

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

RSA No.3184 of 2012 (O&M)

Date of decision : 26.07.2017

Jagtar Singh

...Appellant

Versus

Narinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Amit Jain, Advocate for the appellant.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J.

The plaintiff-appellant has filed this Regular Second Appeal against the judgment passed by the learned Additional District Judge dated 15.12.2011 accepting the appeal filed by the respondent Nos.1 and 2.

The plaintiff had filed a suit for possession by way of specific performance of the agreement to sell dated 12.01.2001 with respect to the land measuring 24 kanals for a total sale consideration of ₹8,40,000/-. It was alleged that ₹40,000/- was paid as earnest money and target date for execution of the sale deed was agreed as 20.06.2001. The plaintiff had further alleged that defendant No.1 had sold the land measuring 16 kanals by registered sale deed in favour of defendant No.2 on 24.05.2001 whereas 8 kanals of land was sold in favour of defendant No.3 on the same date.

The trial Court chose to decree the suit filed by the plaintiff.

In the first appeal filed by the defendant No.1, the learned Court found that execution of the agreement to sell is doubtful. The Learned Court found that the stamp paper on which agreement to sell has been executed shows that name of the Stamp Vendor has not been mentioned at the back of the stamp paper nor his seal has been put on the stamp paper. It has further been found that on the back of the first stamp paper, there is endorsement to the effect 50x6=300. It means that there were six leaves of 50 each. However, the agreement to sell as produced in the Court is consisting of only two leaves and no explanation has been given as to what has happened to remaining four leaves.

The learned First Appellate Court further noted that both the attesting witnesses are not independent witnesses as PW2 Amrik Singh is real brother of Jagtar Singh-plaintiff whereas Lakhwinder Singh is brother-in-law of Kewal Singh. The First Appellate Court further found that witnesses could not tell the name of the typist who typed the said agreement to sell. The witnesses are not at consensus about the place of execution of the agreement to sell. Jagtar Singh-PW1 has deposed that the agreement to sell was scribed at Jalandhar in the house of Lakhwinder Singh whereas Amrik Singh deposed that agreement was scribed at the place of typist at Jalandhar.

With these reasons, learned First Appellate Court after noticing various other discrepancies in the evidence of the attesting witnesses accepted the appeal filed by the defendant No.1 and held that agreement to sell is suspicious.

Learned counsel for the appellant has submitted that four leaves of the stamp paper might have been returned as these were not required.

Learned counsel for the appellant has further submitted that DW1-Sukhdev Singh has appeared. He is son of attesting witness. He has submitted that execution of the agreement to sell on 12.01.2001 was known to all the villagers, therefore, the defendant Nos.2 and 3 cannot claim themselves to be bona fide purchasers. Learned counsel for the appellant has further submitted that minor contradictions in the statement of the witnesses can not result in dismissal of the suit filed by the plaintiff for specific performance of the agreement to sell.

On the other hand, learned counsel for the respondent(s) has with all vehemence submitted that the reasons recorded by the First Appellate Court are cogent and borne out from the record. There is no error in the judgment passed by the learned First Appellate Court, therefore, the appeal is liable to be dismissed.

I have considered the arguments raised by learned counsel for the parties.

There is no dispute that only two leaves out of four leaves have been used, therefore, the stamp paper is incomplete. No explanation has come on record as to how and in what manner four leaves of the stamp paper have disappeared. A bare look at the agreement would prove that stamp paper does not either bear the name of the Stamp Vendor or his seal. The plaintiff has not been able to explain how a stamp paper was issued without the name of the Stamp Vendor or his seal. Non-judicial stamp papers are issued by either Treasury or by the Licenced Stamp Vendor under

their seal and signatures. The Licenced Stamp Vendor duly maintain a register making entry of each stamp paper issued. They are also required to make a entry on the back of the first page of stamp paper by mentioning the name of the purchaser. The purpose for which the stamp paper is being purchased is also specifically mentioned.

On the back of the stamp paper, only initial has been put neither the name of the Stamp Vendor has been mentioned nor the seal has been put. The argument of learned counsel for the appellant that four leaves may have been returned is not supported pleadings or evidence. No explanation has been given from where this stamp paper was purchased and where these four leaves have gone missing.

Second argument of learned counsel is that since agreement to sell was known to everyone in the village as stated by Sukhdev Singh son of attesting witness, therefore, the defendant Nos.2 and 3 cannot be held to be bona fide purchasers. In my opinion, such finding is not necessary because the agreement to sell itself is being held to be doubtful in character.

Learned counsel for the appellant has further submitted that minor contradictions in the statement of the witnesses cannot be used to deny the specific performance of the agreement to sell.

I have carefully considered the arguments. I have also gone through the judgment passed by the First Appellate Court. The contradictions are not minor. Both the attesting witnesses of the agreement to sell are closely related, the vendor and vendee. One is brother of the plaintiff. Second is brother-in-law of defendant No.1. Even name of the typist who typed the agreement has not been disclosed. Attesting Witnesses

are not unison in disclosing the place where the agreement to sell was executed. Therefore, it can be safely held that plaintiff and defendant No.1 had entered in a conspiracy to defeat the rights of Vendors-defendant Nos.2 and 3.

Taking into consideration all the contradictions as noticed by the First Appellate Court, I do not find any reasons to interfere with the findings of fact arrived at by the First Appellate Court.

Counsel for the appellant has not been able to point out any substantial questions of law arising in the present appeal in terms of Section 100 of CPC. Counsel for the appellant has also not been able to point out any ground enabling this Court to interfere in the Regular Second Appeal in accordance with Section 41 of the Punjab Courts Act, 1918.

Accordingly, the present Regular Second Appeal is dismissed.

26.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No