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

RSA No.678 of 1995 [O&M]

Date of Decision: May 03, 2018

Gurnam Singh

....Appellant.

Versus

Gurdial Singh and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by: Mr. Chetan Mittal, Sr. Advocate with
Mr. Prateek Gupta, Advocate,
for the appellant.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate,
for the respondents.

Shekher Dhawan, J.

Present Regular Second Appeal by the plaintiff is directed against the judgment and decree dated 24.11.1994, whereby learned Additional District Judge, Kaithal, reversed the findings recorded by learned Additional Senior Sub Judge, Guhla, on various issues and set aside the judgment and decree dated 16.08.1994 passed by the Court of first instance whereby the suit filed by the plaintiff for possession by way of specific performance of agreement by ordering cancellation of sale deed, was decreed.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

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3. Facts relevant for the purpose of decision of this appeal; that the plaintiff had filed a suit for specific performance of agreement of sale dated 05.04.1988 (Ex.P/1) in respect of agricultural land situated within the revenue estate of village Rasoolpur, Tehsil Guhla. As per plaintiff, defendant No.5-Bhartu purchased the suit land from State of Haryana and mutation was sanctioned in his favour. On 05.04.1988, defendant-Bhartu entered into agreement of sale of the suit land with the plaintiff for a consideration amount of Rs.36,500/-. A sum of Rs.24,500/- was received by defendant-Bhartu as earnest money and the remaining amount was to be paid at the time of execution of the sale deed before the Sub Registrar. Defendant No.5-Bhartu agreed to get the mutation sanctioned/passed in favour of the plaintiff after clearing all encumbrances in respect of the suit land and also agreed to get the sale deed executed in terms of the agreement of sale Ex.P/1. As per plaintiff, he was ready and willing to perform his part of the contract. However, immediately after the agreement, defendant-Bhartu started negotiating with some other persons in respect of the suit land. The plaintiff filed separate civil suit for permanent injunction titled 'Gurnam Singh vs. Bhartu and others' in the month of July, 1988 in the Court of Addl. Senior Sub Judge, Kaithal, for restraining defendant-Bhartu not to alienate the suit land to any other person except the plaintiff. The intending purchasers were arrayed as defendants No.1 to 4 in the said suit.

4. The plaintiff also took the plea that in case plaintiff is not entitled to seek the relief of specific performance of the agreement of sale, though a fact denied and disputed, then he would be entitled to recover the money paid by him to defendant-Bhartu alongwith damages. Despite

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repeated requests and demands, the defendants did not come forward to get the sale deed executed and, as such, suit before the Court of first Instance.

5. Defendants No.1 to 4 contested the suit, *inter-alia*, taking the plea that they had purchased the suit land from defendant No.5-Bhartu for a total sum of Rs.39,000/- vide sale deed dated 01.12.1988. The said sale was effected pursuant to the agreement of sale dated 02.04.1988 (Ex.D/1). As per defendants No.1 to 4, they were not aware of any agreement till they were served in the suit for permanent injunction filed by the plaintiff. As per defendants No.1 to 4, the agreement executed in their favour on 02.04.1988 was in the knowledge of the plaintiff that defendant-Bhartu was not competent to execute any agreement in his favour on 05.04.1988. Even the alleged receipt (Ex.P/2) executed in favour of the plaintiff by defendant-Bhartu is bogus and is result of collusion. Defendants No.1 to 4 claimed themselves to be in possession of the suit land.

6. Defendant No.5 did not appear to contest the suit despite service and he was proceeded against exparte.

7. The Court of first Instance settled the following issues and the parties were put to trial:-

1. Whether defendant No.5 agreed to sell the suit land to the plaintiff for a consideration of Rs.36,500/- vide agreement dated 05.04.1988? If so, to what effect? OPP.
2. Whether the plaintiff has always been and is still ready and willing to perform his part of contract? OPP.
3. Whether defendants No.1 to 4 have illegally taken the possession of the suit land? OPP.
4. Whether the suit is collusive between the plaintiff and defendant No.5? OPD.

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5. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD.

6. Relief.

8. Both the parties led oral as well as documentary evidence. Learned trial Judge, after considering the material and evidence available on file, decided Issues No.1 to 3 in favour of the plaintiff and against the defendants. Since no evidence was led by the parties on Issues No.4 and 5, the same were also answered in favour of the plaintiff and consequently, the suit of the plaintiff for specific performance of the agreement of sale Ex.P1 was decreed vide judgment and decree dated 16.08.1994.

9. The defendants preferred appeal before the first appellate Court and the first appellate Court, considering the material and evidence available on the file, reversed the findings and while accepting the appeal, set aside the aforesaid judgment and decree passed by the Court of first instance. As such, the present Regular Second Appeal before this Court.

10. I have heard learned counsel for the parties at length and perused the record.

11. Learned counsel for the plaintiff-appellant contended that learned first appellate Court has misread and misinterpreted the evidence available on the file. The main controversy is with regard to genuineness of the agreement of sale dated 5.4.1988 (Ex.P/1) in favour of the plaintiff and agreement dated 02.04.1988 (Ex.D/1) in favour of defendants No.1 to 4.

12. As per learned counsel for the appellant, agreement Ex.P/1 is duly proved on the file as the same was scribed by regular Deed Writer. Shri Yashpal Chand Jain, Handwriting and Finger Print Expert (PW4) was examined, who proved the thumb impressions of the vendor on the

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agreement Ex.P/1 and receipt Ex.P/2 vide his report Ex.PW4/1 to Ex.PW4/9. Copy of the plaint in Civil Suit No.314/1988 titled 'Gurnam Singh vs. Bhartu etc.' was proved on record as Ex.P4 and copy of the written statement filed in the said civil suit is Ex.P5. On the basis of these documents, learned Court of first Instance returned the finding that the agreement of sale Ex.P/1 in favour of the plaintiff was duly executed and the earnest money was paid at the time of its execution and there is no suspicious circumstances.

13. To the contrary, the agreement of sale (Ex. D/1) dated 2.4.1988 in favour of defendants No.1 to 4 was certainly a suspicious document as held by learned trial Judge. Agreement, Ex. D/1 is ante-dated though the date on the same was mentioned to be 2.4.1988. The alleged sale deed (Ex. D/2) in favour of defendants No.1 to 4 was executed on 1.12.1988 on the basis of fresh agreement of sale dated 30.08.1988 (Ex.D3). This fact in itself establishes that Ex. D/1 was not executed in a fair manner. All these facts have been completely ignored by learned first Appellate Court while reversing the well reasoned findings recorded by learned Court of first instance.

14. Learned counsel for the appellant further submitted that learned first Appellate Court has reversed the findings without referring to the relevant paragraphs No. 10 and 12 of the judgment passed by learned trial Court. More so, the sale deed, Ex. D/2 does not refer to any agreement. The alleged agreement dated 02.4.1988 was never entered in the Deed Writer Register and as such, the findings recorded by learned first Appellate Court are liable to be set-aside and the suit of the plaintiff be decreed as decided by learned Court of first instance.

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15. Learned counsel representing the defendants contended that the suit for permanent injunction (Ex. P4) was filed by the plaintiff on 27.7.1988, though on the said date, the plaintiff could file and should have filed suit for specific performance of agreement of sale only, but he waited till 3.1.1989 when the present suit for specific performance was filed. Mutation was sanctioned in favour of defendants No.1 to 4 on 11.7.1988.

16. While replying on this point, Mr. Chetan Mittal, learned senior counsel representing the appellant-plaintiff urged that there was a condition stipulated in the agreement, Ex. P1 that the sale deed was to be executed as soon as the vendor became owner and when the vendor become owner of the suit land, the plaintiff filed the present suit for specific performance of the agreement. Prior to that, the plaintiff had filed a separate civil suit for permanent injunction and he was well within his rights to file suit for permanent injunction as he had apprehension that defendant - Bhartu was negotiating with other persons to get the sale deed executed in their favour in violation of the terms of agreement, Ex. P/1.

17. At the time of hearing, the following substantial question of law arises for determination by this Court in the present Regular Second Appeal:-

- (1). Whether the findings recorded by learned first Appellate Court vide judgment and decree dated 16.08.1994 reversing the judgment and decree of the Court of first instance are erroneous because the same are result of misreading and misappreciation of evidence?

18. Having considered the submissions made by learned counsel for the parties and appraisal of the record of this case, this Court is of the

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considered view that, in the present case the matter revolves around the controversy about the genuineness of agreement of sale dated 5.4.1988 (Ex. P/1) and agreement of sale dated 2.4.1988 (Ex. D/1). If, the agreement of sale (Ex. D/1), i.e., dated 2.4.1988 is taken to be correct on the basis of evidence, then the agreement dated 5.4.1988 (Ex. P/1) executed in favour of the plaintiff cannot be held to be valid and legal and no relief can be given to the plaintiff-appellant. But, in the present case, the plaintiff has been able to establish on the file, on the basis of oral as well as documentary evidence, that in fact, the agreement Ex. P/1 was executed on 5.4.1988 and the agreement Ex. D/1 (dated 2.4.1988) was ante-dated and the same was executed in connivance of defendants No.1 to 4 and defendant No.5-Bhartu, just to defeat the rights of the plaintiff-appellant and to wriggle out of the agreement, Ex. P/1 executed by him voluntarily in favour of the plaintiff. The agreement of sale (Ex. P/1) has been duly proved on the file as per the statement of PW-2 Gurnam Singh, who deposed before the Court that defendant No.5-Bhartu, entered into agreement of sale, Ex. P1 for a total sum of Rs.36,500/- and a sum of Rs.24,500/- was paid to Bhartu as earnest money. At that time, receipt, Ex.P/2 was duly executed. The said agreement, Ex. P/1, was executed on the instructions and asking of defendant - Bhartu and he had put his thumb mark in his presence. On his part, Gurnam Singh, plaintiff was ready and willing to perform his part of the contract and was still willing and ready. The said documents have been duly proved on the file as per statement of PW-4, Yashpal Chand Jain, Handwriting and Finger Print Expert who had submitted his report after examining the documents and comparing the thumb-marks.

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19. There was every reason for plaintiff-Gurnam Singh to file a civil suit for permanent injunction as he had apprehension that vendor, defendant-Bhartu was negotiating for sale of the same suit land in favour of some other persons and they were arrayed as defendants therein. The filing of the said suit itself establishes that the defendants had the knowledge about execution of agreement, Ex.P/1 in favour of the plaintiff.

20. Learned Court of first instance had given specific reasons so as to return the finding that agreement of sale (Ex. D/1), allegedly executed on 2.4.1988 was ante-dated. The reasons assigned are that three stamp-papers valuing Rs.1/- each was purchased and no purpose for purchase of the stamp papers was mentioned. More so, the stamps were purchased on 31.3.1988, but the same were not utilized on the same day. The Stamp Vendor could not produce the register for the relevant period whereby stamp-papers were sold. The testimony of DW-1, Shri M.S.Dhillon, Advocate was not believed for the reasons detailed in the judgment that the said witness was attesting witness in the case regarding wrong identification of Gurnam Singh and Avtar Singh in a case pending before the trial Court under Sections 420, 467, 468, 471 and 120-B IPC.

21. More so, in the present case, there are two agreements in favour of defendants No.1 to 4. The first is Ex.D/1, dated 2.4.1988, the execution of which itself is in dispute and the second is Ex.D/3 dated 30.08.1988. In the second agreement, Ex. D/3, there is no reference to the execution of earlier agreement, Ex. D/1. Even in the sale deed, Ex. D/2, there is no mention regarding execution of earlier agreement, Ex.D/1.

22. All these facts clearly establish that the agreement of sale, Ex. D/1 was not duly executed, rather the same was ante-dated and fabricated

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just to defeat the rights of the plaintiff. Even otherwise, agreement of sale, Ex. P/1 has been duly executed and proved on the file and the thumb-impressions have been duly compared and proved on the file as per statement of PW-4, Yashpal Chand Jain, Handwriting and Finger Print Expert. The Court of first instance had given specific reasons for returning findings on various issues which have been set-aside by learned first Appellate Court without any justified ground or valid reason.

23. In view of the above, the present Regular Second Appeal is accepted and the judgment and decree dated 24.11.1994 passed by learned Additional District Judge, Kaithal is set-aside and the judgment and decree dated 16.08.1994 of learned Additional Senior Sub Judge, Guhla is restored. Resultantly, the suit filed by the plaintiff for possession by way of specific performance of agreement is decreed.

24. The Regular Second Appeal stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

May 03, 2018

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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes