

105 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3465 of 2012 (O&M)

Date of Decision: 11.10.2017

Tarsem Lal

... Appellant

Versus

Daljeet Singh and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.K. Jain, Advocate
for the appellant.

Mr. Rahul Rampal, Advocate
for respondent Nos.1 and 2.

ANIL KSHETARPAL J. (ORAL)

This is second appeal against the judgment and decree passed by
First Appellate Court.

Plaintiffs filed a suit for specific performance of agreements to
sell (two agreements of the same date between the same parties) dated
29.10.2003. The first agreement is with respect to house and second
agreement is with respect to agricultural land. Defendant-Tarsem Lal along
with his brother, namely, Som Raj had agreed to sell a house as well as
agricultural land to the plaintiffs.

Som Raj has admittedly honoured the agreements to sell and
executed sale deed in favour of the plaintiffs with respect to his half share in
the house as well as in the agricultural land. As per agreement to sell,

possession was to be handed over to the plaintiffs on the target date. Plaintiff visited the office of Sub-Registrar and got their presence mark whereas defendant-Tarsem Lal did not come forward to perform his part of agreement to sell. Hence, plaintiffs filed a suit for specific performance of the agreement to sell against defendant-appellant-Tarsem Lal only.

In the written statement, the defendant admitted his signatures, however, it was pleaded that such signatures were taken by the plaintiffs on the blank papers on the pretext of arranging a loan from the bank for them.

Learned trial Court dismissed the suit only on the ground that the signatures of the defendant on the last page are after a unexplained and abnormal gap and therefore the pattern of signatures is unnatural.

Appeal filed before the First Appellate Court was accepted. Learned First Appellate Court gave three reasons for reversal of the judgment passed by the trial Court.

1. Defendant has admitted his signatures on the agreement to sell, although it is asserted that the signatures were taken on blank papers.
2. Defendant has not stepped into the witness-box and, therefore, adverse inference has to be drawn against the defendant.
3. Both the attesting witnesses have been examined to prove execution of the agreement to sell.

Learned counsel for the appellant-defendant has submitted as under:

1. There were two agreements to sell one with respect to house and second with respect to agricultural land. Only one suit was filed. Prayer is made with respect to one agreement to sell.

Therefore the suit could not be decreed because it was suffering from a technical defeat.

2. Learned counsel has submitted that in view of Section 73 of the Evidence Act, the Court was required to examine and arrive at a finding that the signatures are after a abnormal gap and, therefore, unnatural, which the First Appellate Court has refused.

3. The attesting/marginal witnesses who have signed the agreement belong to different places, although normally the witnesses are of the same place and known to the parties, and therefore, the judgment of the trial Court is erroneous.

On the other hand, learned counsel for the respondent has supported the judgment passed by the trial Court. He has reiterated what has been stated by the First Appellate Court while dismissing the civil suit.

I have given my thoughtful consideration to the arguments of learned counsel and with their able assistance have gone through the judgment passed by the Courts below as well as the record of the case.

A bare perusal of the agreements to sell, which are two in number of the same date between the same parties, shows that both the agreements are executed on a non-judicial stamp papers worth Rs.300/-. Agreement to sell is on three pages. On first page, defendant-appellant has signed where narration of the agreement comes to an end. Same is the position of the second page. On the third page, which is concluding page, there is some gap in between space where the narration comes to an end and signature of the defendant-appellant. However, simply, because there is some gap between the place where narration of the agreement to sell comes to an end and the place where

signatures of the parties have been appended, the agreement to sell cannot be doubted. Same position is in second agreement to sell.

It may be noticed here that the defendant had admitted his signatures on the agreement to sell in the pleadings. Defendant has not stepped into the witness-box. First Appellate Court has rightly drawn adverse inference against the defendant as it is settled law that once a party wants the Court to believe any particular plea such party has to come into the witness-box and state such fact in his evidence. Such party is further required to face cross-examination. In this case, the defendant has not stepped into the witness-box.

The next argument raised by the learned counsel for the appellant that there were two agreements to sell and, therefore, one suit was not maintainable. Both the agreements to sell are dated 29.10.2003 between the same parties. Plaintiff while filing the suit made a proper description of the properties involved in both the agreements. There is no requirement that separate suit could be required to be filed for each agreement to sell. The prayer clause of the suit is extracted as under:-

“Suit for specific performance of the contract dated 29.10.2003 requesting and compelling the defendant to get the sale deed executed and registered in favour of the plaintiff regarding 1/half share out of:-

a) The house situated in a area 3 Kanals 19 Marlas consisting of 6 rooms, kitchen, bath room, latrine, electric, motor fitted 2 H.W. Boundary wall as shown red in the plan attached:-

East: : Malkit Singh

West : Darshan Singh

North : Road

South : Vacant Plot

situated at village Bharo Munna Tehsil and District Ludhiana and also bearing Khasra No.21//1 7/1-18/1/2/2, Khewat No.61/65 and 21/18/2/2, khata No.91/93, as shown in the jamabandi for the year 1996-97 of village Bharo Munna Tehsil and Distt. Ludhiana.

B) The land measuring 2 Kanals 8 Marlas out of Khatta No.70/73, Khasra No.21//18/1/2(1-19) one half share out of the land 2 Kanal 16 Marlas, 1 Kanal-8 Marlas and Khata No.71/74, Khasra No.2//17/1(2-17), 18/1/2/2(1-9), 1/8 share out of the land 4 Kanal 6 Marla 0 Kanal 11 Marla bearing Khata No.105/108, Khasra No.2//19/2/2(3-12)'s 1/9 share, 0 Kanal 9 Marla, total 2 Kanal 8 Marlas as shown in the jamabandi for the year 2001-2002 and bound as under:-

East: : Malkit Singh

West : Darshan Singh

North : Road

South : Vacant Plot

situated at village Bharo Munna Tehsil and District Ludhiana, and suit for permanent injunction restraining the defendants permanently from alienating, transferring, mortgaging, entering into an agreement to sell, leasing out and interfering in the peaceful possession of the plaintiffs and dispossessing them illegally and forcibly from the above said property, on the basis of oral and documentary evidence.”

In such circumstances, the submission of learned counsel for the appellant cannot be accepted.

The next submission of learned counsel for the appellant that the First Appellate Court has not adverted to Section 73 of the Evidence Act 1872. Section 73 of the Evidence Act provides for comparison of signatures/ writing with the admitted signatures on the documents. In the present case, Section 73

would not be applicable because the defendant-appellant has admitted his

signatures and has not even stepped into witness-box to support his assertion.

The last argument of learned counsel is that attesting witnesses/marginal witnesses were belonging to different places and they were not known to the parties to the suit. The marginal witnesses are not required to be known to the parties to the agreements to sell and they may be belonging to different places. The marginal witnesses are to sign the agreement to prove its genuineness. Agreement to sell is not required to be signed by the attesting witnesses.

Once the execution of an agreement to sell between the parties is established, the parties are bound by the written agreement.

For the aforesaid reasons, I do not find any good ground to set aside the findings arrived at by the First Appellate Court

The appeal is accordingly dismissed.

(ANIL KSHETARPAL)
JUDGE

October 11, 2017
rekha

<i>whether speaking/reasoned</i>	<i>Yes/No</i>
<i>whether reportable</i>	<i>Yes/No</i>