaintiff admits that he has not seen the revenue record before entering into the agreement to sell.

The First Appellate Court declined the relief of specific performance of the agreement to sell but granted alternative relief of refund of the money.

I have heard learned counsel for the parties at length and with their able assistance gone through the record of the case.

Following substantial questions of law arise:-

- (i) Whether genuineness of an agreement to sell signed by the parties can be doubted on small variation in the spacing between the lines when the document is hand written on a plain paper?
- (ii) Whether in absence of any substantive evidence to doubt the authenticity of a document signed by the parties, Courts are justified in refusing to enforce the same?

The agreement to sell i.e. Ex. P-1 was entered and executed between the parties. Agreement to sell is hand written. The space in between the lines on the first page and the second page is different.

However, that itself cannot make the agreement to sell doubtful because the

agreement is duly signed by the plaintiff. On first page, the plaintiff has signed on the left margin whereas on the second page, plaintiff with his own hand written that he has received ₹ 3,00,000/- as earnest money and signed under that note. Agreement to sell is a written document. The Courts cannot doubt the genuineness of document merely on the basis of conjectures and surmises. Once a document which is duly signed and attested by witnesses is available, the genuineness of document cannot be examined like a Will which stands entirely on a different footing. In the present case, the plaintiff has appeared in the witness box as PW-3 whereas scribe has been examined as PW-1. One attesting witness has been examined as PW-2. Signatures on the agreement to sell are admitted by the defendant. The defendant had got issued the aforesaid stamp paper for entering into agreement to sell. This fact is also admitted by the defendant. Defendant had not only purchased the stamp paper for executing an agreement to sell but had also obtained a copy of the Jamabandi (Ex.P-5) from the revenue official on 16.05.2002. Once it is proved on the file that the defendant himself had collected all the documents for entering into the agreement to sell, the genuineness of the agreement to sell is proved on the file.

The second reason assigned by the First Appellate Court is that the name of the father has been wrongly written in the agreement to sell. The Court has held that in fact the name of the father is Chamba Ram whereas it is recorded in the agreement to sell as Chanda Ram. I have seen the copy of Jamabandi (Ex.P-5) available on the file which was got issued by the defendant on 16.05.2002 i.e. a day prior to the date on which the agreement to sell was entered into. Entry in the Jamabandi is hand written

and the name can be read both as Chamba Ram or Chanda Ram. Once in the revenue record, the name can be read as Chanda Ram and Chamba Ram both, the genuineness of the agreement cannot be doubted only on this count. Still further, the plaintiff even filed a suit and impleaded defendant as son of Chanda Ram and not Chamba Ram. In these circumstances, the reason assigned by the Court is clearly erroneous.

The next reason assigned by the First Appellate Court is that the plaintiff admits that he did not see and examine the revenue record. A stray line in the examination of a witness cannot visit the plaintiff with such consequences. Once it is proved on the file that the defendant had obtained a copy of Jamabandi (Ex.P-5) on 16.05.2002 and the aforesaid Jamabandi was produced by the plaintiff in the evidence as PW-5, such statement would pale into insignificance.

Learned counsel for the respondent has submitted that the agreement to sell was result of pressure exerted by Dev Raj. He submits that it is written in the agreement to sell that the land was free from any charge, however, the land was under mortgage as is clear from Jamabandi (Ex.P-5). I have considered both the submissions. A reading of the statement of plaintiff would show that no suggestion was given to the plaintiff during cross-examination that this agreement was on account of pressure exerted by the plaintiff. Second argument of learned counsel is that the land was mortgaged whereas it is mentioned in the agreement to sell that the land is free from any charge. In this regard, one would have to go back to the copy of Jamabandi (Ex.P-5) for the year 1998-1999. The aforesaid Jamabandi does not show that there is any entry of loan or charge in it. This document was obtained by the defendant himself. Once there

was no entry in the Jamabandi, the plaintiff would not have any knowledge that the property in dispute was under a charge.

Questions of law are answered in favour of the appellant.

For the reasons recorded above, the judgment passed by the learned First Appellate Court is found to be erroneous and the same is set aside.

Regular Second Appeal is allowed.

07.09.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No