IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 105 RSA-5300-2016(O&M)

Decided on : 18.08.2017

Raj Kumar and another ..... Appellants

VERSUS

Gurcharan Singh ..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.A.S.Dhindsa, Advocate, for the appellants.

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DEEPAK SIBAL, J. (ORAL)

The respondent-Gurcharan Singh, who was the plaintiff before the Trial Court, filed a suit seeking therein possession of land measuring 12 bighas 10 biswas alongwith rasta/passage, Khal alongwith share in 5 HP electric motor connection, kotha, tubewell bore, electric motor in Khewat No.622, Khatauni No.1072, Khasra No.1056(6-5), 1474(6-5), situated at Village Bhatiwal Kalan, Tehsil and District Sangrur (for short "the suit property). The relief of possession of the suit property was based on an agreement to sell dated 16.05.2005 said to have been entered into between the parties for a total consideration of Rs.12,50,000/-. In the alternative, prayer was made for possession by way of specific performance to the extent of 12 bighas 10 biswas of land out of the share of the appellants in land measuring 58 bighas and 5 biswas bearing Khewat No.622, Khatauni Nos.1072 to 1075, Khasra Nos.1054/1(3-0), 1056(6-5), 1474(6-5), 1485(6-5), 1486(6-5), 2437min (0-8), 1055/2(3-0), 1056(6-5), 1059min(1-1-10), 1481(6-5-0), 1482(6-5), 1057(6-5), 1058/3(0-10), 1059min (5-3-10), 1060(0-1-0), 1061(1-4-0), 2211(0-2), situated at Village Bhatiwal Kalan, Tehsil and District Sangrur.

The case set up by the plaintiff/respondent was that the defendants/appellants being owners in possession of the suit property, on

16.05.2005, entered into an agreement with the respondent to sell the same to him for a total consideration of Rs.12,50,000/-. Rs.9,00,000/- was paid by the respondent to the appellants as earnest money and it was agreed to execute the sale deed upto 15.05.2006 upon payment of the balance sale consideration. The terms & conditions of the agreement were reduced into writing on which the parties appended their signatures. Though as per the agreement, possession was said to have been delivered to the respondent, the same was factually not done. The respondent abided by all the terms & conditions of the agreement; remained ready and willing to pay the balance sale consideration and also remained present in the office of the Sub Registrar, Bhawanigarh on 15.05.2006 for execution and registration of the sale deed alongwith the balance sale consideration and other expenses. However, the appellants, in breach of its terms, never turned up in the office of the Sub Registrar, Bhawanigarh, leading to the filing of the suit for the afore-referred prayers.

On being called upon to present their side of the story, the appellants appeared before the Trial Court and denied the case set up by the respondent. It was submitted that the parties were closely related. Since the appellants were in need of money they took a loan from the respondent and in the course of such transaction, on the asking of the respondent, appended their signatures on blank stamp papers which later were misused by the respondent as he got typed thereupon the agreement to sell dated 16.05.2005 and on the basis thereof filed the present suit.

The Trial Court after sifting the evidence led before it and considering the pleas raised by either side concluded that the case set up by the respondent had merit and resultantly decreed his suit.

The appellants challenged the judgment and decree of the Trial Court before the Appellate Court but remained unsuccessful. It is in this background that they have approached this Court through the present second appeal.

Learned counsel for the appellants submitted that the agreement to sell in question being under-valued, as per the provisions of Section 35 of the Indian Stamp Act, 1899 (for short "the Act") no reliance on the same could and should have been placed by both the Trial Court and the Appellate Court. Rather, such document, on presentation, was liable to be confiscated. It was further submitted that there were certain cuttings in the agreement to sell as per which it was apparent that such document had been forged by the respondent and thus for this reason also the agreement in question was unworthy of being relied upon.

The submission with regard to the agreement to sell being under-valued and thus liable to confiscation, was admittedly neither raised before the Trial Court nor the Appellate Court and therefore factually as to whether the document in question was deficient qua payment of stamp duty, finds no discussion in the impugned judgments. Even otherwise, learned counsel for the appellants admits that the agreement to sell was admitted in evidence as Ex.P1 on 05.08.2008 and at the time of such admission of the document no objection with regard to its admissibility was raised by or on behalf of the appellants. It is further not disputed that thereafter the trial proceeded after considering the agreement to sell in question to have been admitted in evidence. That being so, in view of the provisions of Section 36 of the Act, it is not open either for the Trial Court or a Court of superior jurisdiction, which includes this Court, to go behind the order admitting that document in evidence. In this regard, the following observations made by a Constitution Bench of the Apex Court in *Javer Chand and others versus Pukhraj Surana*, *AIR 1961 SC 1655* may be referred to:-

> "Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross examinations of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial Court itself or to a Court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction".

To the same effect are the following observations of the Apex Court in *Shyamal Kumar Roy v. Sushil Kumar Aggarwal (2006) 11 SCC 331* :-

> "The agreement, as notice hereinbefore, was executed in the year 1995. The applications purported to be under Section 151 of the Code of Civil Procedure, 1908 were filed by Appellant only on 16.2.2005. The Development Agreement, as noticed hereinbefore, was admitted in evidence on 17.2.2003. The learned Trial Judge as also the High Court relied upon a decision of this Court in Javer Chand (supra). An attempt to distinguish the said decision of this Court was made, inter alia, on the premise that therein this Court was concerned with interpretation of the provisions of Marwar Stamp Act, 1947 in respect of two mudatti hundis, which have been admitted in evidence on payment of duty and penalty, but sought to be made inadmissible in evidence in terms of the provisions contained in the 1947 Act. This Court opined that once the said document was admitted in evidence, the new Act i.e. the 1947 Act would be inapplicable, stating :
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> "Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction."
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> The said decision, therefore, is an authority for the proposition that Section 36 would operate even if a document has been improperly admitted in evidence. It is of little or no consequence as to whether a document has been admitted in evidence on determination of a question as regards admissibility thereof or upon dispensation of formal proof therefor. If a party to the lis intends that an instrument produced by the other party being insufficiently stamped should not be admitted in evidence, he must raise an objection thereto at the appropriate stage. He may not do so only at his peril."
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> (emphasis supplied).

In view of the above, the first submission raised by learned counsel for the appellants is not worthy of a favourable consideration.

This takes me to the second argument of learned counsel for the appellants which is that in view of some cuttings in the agreement to sell, considering it to be a forged document, no reliance on the same could and should have been placed. The record reveals that the agreement to sell was duly proved by the respondent through the depositions of the Stamp Vendor, who proved that the stamp paper on which the agreement was made was sold to the appellant Raj Kumar as also through the depositions of the marginal witness and the scribe of the agreement to sell. Respondent-Gurcharan Singh also stepped into the witness box in support of his case. A document and fingerprint expert was also produced, who clearly opined that the agreement was genuine. The Reader, in the office of the Sub Registrar, Bhawanigarh was also produced by the respondent, who duly proved the fact that the respondent was present in the office of the Sub Registrar, Bhawanigarh on 15.05.2006 i.e. the date when the parties had agreed to get the sale deed registered. On the other hand, the appellants led no cogent evidence to explain as to why the alleged loan was taken by them. The terms & conditions of such loan also remain unexplained. The allegations of fraud by the appellants remain unsubstantiated. The plea set up by the appellants that out of the borrowed amount of Rs.9,00,000/- they had returned Rs.6,50,000/- is not proved by them. The receipt produced by them in support of such plea does not inspire confidence as the evidence of the expert produced by them to prove the receipt is not based upon the comparison of the signatures of the appellants on the agreement to sell and no opinion is found to be given by the expert produced by the appellants as to whether, as per these allegations, the agreement to sell was prepared on blank papers. The appellants produced Amarjit Kaur to prove that Rs.6,50,000/- had been repaid by the appellants to the respondent. However, Amarjit Kaur deposed that no amount was paid in her presence.

Once the execution of the agreement which formed the basis of the filing of the present suit has been duly proved by the respondent and the allegations by the appellants of such document having been forged have remained unsubstantiated, the argument of learned counsel for the appellants that such document, due to certain over-writing/cuttings had become unworthy of reliance, deserves to be rejected.

Dismissed.

No costs.

18.08.2017 **[DEEPAK SIBAL]**
shamsher **JUDGE**

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No