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

RSA No.1030 of 2012 (O&M)

Date of decision: 13.11.2017

Joginder Singh(deceased) through LRs

.....Appellants

versus

Harmeet Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Gurinder Pal Singh, Advocate
for the appellant.

Mr. P.S.Jammu, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

1. This is the second appeal filed by the plaintiff against the concurrent findings recorded by the courts below; whereby the suit for specific performance as well as the appeal filed by him has been dismissed by the courts below.
2. For convenience, the parties would be referred herein as the plaintiff and the defendant, as they were described in the original suit.
3. The brief facts of the case are that the defendant entered in agreement to sell land measuring 20 Kanals 14 Marlas in favour of the plaintiff by an agreement dated 24.12.1998, for a consideration of Rs. 5,17,500/-. The target date for execution of the sale deed was fixed to be 23.12.1999. A sum of Rs. 4,00,000/- was paid as earnest money. However, on the target date, the defendants did not execute the sale deed. Therefore, the plaintiff sent a legal notice to the defendant on 29.11.2002. However, when, by no

means, the sale deed could be executed from the defendant, the plaintiff filed the suit.

4. The defendant filed a written statement taking routine preliminary objections. On merits, it was pleaded by the defendant that the agreement in question is a fraudulent document. It was pleaded that, in fact, Gurmukh Singh was a Commission Agent for the defendant. Taking advantage of this fact, he got his signatures on some blank papers and on *bahi*; on the pretext that he wanted to change the name of his firm and for that purpose, to produce the papers before Income Tax Authorities, these papers would be required. The other contents of the plaint were also denied.

5. Parties led their evidence.

6. To prove his agreement, the plaintiff examined Gian Parkash, Deed Writer as PW-1; Joginder Singh, plaintiff himself appeared as PW-2; Shamsher Singh, Handwriting and Finger Print Expert as PW-3; Kewal Krishan, the attesting witness of the agreement was examined as PW-4 and Gurmukh Singh, who put his signatures on behalf of the purchaser/ plaintiff on the agreement in question has been examined as PW-5. Besides this oral evidence, the jamabandi for the year 1992-93 has been placed on record as Ex.PW3/A. Report of Handwriting and Finger Print Expert has been exhibited as Ex.PW3/B1 to Ex. PW3/B13. Besides this, the agreement in question has been proved as Ex. P1 and the entry in the register of deed writer has been exhibited as Ex-P2. On the other hand, the defendant No. 1 appeared himself as DW1. He proved on record jamabandi, Ex. D1 for the year 1998-99. No other evidence was led by the defendant.

7. After hearing the parties, the trial Court dismissed the suit filed by the plaintiff. While dismissing the suit, the trial Court recorded that the agreement to sell was not written on the stamp paper issued by the Haryana Government; from time to time. Still further, it was observed that Kewal Krishan, the attesting witness of the agreement to sell, had admitted in the cross examination that he does not know whether the agreement was executed on the blank papers; because he reached the spot after execution of the agreement. It was further recorded that Gian Parkash, the deed writer, in his cross examination, had deposed that the transaction had not taken place in his presence. Still further, the Court relied upon the fact that PW 4-Kewal Krishan, the attesting witness, was not a summoned witness. So, he had come to the Court for giving evidence in favour of the plaintiff, merely on the asking of Gurmukh Singh. Still further, it was observed that Kashmir Singh, the other attesting witness, has not been examined by the plaintiff. The another circumstance taken into consideration by the trial Court was that Joginder Singh, in whose favour the agreement has been executed, was not present at the time of execution of the agreement. Still further, the Court observed that since defendant No. 1, while appearing in the witness box, has said that he knows nothing about this case, therefore, it raises a suspicion in the mind of the Court that his signatures were obtained on blank papers and on *Bahi* by taking benefit of his ignorance/innocence. In view of the above, the trial Court held that the plea taken by the defendant appears to be genuine and the plaintiff has failed to stand on his legs. Therefore, the suit was dismissed.

8. Aggrieved against the judgment and decree, the plaintiff filed an appeal before the lower Appellate Court. However, the lower Appellate Court

also dismissed the appeal filed by the present appellant/plaintiff believing the version given by the defendant that he was made to sign on blank papers by Gurmukh Singh. It was further observed by the lower Appellate Court that although Gurmukh Singh has signed on behalf of Joginder Singh as vendee, however, there is neither special power of attorney nor general power of attorney of Joginder Singh in favour of Gurmukh Singh. Therefore, it appears that he was not authorised on behalf of Joginder Singh. Hence, the defence taken by defendant No. 1 that it was Gurmukh Singh who intended to grab his property; in connivance with plaintiff, appears to be forceful. The next factor taken by the lower Appellate Court for dismissing the appeal was that although the agreement was allegedly executed on 24.12.1998 but the suit was instituted on 16.12.2002, i.e., only a few days prior to the expiry of period of limitation of three years.

9. While arguing the appeal, learned counsel for the appellant/plaintiff has argued that the agreement in question has been duly proved on record by examining the attesting witness; Kewal Krishan as PW-4 and the deed writer, Gian Parkash as PW-1, along with Shamsheer Singh, Handwriting and Finger print Expert as PW-3 and Gurmukh Singh as PW-5. It is his submission that the agreement has been duly proved on record by leading positive evidence. Still further argument of the learned counsel for the appellant is that the defendant had taken plea of fraud. However, he has abjectly failed to lead any evidence to prove the elements of fraud as contained under Section 17 of the Indian Contract Act. To counter the inference drawn by the Courts below, the learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in **2009 AIR (SC) 1527** titled as ***Alka Bose Versus Parmatma Devi and others***;

to contend that for getting the agreement to sell executed, the presence of

vendee at the time of execution of the agreement is not required, at all.

Any person can put signatures on behalf of the vendee and this would not vitiate the agreement as such. Still further learned counsel for the appellant relies upon the judgment rendered in **1996 AIR (Madras) 353** titled as ***Vairavan Versus K.S.Vidyanandam and others***; to contend that mere fact that a suit is filed only a few days prior to the expiry of the period of limitation; cannot be a ground to deny the relief.

10. On the other hand, learned counsel for the respondents/defendant submitted that the agreement has been written on a simple paper and not on the stamp papers. This, according to the learned counsel for the respondents, supports the contention of the defendant that his signatures were obtained on the blank papers. The next contention of the learned counsel for the respondents/defendants is that the attesting witness, PW-4 Kewal Krishan has admitted that he was not a summoned witness and he had been brought by Gurmukh Singh for deposition before the Court, which shows that he was interested witness. Still further, learned counsel for the respondents submitted that the suit has been filed just before the expiry of the limitation. Therefore, this shows that the agreement was a fraudulent document. In the end, learned counsel for the respondents has submitted that it has been proved on record that the alleged stamp papers, on which the agreement had been written, were not purchased by the defendant; which shows that the agreement is a forged document. Hence, the learned counsel for the respondents submitted that the entire circumstances surrounding the agreement make the agreement as surrounded by suspicious circumstances and hence, the agreement is not proved as per the law, rather, it has been proved as a document created by

a fraud.

11. Having heard the learned counsel for the parties and perusing the record with the able assistance of the learned counsel for the parties, this Court is of the considered view that the plaintiff/appellant has succeeded in proving the agreement as per the requirements of the law. To prove the agreement in question, the plaintiff/appellant could have examined only the attesting witness and the deed writer. Both these witnesses, as well as the person who signed the agreement on behalf of the vendee/plaintiff have been duly examined before the Court. They have consistently deposed that the agreement was signed by the defendant in their presence. It has further been deposed by them that the money was received by the defendant in their presence. The defendant conducted lengthy cross examination of these witnesses. However, nothing could be brought out from the cross examination to these witnesses to impeach their credit. In case of an agreement to sell, merely the fact that the witness appears to be interested witness does not make his testimony, qua the facts deposed by him as doubtful. As an attesting witness, the only requirement of law is that he was a witness to the transaction regarding which he is deposing. Other characteristics of the witness are totally irrelevant.

12. The Courts below have wrongly attributed some language to the witnesses of plaintiff, which does not find mention there in their deposition. The trial Court has written that Kewal Krishan has admitted in cross examination that he reached after the agreement had been executed. This does not find mentioned anywhere in the cross examination of this witness. Rather, it is only written in the cross examination that the agreement was not written in his presence. Needless to say that the execution of an agreement and a mere writing of deed of agreement are two different things. This witness categorically deposed

that he and the defendant had put their signatures in each others' presence. Same is the situation regarding the other deposition mentioned by the Courts below. The Courts have written that the agreement is not on stamp papers issued by the Government of Haryana and that this has been so admitted by the deed writer. This is factually incorrect. Firstly, the agreement is on stamp paper itself, although a simple paper is converted into stamp paper by the stamp vendor by affixing prescribed stamps on it, due to non-availability of designated stamp paper. This is quite common practice in this part of country. Secondly, the deposition of the deed writer has been wrongly read by the Courts below. He has nowhere said that it is not on a stamp paper issued by the State of Haryana. He has only said that it is not on a paper issued by the State of Haryana. These are two different things. Otherwise also, this fact become irrelevant, once the defendant takes a plea that he had not purchased that stamps paper, on which the agreement is written, from stamp vendor, rather, it was the plaintiff who purchased the stamp papers from the stamp vendor. So, it is admitted that the document is on a stamp paper, though, the defendant disputes that he purchased the stamp paper.

13.The other aspect; which proves the validity of the agreement is that the deed writer has duly produced his register before Court as Ex. P2. The signatures of the defendant are present even on the register of the deed writer. It is nowhere the case of the defendant, either in the pleadings or in the deposition that his signatures on the register of the deed writer were also received in advance on some other date. Therefore, it is established on record that he was present before the Deed Writer on the date of execution of the agreement to sell. Therefore, his signatures are there on the agreement. He is only trying to avoid agreement by taking

the plea of fraud.

14. So far as the fraud in creation of agreement is concerned, the defendant had full opportunity to substantiate this plea regarding fraud. However, except examining himself, defendant has not led any evidence whatsoever to prove the ingredients of the fraud as required under Section 17 of the Indian Contract Act.

15. His signatures on the agreement have been duly proved even by the Handwriting Expert. Therefore, a bald statement on behalf of the defendant that the agreement is a fraudulent document; is not sufficient to dispute the validity of the document, which otherwise has been proved by attesting witnesses.

16. Learned counsel for the appellant is legally correct in submitting that mere fact that the suit is filed just before the expiry of the limitation is no ground to doubt the validity of the agreement. Law gives a particular time to the plaintiff to file suit. It is for him to choose the date for filing the suit. Mere fact that he, in his good hope, of getting the sale deed executed by the defendants, did not rush to the Court immediately, does not mean that the agreement itself is a fraudulent document. The second argument of learned counsel for the appellant that the presence of the vendee is not at all required at the time of execution of the agreement to sell; is also legally sustainable. Anybody can sign the agreement on behalf of vendee for his benefit. Learned counsel has rightly relied upon the judgment of the Hon'ble Supreme Court in *Alka Bose case (supra)*. Therefore, the plaintiff has fully proved his case on record.

17. The submission of the learned counsel for the respondents that the witness was not a court summoned witness is totally irrelevant. Whether

the witness is a summoned witness or brought by the plaintiff is

immaterial. The fact that he was not a summoned witness, does not take away the character of the witness as an attesting witness. It was for the defendant to extract, by cross-examining, anything from his deposition to impeach his credit or to prove him to be incorrect. However, the defendants have failed to extract anything from the testimony of this witness to impeach his credit.

18.The submission of the learned counsel for the respondents that agreement is surrounded by suspicious circumstances; is totally irrelevant. The concept of existence of suspicious circumstances as a ground for challenging the validity of a deed, is not applicable to the agreement to sell. This concept is applicable exclusively, to the deed of 'Will' where it takes effect after the death of the executant of the deed. So far as the agreement to sell is concerned, the parties enter into the agreement knowing fully well all the attending circumstances. Therefore, either of the parties cannot be permitted to turn around and start pleading the existence of suspicious circumstances surrounding the agreement. The party can very well take plea of coercion, undue influence, fraud or misrepresentation in execution of the agreement to sell. But in that eventuality, the said party has to prove the ingredients of these legal pleas, as contemplated by the Sections 15, 16, 17 and 18 of the Indian Contract Act. In the present case also, the defendant had taken a plea of fraud. However, he has not led any evidence to substantiate his plea.

19.Having failed in his attempt to dispute the validity of the agreement, learned counsel for the respondents has submitted that the Court should resort to Section 20 of the Specific Relief Act to grant the alternate relief of return of earnest money to the plaintiff. However, this Court does not

find substance in the argument of the learned counsel for the respondents.

The scope of Section 20 of Specific Relief Act is not wild and wide open to include every possible situation or reason for this Section to be invoked. For invoking Section 20 of the Act, the defendant is required to show the Court that his case is covered in anyone of the factors and circumstances as prescribed under Section 20 of the Act. In the present case, the defendants had failed to bring his case within anyone of the factor mentioned in Section 20. Therefore, this plea of the defendants cannot be accepted. The defendants/respondents have lastly pleaded the hardship to them; in case the decree for specific performance is passed. However, for this plea also, no factual basis is laid by the defendants/respondents. On the contrary, it has come on record that land has already been mortgaged by the vendor to the Primary Land Development Bank, before the date of agreement in question, and was further mortgaged to Punjab National Bank even after the date of execution of the agreement. Therefore, there is no hardship to the defendants if this agreement is executed. Hardship, if any, would be to the plaintiff alone. For the hardship of the plaintiff, the defendants cannot invoke Section 20 of the Act. This plea does not deserve to be accepted.

20.No other argument was raised.

21.In view of the above, the appeal is allowed and the judgment and decree passed by the Courts below are set aside. The suit filed by the plaintiff is ordered to be decreed.

13th November, 2017

shabha

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes