

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

RSA No. 2336 of 1991(O&M)

Date of decision : 20.03.2018

Banwari and another

..... Appellants

versus

**Ram Narain(since deceased) represented
through his LR's**

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Umesh Aggarwal, Advocate for the appellants.

Ms.Himani Sarin, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-defendant is in Regular Second Appeal against the concurrent finding of fact whereby the suit for specific performance of the two agreements to sell dated 4.6.1980 for a total sale consideration of Rs. 56,000/- (Rs. 29,000/- and Rs. 27,000/-) in respect of land measuring 69 kanals i.e. 36 kanals 11 marlas and 32 kanal 9 marlas has been decreed by the trial Court and affirmed by the Lower Appellate Court vide judgment and decree dated 26.2.90 in an appeal preferred by the appellant-defendant.

The facts revealed from the record and the paper book are that the respondent-plaintiff instituted the suit seeking specific performance of two agreements to sell ibid of even date in respect of two parcels of land for a total sale consideration of Rs. 56,000/-(Rs. 29,000/-and Rs.27,000/-) alleged to have been executed by defendant against payment of earnest money of Rs. 11,500/- and Rs. 13,000/-. The stipulated date for registration

and execution of the sale deed qua one parcel of land was kept as 04.07.1980 and for the second parcel as 30.11.1980. As per the averments defendant did not come forward for registration and execution of the sale deed despite the fact that the plaintiff had been ready and willing to perform his part of the agreement/contract and the suit aforementioned was filed on 01.07.1981 Appellant-defendant contested the suit by admitting the signatures but denied the contents of the agreement to sell on the premise that the thumb impressions/signatures had been obtained on the blank papers for the purpose of obtaining Taccavi loan and the signatures were not given to the respondent-plaintiff but to the Patwari. There was no intention on behalf of the vendor to sell the agricultural land. In fact the respondent-plaintiff in collusion with the Patwari converted the same into an agreement to sell. An impression was given that the thumb impressions were required for getting aid from the Government. Neither any consideration as reflected in the agreement to sell i.e. earnest money, was ever received and prayed for dismissal of the suit.

Replication was filed by controverting the averments in the written statement. The trial Court on the basis of the aforementioned pleadings framed the following issues:-

1. Whether the defendant had executed an agreement for the sale of the property, mentioned in para No.1(a) of the plaint on 4.6.80 and received Rs. 11500/- as earnest money. If so, on what terms and conditions and to what effect?OPP
2. Whether the defendant again entered into another agreement on 4.6.1980 for the sale of land mentioned in para no.1(a) and received Rs. 13,000/- as earnest money. If so, on what terms and conditions and to what effect?
3. Whether the defendants delivered the possession of the suit land to the plaintiffs in October, 1980, as alleged and the plaintiff is in possession of the same?

4. Whether the plaintiff has all along been ready and willing to perform his part of the contract?
5. Whether the suit is not maintainable in the present form?
6. Whether the plaintiff has no locus standi to file this suit?
7. Relief.

Thereafter additional issue No.6-A was framed which is as follows:-

“Whether the suit is bad for misjoinder of cause of action, if so, its effect?OPD

The respondent-plaintiff examined himself as PW1, Galu- PW2, Meer Singh- PW3, Ganpat Rai Singla, petition writer-PW4, Siri Niwas Jain, Clerk, Haryana State Electricity Board-PW5, Mahinder Singh, Clerk of Sh.Khajan Singh Advocate-PW6, Bhagwan Dass, Clerk, Syndicate Bank-PW7 and Jagdish Kumar,photographer-PW8. Deed writer was recalled for the evidence.

On the other hand defendant-appellant Bhagwana examined himself as DW-1, DW2 Sabha Chand and DW-3 Shiv Charan. Both the parties brought on record the following documents:-

Ex.P1	Copy of the Jamabandi for the year 1976-77
Ex.P2 & P-3	Khasra Girdawaries for the year 1980-81
Ex.P4	Copy of t Roznamcha
Ex.P5	Copy of Khasra Girdwari
Ex.PW3/1	Agreement
Ex.PW4/X	Copy of the agreement (which was allowed to be placed on record by way of secondary evidence)
Ex.PW4/Y	copy of the register of petition writer
Ex.PW5/1-21	copies of the application for change of tube well connection, receipts for payment of electricity charges and electricity bills
Ex.PW6/1 to 4	postal receipts and AD receipts

Mark 'A'	Copy of the notice
Ex.PW7/1	letter dated 1.10.80 of Syndicate Bank
Ex.PA	Copy of jamabandi
Ex.P8	Copy of Girdawari
Ex.PW8/A	Negatives
Ex.PW8/B	Positives
Ex.PW8/C	receipt of the photographer

The trial Court on the preponderance of the evidence, decreed the suit and the appeal also met with the same fate.

Mr.Umesh Aggarwal, learned counsel appearing for the appellant submitted that the judgment and decree of the courts below is not only perverse but at variance, for, the defendant-appellant had never admitted to enter into an agreement to sell as it was the only land on which he was sustaining and earning his livelihood. The judgment and decrees are based on the suppositions and conjectures which is not the scope of the court below. The respondent-plaintiff failed to discharge the onus, for, only one original agreement to sell had been brought on record whereas, Ex.PW4/x is the photocopy of the other agreement. There was apparent collusion between the Patwari and Halwa Patwari for fabricating and forging the revenue record without following the procedure laid down by the revenue authorities. The attesting witnesses were none else but were known to the respondent-plaintiff. In essence the respondent-plaintiff had failed to prove the contents of the agreement which is also an essential requirement of law for the purpose of seeking a discretionary relief under Section 20 of the Specific

Relief Act. Had all these points been looked into cumulatively would have resulted into dismissal of the suit.

Per contra, Ms.Himani, learned counsel appearing on behalf of the respondent-plaintiff submitted that agreement to sell had been proved through the testimony of the attesting witnesses Galu and PW3 Meer Singh who proved the agreement to sell much less passing of the consideration. PW4-Deed writer scribed both the agreements and his testimony remained unshaken. Banwari did not come forward to support the plea taken in the written statement whereas Bhagwana admitted his signatures on the agreement Ex.PW3/1 and also on agreement Ex.PW4/X but denied their contents. No ingredients of fraud or misrepresentation had been proved, therefore, judgment and decree of the Courts below granting the discretionary relief is justified and cannot be interfered with until and unless there is gross illegality which is conspicuously wanting in this case.

I have heard learned counsel for the parties and have gone through the paper book and the entire record and am of the view that there is no force and merit in the submissions of Mr.Umesh Aggarwal, (i) for both the attesting witnesses Meer Singh and Galu though may be relatives of the plaintiff-respondent, proved the execution of the agreement to sell much less its contents and passing of the earnest money which had not been controverted by the vendor, (ii) the deed writer also deposed in the same lines and stated that he had drafted both the agreements to sell Ex. PW3/1 and Ex.PW4/X and were attested by both the witnesses whereas the vendors Banwari and Bhagwana had put their thumb impressions/signatures. If some fraud had been played upon the defendant that too between the Halqa Patwari and Patwari, no sane person would sit idle at home but rather run

from pillar to post for the vindication of his grievance either by lodging a criminal complaint or by approaching the higher police authorities. No such steps have been taken. It is a common practice amongst the vendors to resile from the statement made in the agreement to sell by denying the same or come up with a plea of taking loan. If at all there was some truth in the written statement on receipt of the legal notice they would have taken such steps. Mere silence in not having initiated any criminal proceedings is a testimony of having entered into agreement to sell. Khasara Girdawari also reflected that in pursuance of the agreement to sell, possession was handed over to the respondent-plaintiff. If at all that was the position, an application to the revenue authorities for correction of the same could have been submitted but having failed to redress the aforementioned grievance which is also one of the fact which weighed in the mind of the Courts below in declining their stand. The argument of Mr.Aggarwal is not able to cut ice and form a different opinion from the one taken by the Court below in granting the discretionary relief of specific performance and permanent injunction to the plaintiff-respondent.

No substantial question arises.

Appeal is dismissed.

(AMIT RAWAL)
JUDGE

20.03.2018
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No