

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

Date of Decision: March 20th, 2018

1. **R.S.A.No.2012 of 1995 (O&M)**

Smt.Kaushalya

...Appellant

Versus

Jai Singh

...Respondent

2. **R.S.A.No.2023 of 1995 (O&M)**

Smt.Kaushalya (deceased through L.Rs)

...Appellant

Versus

Chiranji

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

**Present: Mr.G.S.Gandhi, Advocate,
for the appellant in both the appeals.**

**Mr.Arun Jain, Senior Advocate with
Mr.Amit Jain, Advocate,
for the respondents in both the appeals.**

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeals bearing No.2012 and 2023 of 1995. RSA No.2012 is arising out of decision dated 28.7.1989 rendered in Civil Suit No.518 of 1984 titled as “Jai Singh Versus Smt.Kaushilya” (hereinafter called as “Suit No.1”) and RSA No.2023 of 1995 is arising out of judgment and decree passed in Civil Suit No.485 of 1984 titled as “Chiranji Versus Kaushilya (hereinafter referred to “Suit No.2”). Both the suits were decreed by the trial Court and the appeals laid before the Lower Appellate Court by the defendant were also dismissed vide judgments and decrees dated 4.3.1995.

Respondent-plaintiff Jai Singh instituted Suit No.1 for claiming specific performance of the agreement to sell dated 25.1.1984 in respect of land measuring 16 kanals 14 marlas out of total land measuring 33 kanals 9 marlas for a consideration of ₹29,500/- against receipt of earnest money of ₹9,000/-. It was alleged that the possession of the suit land was handed over to the plaintiff. The date for execution and registration of the sale deed was fixed as 15.6.1984 and the plaintiff had always been ready and willing to perform the agreement to sell, but after the execution of the agreement to sell, the defendant came into influence of one Bala son of Nathu and refused to execute the same.

Suit No.2 was instituted by respondent-plaintiff Chiranji for claiming specific performance of the agreement to sell dated 25.1.1984 in respect of land measuring 16 kanals 15 marlas out of total land measuring 33 kanals 9 marlas for a consideration of ₹29,500/- against receipt of earnest money of ₹9,000/-. The date for execution and registration of the sale deed was fixed as 25.6.1984 and the plaintiff had always been ready and willing to perform the agreement to sell, but after the execution of the agreement to sell, the defendant came into influence of one Bala son of Nathu and refused to execute the same.

In both the cases, the appellant-defendant appeared and filed written statement and contested the suit by denying the execution of the agreements to sell. In essence, it was stated that Smt.Rewati (now deceased and represented by Kaushilya) did not sign any agreement to sell and the agreement to sell was forged and fabricated document, much less without consideration. Smt.Rewati was an illiterate, simpleton and handicapped lady. She had been suffering from paralysis since 1981. Atma Ram son of

Banwari Lal, the alleged witness, was her neighbour and family member and she had faith in his wife Bimla and by taking the undue advantage, Atma Ram represented her that Nathu Ram, who was cultivating the land of the defendant, was not giving her share of the crop, therefore, for the purpose of getting the land leased out for a period of 2 years for ₹5,000/-, she appended her thumb impressions on certain papers, but after 10/12 days of the Sakranti, Raghbir son of Maman and Atma Ram came to her house and on the excuse of leasing out the and, obtained her thumb impressions on some papers and she was told that after completion of the formalities in Tehsil, she would be paid ₹5,000/-. The defendant came to know about the agreement of sale allegedly executed by her in favour of Jai Singh son of Raghbir and Chiranji. Earlier they had filed a suit for injunction as there was threat perception. The vendees did not obtain any jamabandi for the purpose of entering into the agreement to sell, which was not read over and explained to her. She never intended to sell the property.

The aforementioned averments were controverted by filing replication and the trial Court, on the basis of the pleadings of the parties, framed the following issues in both the suits:-

- “1. Whether the defendant No.1 executed an agreement of sale dated 25-1-94 in favour of plaintiffs in a sum of Rs.29500/- and received a sum of Rs.9000/-? OPP*
- 2. Whether the plaintiff is ready and willing to perform his part of contract? OPP*
- 3. Whether the defendant committed the breach of contract? OPD*
- 4. Whether the plaintiff is entitled to recover a sum of Rs.18000/- as alternative relief of not how much? OPD*
- 5. Whether the plaintiff is precluded from filing the present suit? OPD*

6.

Whether the suit is barred by order 2 rule 2 CPC? OPD
7.

Whether the agreement dated 25.1.84 is void and without consideration? OPD
8.

If issue No.7 is proved, whether the agreement is based on fraud and misrepresentation? OPD
9.

Whether the thumb-impressions of the defendant have been obtained on blank papers by Aatma Ram in collusion with Jai Singh, Raghbir, Aatma Ram and Chiranji Lal? OPD
10.

Relief.

In both the suits, the plaintiffs examined the following witnesses:-

Suit No.1	Suit No.2
PW-1: Aatma Ram son of Banwari Lal	PW-1: Aatma Ram son of Banwari Lal
PW-2: Sultan Singh son of Maman Singh	PW-2: Sultan Singh son of Maman Singh
PW-3: Vijay Kumar Rustogi Handwriting and Finger Print Expert	PW-3: Vijay Kumar Rustogi Handwriting and Finger Print Expert
PW-4: Jai Singh plaintiff	PW-4: Raghbir Singh son of Maman

The plaintiffs also tendered into evidence following documents:-

Suit No.1	Suit No.2
Ex.P1: Agreement dated 25.1.84	Ex.P1: Agreement dated 25.1.84
Ex.P2: Jamabandi for the year 1979-80	Ex.P2: Jamabandi for the year 1984-85
Ex.PW3/2: to Ex.PW3/4: Report of Finger Print and Handwriting Expert.	Ex.PW3/1: Report of Finger Print and Handwriting Expert.
Ex.PW3/5 to Ex.PW3/7: Negatives	Ex.PW3/2: to Ex.PW3/4: Photographic enlargments of the thumb impressions. Ex.PW3/5 to Ex.PW3/7: Negatives

On the other hand, defendant examined Shri Ram, Record Keeper as DW-1, Sumer Singh Clerk to Shri S.B.Gupta Advocate DW-2, Om Parkash Clerk to Shri M.L.Yadav Advocate DW-3 and she herself appeared as DW-4. The defendant also tendered into evidence the following documents:-

Suit No.1	Suit No.2
Ex.D1: Copy of plaint in Civil Suit No.116 of 1984.	Ex.D1: Copy of plaint in Civil Suit No.116 of 1984.
Ex.D2: Copy of plaint in Civil Suit No.115 of 1984.	Ex.D2: Copy of plaint in Civil Suit No.115 of 1984.
Ex.D3: Copy of written statement in Civil Suit No.116 of 1984.	Ex.D3: Copy of written statement in Civil Suit No.116 of 1984.
Ex.D4: Copy of reply to injunction application.	Ex.D4: Copy of reply to injunction application.
Ex.D5: Copy of affidavit of Smt.Rewati.	Ex.D5: Copy of affidavit of Smt.Rewati.
Ex.D6: copy of written statement in Civil Suit No.115 of 1984.	Ex.D6: copy of written statement in Civil Suit No.115 of 1984.
Ex.D7: Copy of reply to injunction application.	Ex.D7: Copy of reply to injunction application.
Ex.D8: Copy of affidavit of Smt.Rewati.	Ex.D8: Copy of affidavit of Smt.Rewati.
Ex.DX/1: Copy of mutation No.404.	Ex.DX/1: Copy of mutation No.494.
Ex.DX/2: Copy of order dated 15.6.84 in Civil Suit No.115 of 1984.	Ex.DX/2: Copy of order dated 2.8.84 in Civil Suit No.116 of 1984.
Ex.DX/3: copy of order dated 16.8.84.	Ex.DX/3: copy of order dated 15.6.84 in Civil Suit No.115 of 1984
Ex.DX/5: copy of order dated 2.8.84.	Ex.DX/4: copy of order dated 16.8.84.

The trial Court, on the basis of the evidence, decreed the suits and the appeals laid before the Lower Appellate Court also met with the same fate.

Mr.G.S.Gandhi, learned counsel appearing on behalf of the appellant-defendant in both the cases submitted that Jai Singh and Chiranji were uncle and nephew (Chacha & Bhatija). A fraud had been played upon Smt.Rewati. There were material contradictions in the statements of the witnesses, particularly Atma Ram PW-1 in both the suits. Both the Courts below have committed illegality in holding that the execution of the agreement to sell has been proved, whereas Smt.Rewati, the owner of the land, was a paralytic, handicapped and rustic lady, therefore, in such cases, the burden of proof of execution of agreement was heavily upon the plaintiffs, which they failed to discharge. PW-1 Atma Ram and PW-2 Sultan Singh have not proved the execution of the agreement to sell and Subhash

Chander, the Deed Writer, who was an independent person, had not been produced, thus, an adverse inference was liable to be drawn.

It was further submitted that one of the witnesses was real uncle of the plaintiff and against second witness Atma Ram, Smt.Rewati had levelled specific allegations of fraud, therefore, the statements of both the witnesses were not reliable. During the pendency of the suit, Smt.Rewari died, therefore, she could not examine herself. She filed certain affidavits on record. She also made a statement before the Court that her statement would be recorded, but that could not be done. The suit was not maintainable as per the provisions of Order 2 Rule 2 of the Civil Procedure Code, for, in the earlier suit for permanent injunction, relief of specific performance was omitted. The ingredients of Section 16(1)(c) of the Specific Relief Act were wanting. On the other hand, the ingredients of Order 6 Rule 4 CPC regarding the forgery and fabrication, have been proved to the hilt. At the best, the Courts below should have decreed the alternative suit, but not for discretionary relief under Section 20 of the Specific Relief Act. In support of his contention, relied upon the judgment rendered by the Hon'ble Supreme Court in **Joseph Johan Peter Sandy Versus Veronica Thomas Rajkumar & Anr., 2013 (3) Civil Court Cases 270 (S.C.)** to contend that where the theory of signing blank papers had been projected, then scribe would have been the best witness to reveal the correct position. Power of Attorney holder deposing on behalf of the principal would be fatal for the purpose and in this regard, relied upon the ratio decidendi culled out in **Janki Vashdeo Bhojwani & Anr. Vs. Indusind Bank Ltd. & Ors., 2005 (2) Civil Court Cases 324, Subhas Chandra Das Mushib Versus Ganga Prosad Das Mushib and others, AIR 1967 Supreme Court 878** to

contend that once the full particulars of undue influence and fraud had been proved, the suit was liable to be dismissed.

On the other hand, Mr.Arun Jain, learned Senior Counsel assisted by Mr.Amit Jain, representing the respondent-plaintiffs submitted that Raghbir Singh had appeared on behalf of Chiranji as PW-4 as he was a Subedar. He was none else but the father of jai Singh and he had all the knowledge of execution with regard to the agreement to sell in respect of the land as stated above. The appellant-defendant has failed to prove the ingredients of Order 6 Rule 4 CPC, for, the Handwriting Expert has submitted the report to the effect that the thumb impressions on the agreements to sell were of Smt.Rewati, who had given the specimen thumb impressions, which were taken during the course of proceedings. If at all, there was some fraud, they could have initiated criminal proceedings. Kaushilya is the grand-daughter-in-law of Smt.Rewati and she, in cross-examination, admitted that when she died, she had executed a Will in her sound disposing mind, therefore, the plea of suffering from paralysis was an afterthought. If at all, she was suffering from some disease, the medical record was required to be brought on record, particularly Dr.Hardwari from whom the treatment was taken.

It was further submitted that it has come on record that Atma Ram was residing with Smt.Rewati and she reposed faith in him. Appellant-defendant cannot be permitted to take the plea of readiness and willingness, for, the agreement to sell had been denied. In support of his contention, relied upon the judgments rendered by this Court in **Jora Singh Vs. Lakhwinder Kumar & others, 2011 (1) RCR (Civil) 130** and **Lal Chand Vs. Tek Chand, 2013 (5) RCR (Civil) 104**. There was a stay by this Court and, therefore, the amount, as ordered by the trial Court, could not have been deposited and, thus, urged this Court for dismissal of the appeals.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr.Gandhi and the reason is not one but many:-

- a) Kaushalya, when appeared in the witness box, admitted that Smt.Rewati when died was of sound disposing mind and had executed the Will in her favour. The story taken in the written statement is totally apposite to the one which has surfaced during the cross-examination, *ibid*;
- b) Nothing prevented the appellant-defendant to bring on record the evidence of the doctor or medical record to, *prima-facie*, establish that she was suffering from paralysis and, therefore, was not competent to append her thumb impressions;
- c) The report Ex.PW3/1 of the Handwriting Expert, namely, Vijay Kumar Rustagi has been proved, wherein he categorically stated that the thumb impressions given in the Court vis-a-vis the agreement to sell were that of Smt.Rewati;
- d) The agreement to sell does not show that the thumb marked papers have been used by causing adjustment. Both the witnesses, i.e., Atma Ram and Sultan Singh, despite detailed cross-examination, have been coherent and consistent. Rather, the defendant had proved the case of the plaintiff by putting a specific question in the cross-examination to Jai Singh plaintiff. It was suggested through a specific question as to how many currency notes were given. It was stated that the amount was given and the same was counted. In the cross-examination, it

was stated that Atma Ram used to stay in the Haveli of Smt.Rewati;

e) The appellant-defendant cannot be permitted to take the plea of readiness and willingness because she denied the execution of the agreement to sell. The aforementioned observation of mine is derived from the ratio decidendi culled out in the judgments cited supra;

f) Admittedly, Chiranji was Subedar in the Army and Raghbir Singh was his attorney and he had also acknowledged that Jai Singh had executed the agreement to sell with Smt.Rewati for purchasing the land described above, therefore, the ratio decidendi culled out in **Janki Vashdeo Bhojwani's case (supra)**, by taking the aid of provisions of Order 3 Rule 1 & 2 CPC would not be applicable. It would have been applicable if the defendant had taken the plea of readiness and willingness, which, as indicated above, cannot be permitted to be taken in view of the denial of the agreement to sell;

g) There is no dispute to the ratio decidendi culled out in the judgments supra, but the fact of the matter is that if any fraud and misrepresentation had been played upon Smt.Rewati, nothing prevented her to lodge the criminal proceedings. Perhaps they were afraid they were not be contradicted with the proceedings under Section 182 IPC. It has been seen that many persons, after examination of the document, volte-faced on account of the act of greed or otherwise, resulting into litigation. On the contrary, the respondent-plaintiff had been

found to be diligent in pursuing the matter, for, the suit was filed on 17.8.1984 as the target date in both the cases was 15.6.1984. The earnest money of ₹9,000/- has also been proved. Both the witnesses have categorically stated that the entire agreement was for ₹29,500/-.

As an upshot of my above findings, I am of the view that the judgments and decrees of the Courts below do not call for any interference, much less any substantial question of law arises for me to form a different opinion than the one arrived. No ground for interference is made out. Resultantly, the appeals are dismissed.

During the course of hearing, Mr.Jain stated that since there was an interim order for status-quo vide order dated 1.11.1999, therefore, the amount could not be paid and his clients were not aware of the outcome of the appeal, but shall deposit the amount as and when this Court renders the decision either way.

The respondent-plaintiffs are granted two months time to deposit the balance sale consideration.

March 20th, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No