

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1539-2017(O&M)

Date of Decision:20.03.2017

Shamsher Singh

.....Appellant

Versus

Naresh Pal

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Atul Lakhanpal, Senior Advocate,
with Mr.R.S.Chahal, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the impugned judgment of reversal dated 05.11.2016 passed by the learned District Judge, allowing the first appeal of defendant and setting aside the judgment and decree dated 05.03.2012 of the learned trial Court allowing the suit for possession by way of specific performance of agreement to sell, plaintiff has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned first appellate Court in para 1 of its impugned judgment, are that the plaintiff filed the suit, *inter alia*, pleading that on 19.12.2005, the defendant executed an agreement to sell his land measuring 8 Bighas 9 Biswas being 7/24th share of the total land measuring 29 Bighas comprised in Khasra No.371, 368, 373, 374, 372, 375 and 376, situated in Mauza Issopur HB No.471 village Satgauli, Tehsil Jagadhri, District Yamuna Nagar as per jamabandi for the

year 1998-99 in his favour at the rate of ₹11,00,000/- per acre. A sum of ₹7,80,000/- was paid as earnest money and possession of the land was handed over to the plaintiff. The date for execution and registration of the sale deed was fixed as 20.12.2006. On the date fixed, the plaintiff remained present in the office of Sub Registrar, Jagadhri ready with balance sale consideration and expenses for registration but, the defendant did not turn up. He (the plaintiff) issued notice dated 22.02.2007 calling upon the defendant to inform within 15 days from the receipt of the notice as to when would he be executing and getting the sale deed registered. The notice was received by the defendant but, he sent reply dated 01.03.2007 denying the execution of agreement; concocting a cock and bull story and thereafter, he forcibly took the possession of the land back. Claiming that he has always been ready and willing to perform his part of contract, the plaintiff sought specific performance of the agreement. The defendant was also sought to be restrained from alienating the land to anybody else and from changing the nature of the land.

Having been served in the suit, defendant filed his contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled for possession of the suit land by way of specific performance of agreement to sell dated 19.12.2005 with respect to the suit property detailed in the head note of plaint on payment of balance sale price or any other amount as assessed by this court?OPP*
- 2. Whether the plaintiff has been ready and willing to perform his part of the agreement?OPP*
- 3. Whether the plaintiff has no locus standi to file the*

present suit?OPD

4. *Whether the suit of the plaintiff is not maintainable?OPD*

5. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD*

6. *Whether the defendant is entitled for cost under Section 35-A CPC?OPD*

7. *Relief.”*

In order to prove their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has duly proved his case. Accordingly, his suit for possession by way of specific performance of agreement to sell dated 19.12.2005 was decreed, vide judgment and decree dated 05.03.2012. Defendant filed his first appeal which came to be allowed by the learned first appellate Court vide its impugned judgment and decree dated 05.11.2016. Hence, this regular second appeal, at the hands of the plaintiff.

Heard learned senior counsel for the appellant.

It was pleaded and argued case on behalf of the appellant that defendant put him in possession at the time of agreement to sell, however, later on plaintiff-appellant was forcibly dispossessed by the defendant. However, when asked to point out any relevant evidence in this regard, learned senior counsel for the appellant had no answer and rightly so, it being a matter of record, because the plaintiff did not produce any such evidence. In fact, a bare look at the agreement to sell Ex.P1 will make it abundantly clear that it was a forged and fabricated document. The learned trial Court misdirected itself while decreeing the suit of the plaintiff without

there being any sufficient evidence. Having said that, this Court feels no hesitation to conclude that the learned District Judge was well within his jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

Before arriving at a just conclusion, learned first appellate Court re-examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. The cogent findings recorded by the learned District Judge in para 18, 19 and relevant first half para 22 of his impugned judgment, which deserve to be noticed here, read as under:-

“There are subtle variations between the statements of the plaintiff and PW Jaswant Singh which is indicative of the fact that they had come well prepared/rehearsed. However, these variations are sufficient to raise a doubt in the mind of the court as to the authenticity of the transaction. According to the plaintiff, PW Jaswant Singh met the parties in the campus where petition writers have their seats but according to PW Jaswant Singh, he met the parties outside the court complex when he was going towards his brother's house in Sector 17. If the plaintiff is to be believed the remaining witnesses, namely, Khalil Ahmad and Radhey Shyam had met the parties in Tehsil office by chance. It is doubtful if the parties, who were coming specially to the Tehsil for execution of the agreement to sell for a valuable consideration, would not have brought anybody along to act as witness. It seems that the plaintiff, while concocting his version, did not pay heed to this aspect. His attention was more towards proving that the witnesses do not owe allegiance to him. This is why he claimed that PW Jaswant Singh is related to the defendant albeit, at no point of time, could he muster courage to put this fact to PW Jaswant Singh. According to the plaintiff, the agreement was typed

*by Bagga, Petition Writer whereas according to PW Jaswant Singh, it was typed by Om Parkash. It is not the case of the plaintiff that Om Parkash and Bagga is one and the same person. It is quite strange that the agreement was typed by a petition writer but he did not make an entry to this effect in his register whereas as a matter of practice it is to be done. This creates a doubt in the mind of the court that the agreement was typed in the back date. Even otherwise, the stamp paper does not indicate as to who purchased it. The stamp vendor, from whom the stamp paper was purchased, has not been produced in the witness box. His register, wherein corresponding entry would have been made and attested by the purchaser, has not been proved. The scribe of the agreement too has not been examined and as indicated above, there is no unanimity between PW1 and PW2 about his identity. In **Joseph Johan Peter Sandy Vs. Veronica Thomas Rajkumar and another, 2013(3) Civil Court Cases 270 (S.C.)**, the Hon'ble Supreme Court held that when there is theory of signing blank papers then scribe is the best person to reveal the correct position whether blank papers were signed or whether the executant had come to him for execution of the document with the attesting witness. Needless to say that it is the scribe who could have explained as to who had bought the stamp paper for the document. The facts of this case are of the same genre. It is reiterated that there is nothing on record to prove who bought the stamp paper. The scribe having not stepped in the witness box, it is doubtful if the agreement was executed in the manner as alleged. The doubt is compounded by PW2 when he says in his cross-examination that he does not know as to who were the other witnesses as he had left immediately after affixing his signatures whereas in his examination-in-chief by way of affidavit, he had mentioned the names of the remaining witnesses.*

No doubt that the execution of any document has to be

viewed in broader terms without indulging in nit-picking as there would be hardly a document executed with iron cast perfection. There is least doubt that trivial defects and lacunae here and there have to be ignored if the overall picture is convincing. But where there is concealment of material facts/evidence by the plaintiff and there are signs of manipulation, the courts have to put their foot down and refuse to exercise discretion in favour of the plaintiff. It is worth mention that in his cross-examination, the plaintiff was specifically asked as to whether he had entered into any agreement with the defendant prior to the agreement in question. His answer was in negative. When his attention was drawn to the fact that on 15.12.2002, an agreement regarding 4 Bighas was executed between him and the defendant, he claimed that he does not remember. His attention was drawn to the fact that in the said agreement, the total sale consideration had been shown as ₹3,20,000/- out of which ₹2,20,000/- were shown as earnest money. He claimed ignorance if Jagmal Singh and Jaswant were the witnesses on that agreement. Since the defendant did not have the previous agreement, he summoned Jagmal Singh Chauhan, Deed Writer, Jagadhri who brought his register for the year 2001 and stated that against entry No. 948 dated 18.12.2001, there was entry regarding the execution of an agreement to sell between Naresh Pal son of Rulia Ram, resident of Issopur and Shamsheer Singh son of Kathu Ram, House No. 1, Jammu Colony, Yamuna Nagar about 4 Bighas 6 Biswa land. He went on to state that there were several entries in his register about agreements in favour of the plaintiff. The copy of the register containing relevant entry has been placed on record as Ex. D4 wherein the entire details are mentioned. The signatures of the parties were there in the original register. This document probablises the case of the defendant that previously also such like agreement had been prepared. Had the plaintiff

been honest, he would have had no hesitation in admitting this but he chose to deny and at the same time avoided answering the questions. Although, in suggestion given to him, reference was to agreement dated 15.12.2002 whereas Ex. D4 refers to agreement dated 18.12.2001, there is not much of difference because, from the details mentioned on Ex. D4, it is evident that the agreement was in respect of 4 Bighas 6 Biswas for a total sale consideration of ₹3,20,000/- out of which ₹2,20,000/- were supposed to have been paid as earnest money and the final date for execution of sale deed was fixed as 15.12.2002. It seems that the counsel for the defendant while putting suggestion to the plaintiff mistakenly referred to the final date as the date of execution of agreement. Therefore, not much emphasis ought to be laid on the error.

The Court will fail in its duty if the agreement Ex. P1 is not scrutinized minutely. It runs into three pages and appears to have been drafted very carefully. On first look, it does not give the impression of having been fabricated or prepared on blank signed papers. However, there is a striking feature which accentuates the already existing doubt in the mind of the Court. There is difference of margin on Page-1 and Page-2 where the words “albad fareek aval and albad fareek doyam” are mentioned. The margin between these words and the last line on Page-1 is single while it is double on Page-2. This cannot be brushed aside as trivial difference. It seems that with the signatures of the defendant already at the bottom of Page-1, there was compulsion to adjust the writing. Such an expediency might have been working on the back of the mind of the typist. He may not have been sure whether double spacing would be suitable. Therefore, he appears to have given single spacing. On Page-2 and Page-3, there was no such compulsion. Therefore, double spacing was given. This difference exposes the manipulation done by the plaintiff. It is,

therefore, proved by preponderance of probabilities that the blank stamp papers bearing signatures of the defendant were converted into agreement to sell and receipt. This puts a seal of an approval on the plea of the defendant that he had taken loan from the plaintiff who had got his signatures on blank stamp papers.”

It is the settled proposition of law that even if an agreement to sell is proved on record, it does not mean that a decree of specific performance has to follow automatically in every given situation. The legislature, in its wisdom, itself has carved out some exceptions in Section 20 of the Specific Relief Act, 1963. In the present case, plaintiff-appellant, while leading his evidence, has contradicted himself to such an extent that he got himself completely exposed. He had been found changing his stand from time to time, as per his own suitability. The plaintiff was trying to play smart with the defendant as well as with the Court but he was caught at the wrong foot.

Since the case of the plaintiff-appellant was based on falsehood, he has not been found to be a bonafide litigant. A litigant who does not come to the Court with clean hands has no place to stand in the justice delivery system. Relief of specific performance is a discretionary relief. Such litigant is liable to be non-suited and can be non-suited at any stage of litigation. Since the truth is the basis of justice delivery system, a false and frivolous litigation is bound to fail. A litigant who has no respect for the truth does not deserve any sympathy from the Court as well.

The abovesaid view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Kishore Samrite Versus State of U.P. and others**, 2013(2) SCC 398. The relevant observations

gainfully followed in the present case, read as under:-

32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be dis-

*closed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : **Tilokchand H.B. Motichand & Ors. v. Munshi & Anr., [1969(1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr., 2012(3) R.C.R.(Civil) 1 : 2012(3) Recent Apex Judgments (R.A.J.) 56 : (2012)6 SCC 430; Chandra Shashi v. Anil Kumar Verma, 1995(1) R.C.R.(Criminal) 210 : (1995) SCC (1) 421; Abhyudya Sanstha v. Union of India & Ors., 2012(1) S.C.T. 641 : (2011)6 SCC 145; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr., 2011(5) R.C.R.(Civil) 397 : (2011) 7 SCC 639; Kalyaneshwari v. Union of India & Anr., 2012(2) R.C.R.(Civil) 626 : 2012(2) Recent Apex Judgments (R.A.J.) 242 : 2012 (2) S.C.T. 551 : (2011)3 SCC 287).***

*34. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi- fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.*

35. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come

with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors., [(2008)12 SCC 481].

So far as fact situation of the case in hand is concerned, it was a case of loan transaction. Defendant never intended to sell the suit property to the plaintiff. It was the plaintiff who tried to play smart with a view to grab the property of the defendant. Since the entire case of the plaintiff-appellant was revolving around the agreement to sell Ex.P1, onus was on him to prove the agreement to sell, in accordance with law, but he miserably failed to do so. The agreement to sell, Ex.P1 has been found surrounded by very many suspicious circumstances, as noticed by the learned District Judge.

Learned senior counsel for the appellant could not address any meaningful argument to explain the suspicious circumstances surrounding the agreement to sell. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned District Judge committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court as well as this Court in Joseph Johan Peter Sandy Versus Veronica Thomas Rajkumar and another, 2013(2) R.C.R.(Civil) 461; Ramji Dayawala and Sons (P) Ltd. Versus Invest Import, 1981(1) SCC 80; Gurdial Sarup Versus

Kaushalya Kapur and others, 2003(2) R.C.R.(Civil) 374; Nirmal Singh Versus Mangal Singh, 2002(1) R.C.R.(Civil) 745 and Mangat Singh Versus Rakesh Kumar Gupta and another, 2014(4) R.C.R.(Civil) 387.

During the course of hearing, learned senior counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment and decree passed by the learned first appellate Court. 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 judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others**, 2009 (2) RCR (Civil) 286 and **Santosh Hazari Versus Purshottam Tiwari**, 2001 (3) SCC 179.

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 the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

March 20, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No