

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

RSA No.6101 of 2015 (O&M)

Date of Decision: 06.11.2017

Nishtar Singh @ Nachhattar Singh

.....Appellants

Vs.

Naseeb Kaur

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Dinesh Kumar, Advocate, for
Mr.Manish Kumar Singla, Advocate, for the appellants.

RITU BAHRI, J. (ORAL)

CM No.15250-C of 2015

For the reasons stated in the application, delay of 888 days in filing the appeal is condoned.

Application stands disposed of.

RSA No.6101 of 2015

The appellant has come up in appeal against the judgment and decree dated 30.11.2010 passed by Addl.Civil Judge (Sr.Divn.), Jalalabad (West), Distt. Ferozepur, and order of the appellate Court dated 30.01.2013, whereby, plaintiff established her case for the alternative relief of recovery of Rs.7,40,000/- paid as earnest money to the defendant and Rs.53,687.00 NP by way of damages and compensation from the defendant.

The plaintiff had filed a suit for specific performance of agreement to sell dated 09.07.2003 executed by the defendant in favour of plaintiff regarding land measuring 37 kanals 07 marlas. An amount of Rs.7,40,000/-

presence of marginal witnesses and that the defendant further agreed to receive the balance sale consideration at the time of execution and registration of sale deed in favour of plaintiff in terms of agreement before the Sub-Registrar, Jalalabad.

On notice, defendant filed written statement taking the plead that maintainability of the suit. It is pleaded that Ikatar Singh the husband of plaintiff alleging himself to be the owner of a tractor had sold the same in favour of defendant on 09.07.2003 and at that time, he had obtained the signatures on 4/5 blank papers and balk stamp papers saying that theses will be retained by him as receipt of purchase of tractor by the defendant to prove the liability of the defendant qua the said tractor w.e.f. 09.07.2003 onwards which in fact was not the owner of said Ikatar Singh.

On the pleadings of the parties, following issues were framed:

1. Whether the defendant entered into an agreement to sell to the plaintiff of suit property on 09.07.2003 and received Rs.7,40,000/- as earnest amount? OPP
2. Whether the plaintiff has been ready and willing to perform his part of contract? OPP.
3. Whether the agreement in question is a forged and fabricated document? OPD.
4. Whether the suit is not maintainable ? OPD.
5. Relief.

Both the Court have decreed the suit of the plaintiff. The plaintiff in order to prove his case examined the five witnesses. He examined Munsha Singh son of Tota Singh PW-4 who is an important witness of the

the case of the plaintiff by deposing it categorically that he has seen the original agreement to sell dated 09.07.2003 which was signed by him as attesting witness and the said agreement to sell was scribed at the instance and as per instructions of defendant Nishtar Singh regarding sale of land measuring 37 Kanals 7 Marlas situated in the area of village Chak Lakho Wali, Tehsil Jalalabad in favour of of the plaintiff Naseeb Kaur @ Rs.1,70,000/- per acre. He specifically stated that after completion of agreement to sell the contents of the agreement were read over and explained by the scribe to the defendant in his presence and other witness namely Budh Singh son of Balwant Singh and that the defendant after admitting the contents of the same to be correct and after receiving earnest money of Rs.7,40,000/- from the plaintiff put his signatures underneath the agreement in his presence and in the presence of other witness.

The plaintiff has produced and examined Harbans Singh (PW3) who is another important witness being scribe of Ex.P6, who vide his affidavit ex.PW3/A has also reported that the agreement to sell dated 09.07.2003 was scribed by him at the instance of Nachhatar Singh defendant and the said agreement is regarding sale of land measuring 37 Kanals 7 Marlas @ Rs.1,70,000/- per acre. This witness further specifically deposed that after scribing the agreement, it was read over and explained to defendant Nachhatar Singh and the defendant Nachhatar Singh after admitting the contents of the same as correct and after having received the earnest money of Rs.7,40,000/- from the plaintiff put his signatures in Punjabi script in his presence as well as in the presence of Ikatar Singh. A perusal of the file further goes to show that plaintiff to prove the due

Ikatar Singh son of Balwant Singh as PW-2. Vide his affidavit Ex.PW2/A, this witness has specifically deposed regarding execution of agreement to sell Ex.P6 by the defendant in favour of the plaintiff regarding sale of land measuring 37 kanals 7 marlas @ Rs.1,70,000/- per acre in his presence and in the presence of other witnesses. So, the version of all these PWs i.e. PW-1 to PW-4 regarding due execution of Ex.P6 by the defendant Nachhatar Singh in favour of plaintiff thereby agreeing to sell the suit land measuring 37 Kanals 07 marlas owned by him in favour of plaintiff @ 1,70,000/- per acre and regarding the receipt of earnest money @ Rs.7,40,000/- by him (defendant) from plaintiff Naseeb Kaur in the presence of PW-2 to PW-4 are fully corroborative to each other. From their statement, it has been clearly proved on record that the defendant Nachhatar Singh had executed Ex.P6 in favour of the plaintiff. However, a legal notice dated 26.07.2005 issued by her to the defendant through her counsel calling upon him to execute the sale deed of suit land in her favour within 15 days of receipt of the same. This notice was duly served upon the defendant as is clear from the perusal of Ex.P3 the AD receipt bearing the signatures of defendant Nachhatar Singh.

As regard the stand taken by the defendant that since the agreement P-6 has not been executed on stamp paper of Rs.300/-, the suit for specific performance could not decreed/ The careful perusal of the file goes to show that the agreement to sell in dispute in this case has been executed on the simple paper bearing adhesive stamps of Rs.20/- of the value of Rs.300/-. The plaintiff is however, definitely entitled for recovery of the earnest money of Rs.7,40,000/- paid by her to the defendant Nachhatar Singh at the time of execution of Ex.P6 along with interest and

agreement is forged and fabricated document.

Since the agreement to sell (Ex.P6) was duly proved, the suit filed by the plaintiff was rightly decreed by both the Courts below as plaintiff has successfully established her case for the alternative relief of recovery of Rs.7,40,000/ paid as earnest money to the defendant and Rs.53,687-50 NP by way of damages and compensation from the defendant with interest as given by Courts below. So in the light of the discussion, no substantial question of law arising out and the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

06.11.2017

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No