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

RSA No. 816 of 2017 (O&M)
Date of Decision: 9.3.2017

Som Nath

.....Appellant

Vs.

Suresh Kumar and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Tejeshwar Singh, Advocate
for the appellant.

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<u>RAMESHWAR SINGH MALIK J. (ORAL)</u>

Feeling aggrieved against the impugned judgment and decree dated 26.10.2016 passed by the learned Additional District Judge, dismissing his first appeal against the impugned judgment and decree dated 17.9.2013 of the learned trial court, whereby suit of the plaintiff for possession by way of specific performance of the agreement to sell with consequential relief of declaration and permanent injunctions was decreed, defendant No.2 has approached this Court by way of present regular second appeal.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that defendant No.1 Joginder Singh had agreed to sell land measuring 3 Kanals 4 Marlas being 1/5th share out of land measuring 16 Kanals situated in village Sirsma, Tehsil

Thanesar, District Kurukshetra, detailed in para No.1 of the plaint, for a valuable sale consideration of ₹5,00,000/- to plaintiff and he also received a sum of ₹4,00,000/- as earnest money from him. Agreement to sell dated 28.4.2008 was duly executed which was thumb marked and signed by Joginder Singh and also by the witnesses. The receipt qua the amount of ₹4,00,000/- received as earnest money was also executed by appellant-Joginder Singh in his own handwriting. The sale deed had to be executed on 27.3.2009 on payment of balance sale consideration. However on 18.3.2009, when plaintiff approached appellant-Joginder Singh, he expressed his inability to execute the sale deed and accordingly, the date for execution and registration of the sale deed was extended from 27.3.2009 to 21.7.2009 and a writing in this regard was duly executed on 18.3.2009 itself in the presence of the witnesses.

On 21.7.2009, plaintiff reached the office of Sub-Registrar, Thanesar, along with balance sale consideration and money required for stamps etc., but appellant-Joginder Singh did not turn up. Oral requests made by plaintiff to appellant-Joginder Singh remained unheeded. Eventually, plaintiff served a legal notice dated 18.8.2010 to appellant-defendant No.1 asking him to execute the sale deed in his favour on 21.9.2010. However, the said registered notice was intentionally not received by appellant-defendant No.1 and the same was returned unserved. Respondent No.1-plaintiff claimed that message was conveyed to appellant-defendant No.1 personally as well.

On 21.9.2010, appellant-defendant No.1 again did not turn up in the office of Sub-Registrar, Thanesar, even though, respondent No.1-plaintiff remained present in the said office throughout the day along with balance sale consideration and other expenses. Thereafter, respondent No.1-plaintiff came to know that appellant-defendant No.1 had illegally, fraudulently and dishonestly executed registered sale deed dated 2.6.2009 qua part of the land in question in favour of his real brother-defendant No.2, in order to defeat his lawful rights. The said sale deed was alleged to be illegal, null and void and not binding on the rights of respondent No.1-plaintiff.

Having been served in the suit, defendant No.1 appeared and filed his written statement, raising more than one preliminary objections. Defendant No.2 also appeared and filed his separate written statement, claiming himself to be a bonafide purchaser for due consideration. Plaintiff filed his replications. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether there was an agreement to sell dated 28.4.2008 for valuation consideration of suit property between the parties? OPP.
2. Whether plaintiff has been ready and willing to perform his part of contract on payment of balance sale consideration? OPP.
3. Whether if above issues are proved, then plaintiff is entitled to decree of possession by way of specific performance of contract dated 28.4.2008 with consequential relief of injunction as prayed for?OPP
4. Whether the present suit is not maintainable? OPD.
5. Whether the plaintiff has no locus-standi to file and maintain the present suit? OPD.
6. Whether the plaintiff has not come to the court with clean hands and concealed the true and

material facts? OPD

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

8. Whether the suit is hopelessly time barred? OPD.

9. Relief.

In order to prove their respective stands taken in their pleadings, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has proved his case. Defendant No.2 could not prove himself to be a bonafide purchaser. Accordingly, suit of the plaintiff for possession by way of specific performance of agreement to sell dated 28.4.2008 was decreed vide impugned judgment and decree dated 17.9.2013. Dissatisfied, defendants No.1 and 2 filed their two identical appeals which came to be dismissed by the learned first appellate court, vide its common impugned judgment and decree date 26.10.2016. Hence this regular second appeal at the hands of unsuccessful defendant No.2.

Heard learned counsel for the appellant.

Facts are hardly in dispute. Defendant No.1 entered into and agreement to sell with plaintiff on 28.4.2008. This agreement to sell has been duly proved on record as Ex. D3. Defendant No.1 has admitted execution of the agreement to sell. Plaintiff proved his pleaded case,by leading sufficient documentary as well as oral evidence, which was found well convincing. Both the defendants, in collusion with each other, procured mortgaged deed dated 29.4.2008 (Ex.P12) and sale deed No. 1783 dated 2.6.2008 relating to some part of the suit land, with a view to defeat the genuine claim of the plaintiff. However, during the course of trial, malafide intentions of the defendants came to the light and they were exposed. Since these true facts of the case as well as evidence available on record have been rightly appreciated by the learned courts below in the correct perspective, the impugned judgments and decrees deserve to be upheld.

In fact, total case of the defendant-appellant was based on falsehood. He has neither been found to be bonafide purchaser, nor a bonafide litigant. Defendants were trying to misuse the process of law. On the other hand, plaintiff was a bonafide litigant. He duly proved his pleaded case by leading cogent and convincing evidence. Both the learned courts below rightly held the plaintiff to be entitled for a decree of possession by way of specific performance of the agreement to sell. A litigant who does not come to the court with clean hands is not entitled for any kind of relief from any court of law. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees, which deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of Hon'ble the Supreme Court as well as this Court:-

1.Mohammedia Coop. Building Society Ltd. V. Lakshmi S. Coop, Building Society Ltd and others, 2008 (7) SCC 310 (SC)

2. Kishore Samrite V. State of U.P. and others, 2013 (2) SCC 398 (SC)

3.Surinder Singh and another Vs. Abdul Hammed @ Dalip (since deceased) through LRs and others, (RSA No. 6110 of

2015, decided on 20.2.2017. (P&H)

On conduct of the litigants, observations made by Hon'ble the Supreme Court in para 31 to 35 of its judgment in <u>*Kishore Samrite's case*</u> (supra), which can be gainfully followed in the present case, read as under:-

> *"31. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.*
>
> *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 disclosed. 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) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1 421]; Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(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 locupletiorem, 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]***.*"*

Before arriving at a just conclusion, learned first appellate court rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Cogent findings recorded by the learned first appellate court in para 13 to 17 of its impugned judgment, which deserve to be noticed here, read as under:-

"13. The execution of agreement to sell dated 28.4.2008 has been admitted by appellant-defendant No.1 but it is claimed that same was executed as security only and there was no intention of either of the parties to execute the same. In the given circumstances, it was necessary for appellant-defendant No.1 to have proved the loan taken by him from respondent No.1-plaintiff and its repayment to him. Neither the date of the loan has been mentioned nor the date of its repayment has been specified. It is surprising that no writing was executed regarding the loan, whereas, a detailed writing qua the agreement to sell had been executed and even got notarized by the parties in the presence of the witnesses. The attesting witnesses of the agreement to sell Ex.P3 have been examined by respondent No.1-plaintiff as PW6 and PW8 and both the witnesses have proved the execution of the agreement to sell dated 28.3.2008. The

said agreement was duly entered in the register of Smt. Neelam Aggarwal, Notary Public at serial No.343 (Ex.P4). The entry with regard to extension of time for execution of the sale deed was also made at serial No. 192 (Ex.P6) in the register of Shri R.N.Kaushal, Notary Public.

14. Respondent No.1-plaintiff has claimed that a sum of 400,000/- was duly paid by him ₹ to appellant-defendant No.1 and the said fact has been mentioned in the agreement to sell Ex.P3 which has been signed as well as thumb marked by appellant-defendant No.1. In the absence of any evidence to the contrary, the contents of Ex.P3, which have been proved by oral as well as documentary evidence, are to be believed. Though, appellant-defendant No.1 has claimed that his land was already mortgaged with his brother, evidence on record reveals that after executing the agreement to sell dated 28.4.2008 (Ex.P3) in favour of respondent No.1-plaintiff, appellant-defendant No.1 had executed the mortgaged deed Ex.P12 in favour of his brother on 29.4.2008. No doubt, the date of writing the said document is mentioned as 17.4.2008 but the same was got registered only on 29.4.2008 after the execution of agreement to sell Ex.P3. This explains the reason as to why appellant-defendant No.1 was not willing to get the sale deed executed in favour of respondent No.1-plaintiff on the target date.

15. Respondent-plaintiff No.1 had already paid a sum of 4,00,000/- to appellant-defendant No.1 ₹ out of the settled amount of ₹5,00,000/- and a note in this regard has been given by appellant-defendant No.1 in his own handwriting on the first page of Ex.P3. The said writing has been admitted by appellant-defendant No.1 when he had stepped into the witness-box as DW1. There was no justification in writing the said note in case no such *payment had been made by respondent No.1-plaintiff or received by appellant-defendant No.1 in accordance with the recital of agreement to sell Ex.P3.*

16. The necessity to execute the memorandum for extension of time for execution of the sale deed has also not been explained convincingly. As already mentioned here-in-before, appellant defendant No.1 has not specified the dates when the loan was taken by him and when the same was repaid. The commission agent to whom his agricultural produce had been sold has also not been examined. No 'J' Form has been produced by appellant-defendant No.1 to prove the said sale. There is nothing on record to show that on 18.3.2009 when endorsement Ex.P5 regarding extension of time was made, the alleged loan was still outstanding. The said endorsement has been duly proved by the witnesses and also has been admitted by appellant-defendant No.1 himself. In case, respondent No.1-plaintiff and appellant-defendant No.1 were so diligently perusing the agreement to sell and its extension, appellant-defendant No.1 would have definitely executed a loan document as well or would have inserted the clause regarding obtaining the loan from respondent No.1-plaintiff in the same document. The absence of any such document or clause clearly weighs against him.

17. Learned lower Court has rightly rejected the plea of appellant-defendant No.2 Som Nath regarding being bonafide purchaser. By no stretch of imagination, it can be presumed that appellant-defendant No.2, who is the real brother of appellant-defendant No.1 Joginder Singh, was unaware about the execution of the agreement to sell Ex.P3 by appellant-defendant No.1 in favour of respondent No.1-plaintiff. In case, respondent No.1-plaintiff had already obtained loan from his brother *and mortgaged the land with him, no person would have been foolish enough to give further loan to appellant-defendant No.1 against the security of the same land. A money lender would certainly have been vigilant in this regard. Further more, the loan transaction between appellant-defendants is also not proved on record."*

A combined reading of both the impugned judgments and decrees passed by the learned courts below would make it crystal clear that defendants colluded with each other to defeat the genuine claim of the plaintiff, with a view to achieve their ulterior motive, however, they could not succeed. Defendant No.2-appellant was caught at the wrong foot, while trying to play smart by misusing the process of law. He being real brother of defendant No.1, cannot claim ignorance about the agreement to sell dated 28.4.2008 executed by his brother-defendant No.1 in favour of the plaintiff. This was the reason that he miserably failed to prove himself to be a bonafide purchaser. Since the learned courts below have committed no error of law, while passing their respective impugned judgments and decrees, the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments and decrees passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and

Santosh Hazari Vs. 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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

9.3.2017
Ak Sharma

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