

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.2806 of 2013 (O&M)
Date of Decision: 06.11.2017**

Usha Mohan

... Appellant

Versus

Kulwant Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sunil Chadha, Senior Advocate,
with Mr. Akshay Chadha, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

1. Notices for service of sole respondent Kulwant Singh were issued time and again but the same could not be served. The process server's report was received that he had left the house where he had been residing and had shifted residence to unknown address. In these circumstances, the appellant was allowed by this Court service of respondent to be effected through publication in the newspaper "The Tribune" vide order dated January 27, 2016.

2. The Lower Court record has been received and perused with the assistance of Mr. Sunil Chadha, learned Senior counsel for the appellant. Vide order dated July 31, 2017 the respondent was ordered to be proceeded against ex parte and the case was adjourned for ex parte arguments and that is how the matter came up for hearing on September 11, 2017 when arguments were heard and judgment reserved which is being pronounced today.

3. This is plaintiff's appeal in a suit for possession as owner by way of specific performance of agreement to sell dated January 27, 2006 executed by defendant Kulwant Singh vendor in favour of the plaintiff proposing to transfer title of suit house admeasuring 127 sq. yrd situated in Hardial Nagar, Baloke, Tehsil and District Ludhiana bearing Khasra No.29/4 Khata No.23/23 as per Jamabandi for the year 1998-99 Hadbast No.103 in favour of the plaintiff. Direction was claimed to the defendant to execute and get registered sale deed in favour of plaintiff, the defendant having received the full sale price (leaving payable nil by the plaintiff) and for injunction restraining the defendant from alienating and transferring the suit property. The total sale consideration was ₹3 lakh. The defendant received ₹50,000/- as earnest money in advance. Out of the balance amount ₹50,000/- was paid in cash whereas a cheque of ₹2 lakh was handed over to the defendant to cover the total sale consideration. In addition, a sum of ₹30,000/- was also paid in the cash towards purchase of stamp papers for executing the sale deed. The target date was January 31, 2006 in the contract of sale.

4. On January 30, 2006 the defendant had received the balance sale consideration of ₹50,000/- but demanded a further amount of ₹2.5 lakh from the plaintiff as loan on interest @18% per annum on the pretext that by paying back the loan to the bank he would get released the sale deed of the mortgaged suit property.

5. Mr. Chadha explains that out of the said loan amount of ₹2.5 lakh which the plaintiff advanced to the defendant ₹1.48 lakh was paid through cheque dated January 30, 2006 whereas remaining amount of ₹1.02

lakh was paid in cash. In addition, another amount of ₹5,000/- was paid in cash on account of balance amount for purchasing the stamp papers and making good the registration fee.

6. By way of the above transaction, a sum of ₹5.85 lakh was paid by the plaintiff to the defendant out of which ₹3 lakh was paid towards sale consideration of agreement to sell dated January 27, 2006; ₹35,000/- towards purchase of stamp paper and registration fee and the balance amount of ₹2.5 lakh was paid to discharge the loan. Out of the said total amount of ₹5.85 lakh, an amount of ₹2 lakh and ₹1.48 lakh had gone by way of two cheques into the account of the defendant.

7. Despite having performed not only his part of the contract and paying off the entire agreed consideration to the defendant and fulfilling the terms of the contract the plaintiff ensured he remained present before the Sub Registrar, Ludhiana on January 31, 2006 but the defendant did not come forward to execute the sale deed. It was implicit that the defendant had backed out of the deal and failed to perform his part of the contract.

8. Waiting unsuccessfully for the defendant to respond, the plaintiff sent a telegram (Ex.P-15) dated April 01, 2006 followed by a legal notice dated March 27, 2006 (Ex.P-19) through registered post to the defendant calling upon him to execute the sale deed in pursuance of the agreement to sell. Both these communications remained unanswered. Hence the suit was brought on April 26, 2006.

9. On notice, the defendant appeared and tendered his written statement on June 12, 2006 taking the plea that all he had taken a loan of ₹50,000/- from the plaintiff and in lieu thereof plaintiff had got signed blank

papers from the defendant which were later on forged and fabricated into the agreement of sale dated January 27, 2006; the alleged loan amount of ₹50,000/- was agreed to be returned along with interest @2% per month within a period of 12 months i.e. upto December 31, 2006 but prior to the date for return of money, the plaintiff forged the agreement to sell in question and launched the civil suit.

10. Both the Courts below have dismissed the suit holding that neither execution of the agreement to sell is proved nor passing of sale consideration and the parties having entered into the agreement to sell in question is doubtful and it is all merely a money transaction between the parties and the signatures of the defendant were obtained on blank stamp papers as security for re-payment of loan.

11. The facts emerging from the file which are not disputed are that the defendant did not dispute his signatures on the agreement to sell. His allegation was that he signed blank papers which have been misused and converted into agreement to sell surreptisuously. To test the veracity of the statement and the defence version, the defendant's cross-examination has to be read carefully wherein he admits that he received the amount of ₹2 lakh and ₹1.48 lakh by way of cheques from the plaintiff. Contrast this statement with his plea of loan of ₹50,000/- the figures mismatch disproportionately casting a huge shadow of doubt on the defence. While dealing with bank transactions from one account to the other the stand of the defendant stands belied. Both the Courts below have failed to notice this crucial aspect which militates against the version of the defendant that he signed the documents blank. This is an admission of signatures.

12. The story of signing blank papers is a story usually told to wriggle out of contracts. Pleadings of this kind taken as defences in suits be they one for specific performance have been aptly summed up in a judgment of the Allahabad High Court produced by Mr. Chadha in Hodil Singh (Deceased) represented by Legal Heirs v. Bhagwant Singh (Deceased) represented by Legal Heirs, 2010 (2) Civil Court Cases 608 (Allahabad). In paragraph 16 the High Court observed as follows:-

“16. Now a days, it has become a regular tendency that first enter into an agreement or a contract in respect of immoveable property or some other contractual affairs or business with an ulterior motive and thereafter resile from the promise made through the agreement or contract by entering into litigation. It is a new device invented just in order to get the execution of terms and conditions contained in an agreement or contract frustrated. The person, who has paid the money or consideration on execution of an agreement or contract feels cheated after getting involved in an unexpected and unsavoury situation of unwanted litigation so initiated by a dishonest person. Thus, the primary duty of a Court of law is to enforce a promise, which the parties have made and to uphold the sanctity of a contract or an agreement entered into between the parties, which form the basis of a society, though there may be exception. The Courts must exercise extreme restraint in holding a contract or an agreement to be void as it would encourage dishonesty and cheating.”

13. Not only the two bank transactions of money passing there were on record other material duly proved, i.e., Exs.P-8 and P-12 being pass book entries of the plaintiff recording payment of remaining amounts in tranches of ₹30,000/-, ₹5,000/-, ₹50,000/- or ₹1,52,000/- respectively. These transactions belie the stand of the defendant that the agreement of sale was a fake and fabricated document.

14. There is yet another issue to contend with as noticed in the first interim order issuing notice of motion to the defendant and notice re.: stay as well. At the threshold of the appeal, it was argued by Mr. Chadha that Rakesh Mohan son of the plaintiff deposed on his behalf being a general power of attorney holder and he was partly cross-examined. Thereafter, the case was adjourned for further cross-examination of the said witness by the defendant and a direction was issued by the trial Court to bring and produce the original agreement to sell, however, he was never cross-examined further nor the agreement showed up. It was argued that once signatures on the agreement are admitted and the document has been exhibited it should be deemed to have been proved in accordance with law. During the trial, by order dated August 23, 2010 the trial Court treated further cross-examination as Nil, meaning thereby, that the examination-in-chief of PW-1 son of the plaintiff ought to have been accepted by the Courts below as evidence. On this aspect, Mr. Chadha relies on three judgments of this Court the first of which is Darshan Singh Sethi v. Chander Prabha, (2005-2) Vol.CXL The Punjab Law Reporter 126 holding in a rent matter that no adverse inference can be raised against the landlady for not examining herself personally but appearing through her attorney. The evidence recorded would hold good. Again in Bhagat Singh v. Jagdish Kaur, 2011 (1) RCR (Civil) 118 the Court was dealing with Section 13 (3) (a) (i) of the East Punjab Urban Rent Restriction Act, 1949 in a case where the landlady did not step in witness box to depose and produce a power of attorney holder to stand in the witness box to establish the need of the landlady for possession upon eviction would not disqualify the deposition to be legal

evidence. The contention that landlady must fail since she had not stepped into the witness box to depose through facts pleaded in the eviction petition and, therefore, the testimony of the power of attorney could not be read in evidence was not tenable legal argument and was overruled. The power of attorney holder was no other than the son of the landlady for whose personal need petition has been filed and he being the best judge of his need was competent to depose and to substantiate the pleadings. In similar strain is the decision in Girdhari Lal v. Baljit Singh and others, 2003 (1) RCR (Rent) 431. The eviction of the tenant was sought on grounds of non-payment of arrears of rent and merely because the landlord did not appear in the witness box was not a circumstance against him as nothing had to be stated which was personal to the knowledge of the landlord.

15. The last case cited is Ram Lal v. Sunil Kumar, 2011 (2) Civil Court Cases 299 (P&H). This was a case arising out of suit for specific performance of an agreement to sell. The question was whether the document was an agreement to sell or was an agreement for loan. The Court held that the document in question is an agreement to sell reasoning that firstly, the vendor altogether denied execution of agreement of sale and even stated that he never secured or borrowed any money from the plaintiff on interest; secondly, he denied the execution of agreement and claimed it to be forged and fabricated document though he himself was signatory to the agreement and then alleging it to be a loan transaction; thirdly, the Court held that agreement denied by defendant throughout cannot to be said to be meant for raising loan on interest and; fourthly, defendant never offered to repay the loan amount. Though not on all fours, the decision does help Mr.

Chadha and advances his plea that had it been a loan then they ought to be evidence of offer of repayment and actual payment in whole or in part. In this case there is no evidence that loan of ₹50,000/- was offered to be paid.

16. To re-enforce his argument, Mr. Chadha relies on the relevant part of the evidence of DW-1 Kulwant Singh during recall for further cross-examination. On solemn oath he stated as follows:-

*“DW1:- Kulwant Singh defendant recalled for further cross examination on SA
xxxxx by Sh. Prabhjot Singh, Adv on behalf of Plaintiff. I have not brought the copy of sale deed. **Usha Mohan had given to me Rs.1,48,000/- and Rs. two lacs through cheque as loan (Mainu Usha Mohan Ne 1,48,000/- rupee ate 2 lakh rupee Rahin Cheque Bator Loan Ditta se).** I do not know as to whether my counsel stated about this in the written statement or not. No documentation was done with regard to the loan. It is incorrect that the aforesaid amount was given so as to get the sale deed of my house released from the bank. **It is correct that Ex. P1 bears my signatures (Eh theek he ki Ex P1 te mere daskhat han)** and when my signatures were obtained on Ex P1, they were blank papers, nothing was written thereupon. It is incorrect that when I signed on Ex P1, agreement to sell had been written thereupon at that time. **I had returned the loan which I had taken. I do not remember the date and month of returning the loan.** It is incorrect that the amount which I had taken was for executing the sale deed in favour of the plaintiff. It is also incorrect that I have not returned the said amount. It is also incorrect that I have given a false statement for not executing the sale deed. It is incorrect that I have given false statement.*

RO&AC

Sd/-

Kulwant Singh

Sd/-

CJ (JD) LDH

18/1/12”

17. Kulwant Singh did not remember the day and month of

returning the loan and, therefore, his story should not have been believed by

the Courts below without corroboration. The learned Additional District

Judge, Ludhiana in his judgment dated April 10, 2013 has improperly upheld the judgment and decree of the trial Court without proper justification or assigning pertinent reasoning and has partially decreed the suit for recovery for ₹50,000/- along with interest @6% per annum from January 27, 2006 till its realization with costs. The defendant has been directed to pay ₹50,000/- to the plaintiff. The fundamental flaw which has occurred in the judgments of the Courts below is misreading of evidence and omission to read the relevant materials on record which clearly prove that the agreement of sale was a genuine document on the preponderance of probabilities.

18. Mr. Chadha has taken me through the written statement of the defendant and the entire oral deposition of the defendant and I have no reason to disagree with the contentions of Mr. Chadha that this is a case for interference and reversal of the judgments and decrees of the Courts below.

19. As a result, the appeal is allowed. The judgments and decrees of the Courts below are set aside. The suit is decreed as prayed.

(RAJIV NARAIN RAINA)
JUDGE

06.11.2017
manju

Whether speaking/reasoned *Yes*

Whether reportable *No*