

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

**CM No.8332-C of 2017 in/and
RSA No.2333 of 2017
Date of decision:12.07.2017**

Tejinder Singh

.....Appellant

Versus

Lakhwinder Singh (deceased) through his LR's and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Khunger, Advocate,
for the appellant.

Ritu Bahri, J.

CM No.8332-C of 2017

For the reasons mentioned in the application, same is allowed and the main appeal i.e. RSA-2333-2017 is taken up today itself for disposal.

RSA No.2333 of 2017

Defendant No.2-appellant (Tejinder Singh) has filed the present appeal against the judgments of concurrent findings of fact recorded by both the Courts below i.e. Addl. Civil Judge (Senior Division), Jagraon and the Additional District Judge, Ludhiana, whereby suit filed by the plaintiff-respondent Nos. 1 and 2 for possession by way of specific performance of agreement to sell dated 17.09.1993, has been decreed.

Plaintiffs (respondent Nos. 1 and 2 herein) filed a suit to the effect that vide agreement to sell dated 17.09.1993, defendant No.1-Gulzar Singh (respondent No.3 herein) had agreed to sell land measuring 10 Kanals 15 Marlas to them for a sale consideration of Rs.1,10,000/- and received ₹50,000/- as earnest money. Another sum of ₹50,000/- was agreed to be

Rs.10,000/- was to be paid at the time of execution and registration of the sale deed, which was stipulated to be executed on or before 30.03.1994. Possession of the suit land was delivered to the plaintiffs by defendant No.1- Gulzar Singh at the time of execution of the agreement to sell on 17.09.1993. As per terms of the agreement, plaintiffs had paid a sum of ₹50,000/- to defendant No.1 vide writing dated 18.02.1994. Thereafter, plaintiff (Lakhwinder Singh) had requested defendant No.1 to execute the sale deed in his favour, but he (defendant No.1) did not do so. However, Baljit Kaur, representative of defendant No.1, illegally and wrongly alienated land measuring 7 Kanals 12³/₄ Marlas, out of the suit land, in favour of defendant No.2 (appellant herein) vide registered sale deed dated 17.01.2005 during the pendency of the suit despite the fact that a status quo order qua alienation of the suit land had already been passed by the Court on 06.08.1994. Hence, the suit.

Upon notice, defendant No.1 appeared and filed written statement admitting his ownership over the suit land. Execution of agreement dated 17.09.1993 and receipt of earnest money of ₹50,000/- by defendant No.1 in favour of the plaintiffs was denied. It was further stated that the alleged agreement to sell and the receipt regarding payment of ₹50,000/- were forged and fabricated documents, which have been prepared by the plaintiffs in connivance with Mr. V.K. Bansal, Advocate. Defendant No.1 had suffered a collusive decree dated 21.12.1992 in favour of his niece (*bhatiji*) namely Manjit Kaur. But, in the month of January, 1993, his relations with her became strained. In order to challenge the aforesaid decree, he had engaged Mr. V.K. Bansal, Advocate, who procured his signatures and thumb impressions on certain blank papers. In stead of challenging the

plaintiff, had fabricated the alleged agreement and writing on the said papers with an intention to grab his property.

Defendant No.2-appellant filed his separate written statement taking preliminary objections with regard to maintainability of the suit, jurisdiction, Court fee and cause of action. It was stated that defendant No.2 was bonafide purchaser of the suit property without notice and his right was protected under Section 41 of the Transfer of Property Act. On merits, he has denied the factum of any knowledge about agreement to sell dated 17.09.1993.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the defendant No.1 executed the sale agreement dated 17.09.1993 in favour of the plaintiff, if so, its effect? OPP
2. Whether the plaintiff is entitled for possession by way of specific performance of agreement to sell? OPP
3. Relief.

Subsequently, following additional issues were framed vide order dated 14.11.1995:-

- 1-A. Whether defendant No.1 executed agreement of sale dated 18.02.1994 in supplement to the agreement dated 17.09.1993, if so, its effect? OPP
- 1-B. Whether plaintiff always remained ready and willing and now also is ready and willing to perform his part of contract? OPP
- 1-C. Whether the agreements dated 17.09.1993 and 18.02.1994 are result of fraud and are forged and fabricated documents? OPD

Thereafter, vide order dated 27.02.2007, another additional issue was framed, which reads as under:-

- 1-D. Whether defendant No.2 is a bonafide purchaser for a valid sale consideration? OPD-2

During the pendency of the suit, defendant No.1-Gulzar Singh

expired and his wife Baljit Kaur stepped into his shoes. In order to prove execution of the agreements dated 17.09.1993 and 18.02.1994, plaintiffs examined Balbir Singh, one of the marginal witnesses, as PW-3, who deposed that Gulzar Singh had executed the agreement to sell dated 17.09.1993 in favour of the plaintiff qua land measuring 10 Kanals 15 Marlas for a total sale consideration of ₹1,10,000/-, out of which, he received ₹50,000/- as earnest money and delivered possession of the suit land to the plaintiffs. He also deposed that after admitting the contents of the agreement to be correct, parties put their respective signatures on the same. Thereafter, he along with another witness namely Kuldip Singh, put his signatures thereon. He identified his signatures on the agreement as Ex.PW3/1. Pritam Singh, marginal witness of agreement to sell dated 18.02.1994, was examined as PW-2, who identified his signatures as Ex.PW2/1. Dwarka Nath Raina, Stamp Vendor, Jagraon, was examined as PW-1, who proved on record copy of register showing entry of stamp paper worth ₹3/- purchased by Gulzar Singh, as Ex.PW1/1. He identified his seal and signatures on the back of stamp paper and proved the same as Ex.PW1/2 and Ex.PW1/3. Parkash Singh (PW-5) deposed that he had gone with the plaintiff to the house of defendant No.1 in order to ask him to perform his part of the contract, but he did not met there. Later on, after a gap of 2-3 days, defendant No.1 met him at Raikot, where he had conveyed the message of Lakhwinder Singh. However, defendant No.1 had told him that he could not execute the sale deed in favour of Lakhwinder Singh-plaintiff due to having apprehension of daughter-in-law of his brother, who had not been providing food. He had further informed that in case he did so, he would be criminally intimidated by daughter-in-law of his brother. This

Gulzar Singh was enjoying every amenity of life while residing with Baljit Kaur and the story put forth by him was concocted one.

The defendants had taken a stand that agreements dated 17.09.1993 & 18.02.1994, Ex.PW-3/2 and Ex.PW-2/1, were forged and fabricated documents. They examined Santokh Singh, Advocate (DW-1), M.S. Ghuman, Advocate (DW-2) and Randhir Singh, Clerk of M.S. Bhutter, Advocate (DW-5) to prove that plaintiffs were represented by V.K. Bansal, Advocate and they had earlier conducted forgery with regard to the document, Ex.D-20. Copy of plaint with regard to a suit filed by one Satwinder Singh against Harjit Kaur and Lakhwinder Singh, was produced on record as Ex.D1. Sh. M.S. Ghuman, Advocate (DW-2) had proved on record copy of the written statement filed in a case titled as 'Lakhwinder Singh Vs. Satwant Singh and another', as Ex.D2. He also identified his signatures on the same. Sh. M.S. Butter, Advocate (DW-5) placed on record copy of agreement and power of attorney filed by Sh. V.K. Bansal, advocate, on behalf of plaintiff, as Ex.D-21 and Ex.D-22.

In order to rebut this evidence, plaintiffs had placed on record copies of order dated 15.05.1996 and decree sheet, Ex.PR and Ex.PS, to show that a compromise, Ex.C-1, had been effected between the plaintiffs and Satwant Singh, whereby he had agreed to return the earnest money of the plaintiffs. Defendant No.1 had placed on record copies of plaints/suits pending between Sanmati Vimal Jain School and Sanmati Sewa Singh as well as Municipal Committee, Jagraon along with copies of written statement(s) and replication(s) filed therein and judgments pronounced therein as Ex.D8 to Ex.D14. However, these documents were not sufficient to prove any fraud committed by Sh. V.K. Bansal, Advocate. Moreover,

that he had gone with defendant No.1-Gulzar Singh to Mr. V.K. Bansal, Advocate, who had talked with him with regard to the agreement to sell executed in favour of Lakhwinder Singh (plaintiff).

After going through the above evidence, plea that agreement to sell in question was the result of fraud and forgery committed by Mr. V.K. Bansal, Advocate, by taking signatures of Gulzar Singh (defendant No.1) on the blank papers, was held to be highly improbable.

Finally, issue (issue no.1-D) with regard to defendant No.2-Tejinder Singh (appellant herein) being bonafide purchaser has been considered in detail by both the Courts below. Appellant-defendant No.2 along with his parents, was party to the partition proceedings initiated by Baljit Kaur qua the suit land in the year 1994. The sale deed was executed by Baljit Kaur in favour of defendant No.2 on 17.01.2005. Copy of partition proceedings showing Tejinder Singh and his parents as party to the partition proceedings was proved on record as Ex.PQ. Further, Gurinder Singh (PW-6), who was attorney of legal representatives of plaintiff, deposed that after passing of the injunction order, notice was got published by the plaintiff(s) in daily Punjabi 'Jag Bani' newspaper. Hence, even if the injunction order was not got entered in the revenue record i.e. Jamabandi Ex.D-15 to Ex.D-18 and rapat roznamcha, the fact that it was got published in daily Punjabi 'Jag Bani' newspaper, was sufficient to prove that it was within the knowledge of general public that litigation with respect to this land was going on. Since, defendant No.2 and his parents were party to the partition proceedings, they could not take the plea that they were not aware about the pendency of civil litigation. Baljit Kaur, daughter of Gulzar Singh, had wrongly and illegally sold the land in dispute to defendant No.2 despite

passing of the injunction order by the Court. Hence, defendant No.2

(appellant) could not lead sufficient evidence to show that he was bonafide purchaser of the suit land. Thus, issue No.1-D has rightly been decided against defendant No.2.

Learned counsel for the appellant has not been able to show any evidence led by defendant No.2, which has been misread by both the Courts below while returning a finding that he cannot take the plea of bonafide purchaser. Moreover, this Court in **Prem Chand Vs. Haryana State Industrial Development Corporation Ltd.**, 2006 (2) RCR (Civil) 468, has held that if, any property is purchased during the pendency of litigation, the plea of bonafide purchaser is not available to the vendee.

Learned counsel for the appellant has not been able to refer any judgment contrary to the law laid down by this Court in **Prem Chand's** case (supra). Hence, after going through the impugned judgments passed by the Courts below, no illegality, much less perversity, has been found therein, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

12.07.2017
ajp

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