

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.4759 of 2017 (O&M)
Date of Decision: 23.10.2017**

Kamaljeet and another

... Appellants

Versus

Manju Sharma

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: M. Bhag Singh, Advocate,
for the appellants.

RAJIV NARAIN RAINA, J.

1. The defendants are in appeal in a suit for specific performance of an agreement to sell land admeasuring 41 K 17 M by contract dated October 14, 2007. The plaintiff is the proposed buyer agreeing to purchase the suit land for ₹47,86,593/- of which ₹7 lakh were paid as earnest money. The balance was to be paid on the target date i.e. April 14, 2008. The defendants handed over the original sale deeds of the suit land to the plaintiff on the day of agreement. The plaintiff asserted that a further sum of ₹2 lakh was paid to defendant No.1 on November 05, 2007 towards his ½ share in the sale consideration.

2. Before the target date, the plaintiff apprehending that defendant was negotiating sale of the land to third party brought a suit for permanent injunction on March 15, 2008 against the vendor.

3. On appearance, the defendants disputed the execution of the

agreement in the written statement. The target date turned out to be a holiday and plaintiff asserts that on the following day he remained present in the office of the Sub Registrar with the balance sale consideration but defendant did not turn up to perform his part of the contract and the plaintiff marked her presence before the Executive Magistrate.

4. In the written statement, it may be mentioned, that apart from the suit for permanent injunction instituted before the target date the plaintiff filed the suit for possession by way of specific performance of the contract of sale. The suit has been decreed by the Additional Civil Judge (Senior Judge), Hisar with judgment pronounced on December 17, 2013 and decree sheet prepared on the same day. Defendants are directed to execute and register sale deed in favour of the plaintiff within a period of two months, failing which plaintiff shall be entitled to get the sale deed executed and registered through Court.

5. Upon the evidence adduced on record, the trial Court has concluded while having regard to the pleadings and the deposition of witnesses that execution of the agreement Ex.P-1 stands proved; passing of consideration under the agreement has been proved by plaintiff; plaintiff appeared in the witness box as PW-2 and supported her case in her oral deposition. The cross-examination gave birth to no contradiction or inconsistency from the pleaded case. The attesting witness to the agreement to sell, Patel Singh PW-4 corroborated the stand of the plaintiff regarding execution of agreement. Receipt of earnest money by the defendants and receipt of further sum of ₹2 lakh as per Ex.P-2 has been corroborated by the witness; Shamsher Singh PW-4-A Handwriting and Finger Print Expert

produced by the plaintiff has proved the disputed signatures of the executant on the agreement Ex.P-1 and opined that the signatures therein when compared with the standard specimen signatures are of one and the same person.

6. Then emerges the major chink in the armour of the defendants when they failed to muster courage to produce and examine a handwriting and finger print expert to successfully rebut the opinion of expert witness Shamsher Singh examined by the plaintiff-respondent. The finding of readiness and willingness of the plaintiff for performing her part of the agreement stands proved as a fact from the affidavit of the plaintiff Ex.P-5. Her testimony has not been shaken in cross-examination. The Courts have ruled out chances of material discrepancy or contradictions in the testimony of plaintiff witnesses, the scribe etc. It would be useful to reproduce the stand of the defendants in their preliminary objection No.2:-

“02. That plaintiff has no cause of action to file present suit against defendants, as defendants had not entered into any such agreement with plaintiff, as is attached with plaint. Here it would be pertinent to mention that, attached agreement & receipt, upon which false claim is made by plaintiff, were never signed by the defendants & signatures put on them are false & fake. Plaintiff had prepared forged documents to make a false claim from defendants & this fact is well within notice of plaintiff. Here it would be pertinent to mention that in this regard, an application u/section 340 Cr.P.C. is even pending against the plaintiff in Hon'ble Court of Sh. Sunil Kumar, Ld. C.J. (J.D.) Hisar.”

7. In the face of such a vehement stand of the defendants and the agreement being false, fake and forged and the suit being not maintainable and being vexatious in nature as stated in preliminary objection No.6 there

is hardly any scope left for equity to be exercised in favour of the defendants to excuse them from the contract. While we quote from the preliminary objections it could only be fair to quote paragraph 2 on merits of the written statement filed by the defendants to bring clarity to the whole picture.

“02. That entire contents of para no.2 of plaint are quite wrong, incorrect & hence denied. When defendants had not entered into any such agreement as is attached with plaint, then no question arises for taking of balance sale consideration of Rs.40,86,593/- on the day of registration of sale deed which was alleged to be fixed on 14.04.2008. Remaining contents of para are also quite false, fake & vexatious, having no truth. So far as matter of having of original sale deeds in possession of plaintiff are concerned, they were provided to plaintiff by property dealers namely Bhim Singh s/o Moman Ram, R/O village Dabra & Ramesh s/o Ram Rakh, R/o village Mangali Mohabbat. Both the property dealers had told to defendants that before purchasing their land, any proposed purchaser asks for original sale deeds of land for their verification. By keeping faith & reliance on statement of dealers, defendants had handed over both original sale deeds to above said property dealers. Plaintiff in single tune with dealers prepared a false, fake & forged agreement & receipt, which are attached with plaint & filed the present suit against defendants just to grab the land of defendants. In attached agreement & receipt, both dealers are shown witnesses of agreement, which is false, vexatious & even not containing signatures of defendants. Regarding false claim by plaintiff in single tune with above said witnesses, the defendants had also moved an application u/section 340 of Cr.P.C. before Hon'ble Court of Sh. Sunil Kumar, C.J. (J.D.) Hisar which is still pending, as before filing present suit; plaintiff had also filed a suit for permanent prohibitory injunction in the Hon'ble Court of Sh. Sunil Kumar, C.J. (J.D.) Hisar. Here it would be pertinent to mention here that a criminal complaint is also pending against the plaintiff & her said false witnesses, u/sections 420/467/468/471/34/120-B of

*I.P.C. in the Hon'ble Court of Sh. Ashwani Kumar Goyal,
Learned J.M.F.C. Hisar.”*

8. If the story is to be believed then it should be accompanied by evidence and proof. Once signatures of the executant on the document are not disputed specifically by production of evidence to the contrary then I find no scope to deviate from the view expressed by both the Courts below that the agreement of sale was indeed a genuine document. The stand of the defendants was that they never signed the documents and the signatures are false and fake.

9. The learned Additional District Judge, Hisar has dismissed the appeal agreeing with the view of the learned trial Court and I would endorse both and commend the dismissal of the appeal. The findings of fact recorded after appreciating evidence and arriving at justified conclusions on facts proved are not open to interference on the second appeal side of this Court under Section 41 of the Punjab Courts Act, 1918, a local law resurrected by the Supreme Court and restored to its pristine status in as per law in *Pankajakshi (D) through LRs. & others vs. Chandrika & Others.*, (2016) 4 SCC 68 : AIR 2016 SC 1169.

10. Mr. Bhag Singh, learned counsel has placed strong reliance on Subhash Chander and others v. M/s Active Promoters Pvt. Ltd., 2015 (1) RCR (Civil) 62 and Richhpal Singh v. Sandhura Singh, 2014 (9) RCR (Civil) 70 in support of his case that the agreement to sell was a forged and fabricated document surrounded by suspicious circumstances and, therefore, it is doubtful to rely on as the burden to discharge proof was on the plaintiff and for her to show that the agreement was not a result of fraud, misrepresentation and the same was without notice or knowledge of the

defendants. The Court in *Subhash Chander* held that normally the burden is on the defendant to prove fraud, misrepresentation etc. but when specific allegations are there, then burden is on the plaintiff to prove that document is genuine and is to the knowledge of the defendant. Continuing the thread of reasoning, the Court held that when a person is in a fiduciary relationship with another and the latter is in position of active confidence, the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position. He has to prove that there was fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bona fide. In such a case, the burden of proving good faith of the transaction is thrown upon the dominant party, that is to say, the party which is in position of active confidence.

11. In *Richhpal Singh* the Court dealt with the case where the genuineness of the agreement was in doubt.

12. I do not see how either of the cases promotes the case of the appellants for setting aside the decree when signatures were denied and no expert evidence was led to refute the version of the plaintiff apart from fulfillment of the other conditions which go to the success of grant of the discretionary relief of possession by way of specific performance together with the essential attending facts and circumstances proved beyond doubt on evidence.

13. The two cases are distinguishable on facts and I find no suspicion or doubt in the creation of the agreement to sell.

14. As an upshot of the above discussion, finding no merit in the appeal worth consideration I would hereby dismiss the appeal and leave the

plaintiff to his remedy in execution of the decree.

(RAJIV NARAIN RAINA)
JUDGE

23.10.2017
manju

Whether speaking/reasoned	Yes
Whether reportable	No