

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3843 of 2016 (O&M)
Date of decision: 16.03.2017

Sukhdev Singh

... Appellant

Vs.

Manohar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Jasinder Singh Thind, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Having failed in both the Courts below, in his suit for specific performance of agreement to sell dated 05.12.2002, plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by learned first appellate Court in para 3 of its impugned judgment, are that Gurdial Singh son of Teja Singh was owner in possession of land measuring 57 Kanals 1 Marlas bearing Khasra No.98/16/2(1-2), 17/1/1(3-13), 576/4(0-12), 98/14(8-0), 15/1(7-16), 576/3(0-4), 97/1(8-0), 98/7(6-13), 97/10/1(0-18), 10/2/1(0-9), 98/5/3(6-0), 6/1(7-8), 16/1/2(6-1), 576/2(0-5) khata khatauni No.57/112, 104/187, 166/330, 238/438, as per jamabandi for the year 2002-03 situated in village Buttar Kalan, Sevia Patti, Tehsil Baba Bakala, District Amritsar and said Gurdial Singh entered into an agreement to sell dated 5.12.2002, with regard to the said land along with

two bores and tubewell connections B-151 5 HP and all rights thereof with the plaintiff for Rs.19,96, 750/- at the rate of Rs.2.80 lacs per acre and accordingly, an agreement to sell dated 05.12.2002 was duly executed by Gurdial Singh in favour of plaintiff in presence of attesting witnesses. At the time of execution of agreement to sell, in question, Gurdial Singh received Rs.12 lacs as earnest money from the plaintiff. It was agreed by Gurdial Singh that sale deed would be executed by him in favour of plaintiff on 06.12.2003 on receipt of balance sale consideration. All the terms and conditions were incorporated in the agreement. Possession of the suit land was delivered to the plaintiff on 05.12.2002 and since then, plaintiff had been in cultivating possession thereof. On 06.12.2003, it was Saturday and office of Sub Registrar was closed being holiday and on 08.12.2003, plaintiff along with balance sale consideration and expenses remained present in the office of Sub Registrar, Baba Bakala, but Gurdial Singh did not appear to execute the sale deed. Plaintiff got his presence marked by executing an affidavit. Thereafter, plaintiff approached Gurdial Singh many times for execution of sale deed in his favour but he did not pay any heed to the request of plaintiff. Unfortunately, Gurdial Singh died on 17.04.2004, leaving behind defendants No.5 to 16 as his legal heirs. Plaintiff also approached the legal heirs of Gurdial Singh, but they intimated that defendants No.1 to 4 had got the sale deed executed from deceased Gurdial Singh on 11.06.2003. Thereafter, plaintiff applied for the certified copy of sale deed dated 11.06.2003 which was received on 10.09.2004 and thereafter, he also applied for jamabandi. Defendants No.1 to 4 had prior knowledge regarding execution of agreement to sell dated 05.12.2002 executed by Gurdial Singh, since deceased in favour of plaintiff. So, the sale deed dated 11.06.2003

was not a valid and legal. Defendants No.1 to 4 had taken forcible possession of the suit property on 27.11.2009 during the pendency of suit. So, they were in illegal and unauthorized possession of the suit property and plaintiff was entitled to get the possession of the suit property being its prospective vendee. Plaintiff remained ready and willing to get the sale deed executed in his favour on payment of balance sale price. The plaintiff requested the defendants No.5 to 16 to receive the balance sale consideration and to execute sale deed in his favour but they dilly delayed the matter on one pretext or the other, stating that they would execute the sale deed after applying for cancellation of sale deed dated 11.06.2003, but they had not taken any step to do so. On the other hand, defendants No.1 to 4 were threatening to alienate the suit land to some other person to which they had got no right, title or interest. Hence, on accrual of cause of action, present suit was filed by plaintiff.

Defendants were served in the suit. Joint written statement was filed by defendants No.1 to 4, raising more than one preliminary objections. Agreement to sell was alleged to be forged and fabricated document. Defendants No.1 to 4 claimed themselves to be bonafide purchasers without notice and for due consideration. Gurdial Singh, who allegedly executed the agreement to sell dated 05.12.2002 in favour of the plaintiff-appellant and later on sold the suit land vide registered sale deed dated 11.06.2003 for valuable consideration of Rs.21,39,500/- in favour of defendants No.1 to 4, died. Defendants No.5 to 16 were the legal representatives of Gurdial Singh. Plaintiff filed his replication.

On completion of pleadings of the parties, learned trial Court framed the following issues: -

- 1) Whether the defendant Gurdial Singh executed an agreement to sell dated 05.12.2002 in favour of plaintiff qua the land in dispute after receiving an amount of Rs.12 lacs? OPP
- 2) Whether the plaintiff was and is always willing and ready to perform his part of agreement dated 05.12.2002? OPP
- 3) Whether the sale deed dated 11.06.2003 is invalid and is liable to be declared null and void ? OPP
- 4) Whether the defendants No.1 to 4 have already taken the forcible possession of suit property from plaintiff on 27.11.2009 during the pendency of the suit ? OPP
- 5) Whether the plaintiff is entitled for possession of the suit property? OPP
- 6) Whether the plaintiff is entitled for permanent injunction as prayed for ? OPD
- 7) Whether the present suit is not maintainable ? OPD
- 8) Whether the plaintiff has no locus standi to file the present suit ? OPD
- 9) Whether the plaintiff has concealed the material facts at the time of filing the present suit ? OPD
- 10) Whether the sale deed dated 11.6.2003 is with due consideration and within the notice of plaintiff ? OPD
- 11) Relief.

In order to prove their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record,

learned trial Court came to the conclusion that the plaintiff has failed to prove his case. Accordingly, suit of the plaintiff was dismissed, vide impugned judgment and decree dated 08.10.2012. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned District Judge vide his impugned judgment and decree dated 19.01.2016. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

Appellant, being the plaintiff, onus was on him to prove, by leading the cogent and convincing evidence. It was alleged in the written statement that case of the plaintiff was based on falsehood, because the alleged agreement to sell was a forged and fabricated document. In spite of the fact that the agreement to sell dated 05.12.2002, which was the sole basis for suit of the plaintiff-appellant, had become a seriously disputed document, as per the pleadings of the parties, plaintiff still did not lead the relevant evidence to prove the authenticity of this document-agreement to sell. He did not produce any handwriting and fingerprints expert. On the other hand, it was the defendants, who produced DW3 handwriting and fingerprints expert. Reports Ex.DW3/1 and Ex.DW3/2 along with photographs Ex.DW3/3 to Ex.DW3/11 were produced on record. The learned trial Court considered each and every relevant aspect of the matter and also the evidence available on record, in correct perspective, before passing its impugned judgment and decree dated 08.10.2012, thereby rightly dismissing the suit of the plaintiff.

Similarly, the learned first appellate Court, before arriving at its just conclusion re-examined, considered and appreciated true facts of the case as well as the evidence available on record, in the right perspective. Cogent

findings recorded by the learned first appellate Court in paras 17 and 18 of its impugned judgment, which deserve to be noticed here, read as under: -

“Since plaintiff has filed the present suit, seeking specific performance of of agreement to sell dated 5.12.2002 Ex.P1 allegedly executed in his favour by Gurdial Singh, since deceased, with regard to sale of suit land and he had received Rs.12 lacs in presence of attesting witnesses being earnest money from plaintiff, so it was incumbent upon plaintiff to prove on record all these facts by leading cogent and convincing evidence. Plaintiff has examined Shri Daljit Singh, Advocate, as PW1 and he tendered in evidence his duly sworn affidavit Ex.PW1/1 and as per his deposition, he had drafted agreement to sell dated 5.12.2002 at instance of Gurdial Singh son of Teja Singh, resident of village Buttar Kala, who had been residing at New Partap Nagar, G.T. Road, Amritsar in favour of plaintiff with regard to suit land and Gurdial Singh received a sum of Rs. 12 lacs as earnest money. PW1 Daljit Singh was examined in chief and cross examined partly but later on, he died and his remaining cross examination could not be conducted. So as per law, his testimony cannot be considered. To prove due execution of such agreement to sell and receipt of money, plaintiff further examined Shri Parduman Singh Batra, Adv, as PW2, who furnished his affidavit as Ex.PW2/A identifying signatures of Shri Daljit Singh, Adv, on the alleged agreement to sell as he stated that he remained junior to Shri Daljit Singh Gill, Adv, since May 1999 till 2004. Though he

supported and corroborated the version of the plaintiff in his duly sworn affidavit but while facing cross examination, he has specifically deposed that he had simply identified the signatures of Daljit Singh, Advocate. He further stated in his cross examination that Sukhdev Singh plaintiff had contacted him to depose and to identify the signatures of Daljit Singh, Advocate. He also could not tell the name of Typist from whom the agreement, in question was got typed. So, his testimony is of no help to the plaintiff. Though plaintiff has examined Shri Kulwant Singh, one of the attesting witness to the agreement as PW3 and he also supported and corroborated the version of the plaintiff as regards execution of agreement in question by Gurdial Singh since deceased and as regards receipt of earnest money from plaintiff by Gurdial Singh. In his cross examination, he stated that Sukhdev Singh plaintiff is his brother-in-law(sister's husband). Though in his examination in chief, he stated that Shri Daljit Singh, Advocate had drafted the sale agreement and signed the same and affixed his seal on the same and also read over the contents thereof to the parties in his presence and in presence of Tarsem Singh son of Karam Singh and Shri Parduman Singh, Advocate, but in his cross examination, PW2 Shri Parduman Singh Batra, Adv. stated that he did not know the contents of agreement to sell. In his cross examination, PW3 Kulwant Singh stated that he did not remember who signed the register of Advocate, but he again stated that Sukhdev Singh and Gurdial Singh had signed that register of Advocate, but in his

cross examination, PW2 Shri Parduman Singh Batra, Adv, has stated that Daljit Singh Adv, was not having any such register. However, in the present case, no such register which was allegedly signed by Sukhdev Singh and Gurdial being maintained by Shri Daljit Singh, Adv, has been produced or proved nor any stamp vendor from where Gurdial Singh since deceased purchased the stamp paper has been examined. Furthermore, the impugned agreement to sell was not got scribed from a regular deed writer. Sukhdev Singh plaintiff while appearing into witness box as PW7 has deposed as per his case by tendering his affidavit Ex.PW7/A, but in his cross examination, he has admitted that agreement in question was executed on 05.12.2002 and Gurdial Singh died on 17.04.2004 and on the basis of the impugned agreement, he had not filed any suit against Gurdial Singh during his life time. This circumstance creates suspicion as regards execution of such agreement. This agreement was allegedly executed for sale of big chunk of land and huge money was allegedly received by Gurdial Singh since deceased and the sale deed was allegedly to be executed on 06.12.2003 and then why Sukhdev Singh plaintiff kept mum till 17.04.2004 and why he did not approach Gurdial Singh for execution of sale deed in his favour and why he did not serve any legal notice upon him for not appearing before the office of Sub Registrar for the purpose of execution of sale deed and why he did not file any suit against Gurdial Singh during his life time. He also admitted that he never issued any notice to daughter in law or

grand son of Gurdial Singh for execution of sale deed. All these circumstances remained unexplained on the part of the plaintiff, which are sufficient to draw adverse inference on the testimonies of all the witnesses examined by plaintiff in support of his case and create a suspicion as regards execution of impugned agreement. It is well known that as and when any person purchases any property whether it is a small piece of land or a big chunk of land, verification to the effect of existence of such land and that of revenue record is made, but in his cross examination, Sukhdev Singh plaintiff has stated that before purchasing land, he had not gone to village to verify the price of suit land nor he had verified about revenue record from Patwari and as per his own version, he had acquainted with Gurdial Singh about 10-15 days prior to the agreement. Even the Typist, who, as per version of plaintiff, had typed such agreement, has not been examined by him. So, there is nothing on record to establish the factum of execution of impugned agreement by Gurdial Singh since deceased.

Though it is the case of the plaintiff that possession of land was handed over to him on 05.12.2002 and on 27.11.2009 possession of the suit land was taken forcibly from him by defendants No.1 to 4. So, as per his version he remained in possession of the suit land w.e.f 05.12.2002 till 27.11.2009 but he admitted in his cross examination that he could not produce any document with regard to his possession over the suit land. No khasra girdwari during such period has been proved on record by

the plaintiff, which was the best document for him to establish his possession during such period. So, the evidence led on record by the plaintiff to show his possession is of no help to his case.”

It is the settled proposition of law that relief of specific performance is a discretionary relief. Even if an agreement to sell is proved on record, still it is not always necessary that a decree of specific performance has to follow automatically. Legislature itself has carved out some exceptions in Section 20 of the Specific Relief Act, 1963. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Further, plaintiff-appellant himself appeared as PW7. While deposing before the Court, he contradicted himself to such an extent that his own statement left him dis-entitled for the relief, he was seeking from the Court. He admitted that Gurdial Singh remained alive for 7/8 months even after the target date fixed in the alleged agreement to sell dated 05.12.2002, but the appellant-plaintiff never initiated any kind of litigation against Gurdial Singh. He also admitted in his cross-examination that he did not give any notice to Gurdial Singh regarding execution of sale deed. He also failed to produce any evidence to show his possession over the suit land at the time of filing of the suit, although he claimed that he was in possession of the suit land.

Similarly, Kulwant Singh PW3, who was none else but brother-in-law of the plaintiff, deposed before the Court in favour of the plaintiff. However, during his cross-examination, this witness also falsified the pleaded case of the plaintiff. From the deposition of this witness, it became evident that

plaintiff-appellant was aware of the sale deed dated 11.06.2003, executed by Gurdial Singh, in favour of defendants No.1 to 4, during the lifetime of Gurdial Singh. Despite knowing fully well about the execution of sale deed dated 11.06.2003 by Gurdial Singh in favour of defendants-respondents No.1 to 4, plaintiff-appellant kept on sleeping over his rights, if any. He woken up from the slumber after the death of Gurdial Singh and filed the present suit for specific performance as late as on 31.01.2005. Under these peculiar facts and circumstances of the case obtaining on the record, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

- 1. *Golap Chand Agarwalla G.K. Agarwalla Vs. Gopal Chandra Pal, 2002 (46) ALR 796 (SC).***
- 2. *P.C. Varghese Vs. Devaki Amma Balambika Devi and others, 2005 (8) SCC 486 (SC).***
- 3. *Man Kaur (Dead) by LRs Vs. Hartar Singh Sangha, 2010 (10) SCC 512 (SC).***
- 4. *Swarn Singh Vs. Swarn Kaur and others, 2003 (2) RCR (Civil) 505 (P&H).***
- 5. *Balbir Singh Vs. Manjit Kaur and another, 2013 (1) RCR (Civil) 740 (P&H).***

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned

judgments. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in either of the impugned judgments and decrees passed by both the learned Courts below, the same deserve to be upheld. The regular second appeal, having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

16.03.2017
vishnu

[**RAMESHWAR SINGH MALIK**]
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No