

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 08.11.2017****RSA No.5119 of 2017 (O&M)**

Malkiat Singh

...Appellant

Vs.

Lakhwinder Singh & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Anupam Sharma, Advocate, for the appellant.

RAJIV NARAIN RAINA, J. (ORAL)

Gurpartap Singh was duped by Malkiat Singh in the property deal which mercifully did not materialize. Malkiat Singh was the plaintiff pretending to be the vendee of Gurpratap Singh of the suit property. The Court of first appeal saw through the game plan and dismissed the suit partly while declining execution of contract of sale of immovable property by way of specific performance and ordering instead return of money taken as loan. There can be no better evidence of being rooked than plaintiff's own recorded cross-examination on oath, which has been noticed by the lower Appellate Court in paragraphs 16 & 17, which is a précis of the deposition of the plaintiff/appellant. Counsel did not argue that the précis of the testimony was not the deposition in the witness box by the plaintiff. Relevant paragraphs 16 & 17 for the purposes of decision on this appeal are as follow:

“16. Let us proceed further to examine merits of this case. As per pure and simple case of the plaintiff, both the defendants agreed to sell 24K of land, as described in the

head note of the plaint situated in Village Umriana and executed the sale agreement dated 20.05.2009 in the presence of attesting witnesses. This bargain was struck at ₹4,75,000/- per acre and out of the total sale consideration of ₹14,25,000/- a major portion amounting to ₹10,35,000/- was paid as an earnest money and it was stipulated that sale deed would be executed and registered on or before 20.11.2009.

Interestingly, defendants have not denied execution of above said sale agreement, but they have taken a definite defence that they had borrowed a sum of ₹9 lacs from the plaintiff and as a measure collateral security, their signatures were obtained on the above said document which is being termed as 'sale agreement' (Ex.P1). Once such a definite defence has been taken by the defendants, entire onus shifts upon their shoulders to prove it as a matter of fact. Let us explore whether the defendants could prove their above stated defence.

17. In this regard the first and foremost argument put forth by their learned counsel was that defendants had been on good visiting terms with the plaintiff. In the past also, they had taken loan 2-3 times to return it along with interest. Each time when such a loan used to be raised, the plaintiff had been obtaining their signatures as a token of security. True to the above said pleadings and arguments of learned counsel for the appellants, in his cross examination, plaintiff Malkiat Singh admitted that he is running a finance business and that defendant Gurpartap Singh had been borrowing money from him. Malkiat Singh was candid enough to utter that Gurpartap Singh used to return the borrowed money and Gurpartap Singh still owes some money towards those loan transactions. He further went on to admit that when Gurpartap Singh had been borrowing money, he used to get his signatures upon (blank) papers and sometime he used to obtain his signatures on (blank) stamp papers, as a result of security. When all of sudden Malkiat Singh was confronted with sale agreement Ex.P1, he happened to admit that sale agreement was also got scribed as a measure security; though he was quick enough to

withdrawn this admission in the same breath by correcting himself that the said agreement pertained to sale of land.”

Malkiat Singh admitted that he was a financier and not only knew defendant Gurpartap Singh, but had earlier dealings of lending money to him. The disputed transaction was not a stray incident and in the past the plaintiff admitted that Gurpartap Singh had been borrowing money and had been returning it and in the course of these transactions, the agreement to sell of 24 Kanals of land was born. The lower Appellate Court treated this as a security for loan and in exercise of its discretionary jurisdiction under the Specific Relief Act, 1963 denied specific performance and instead ordered refund of principal amount of ₹10,35,000/- treating it as loan. Defendant never intended to sell his precious land to the plaintiff.

Many suspicious circumstances have been pointed out by the lower Appellate Court, one of which strikes the mind the hardest, which is that the sale consideration of valuable agricultural land was at a throwaway price of ₹4,75,000/- per acre, when the market value was manifold at the time. The Court noticed the sharp rise of prices of agricultural land after 2005 and the sale consideration itself appeared to be suspicious circumstance.

When the lower Appellate Court has taken a plausible view on the evidence, which is justified on facts arrived at after appreciation of evidence produced by both the parties, then interference under Section 100 of the CPC or Section 41 of the Punjab Courts' Act, 1918 is not warranted. For predominance of the 1918 Act in Punjab & Haryana jurisdiction over Section 100 of the Code; See, law stated by the Supreme Court in

Pankajakshi (D) through LR. & others vs. Chandrika & Others., (2016) 4 SCC 68 : AIR 2016 SC 1169.

On a due consideration of the matter and having heard the arguments advanced by the appellant at length, I would not find anything in this appeal to unsettle the sound judgment and decree passed by the lower Appellate Court partly decreeing the suit and would dismiss the appeal as devoid of merit as far as claim for specific performance of the agreement of sale is concerned.

08.11.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>