

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2700 of 2011 (O&M)

Date of Decision: March 01, 2018

Baljit Singh

...Appellant

Versus

Nasib Kaur

(Deceased through L.Rs)

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Aakash Singla, Advocate,
for the appellant.

Mr.Harsh Aggarwal, Advocate,
for respondent No.1 (b).

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 17.9.2010 rendered by the Lower Appellate Court, whereby the appeal of the respondent-defendant against the judgment and decree dated 11.3.2008 of the trial Court decreeing the suit, has been allowed. In essence, the suit for specific performance of the agreement to sell dated 9.7.1996, had been dismissed.

It would be relevant to give brief facts of the case.

Appellant-plaintiff instituted the suit for seeking specific performance of the agreement to sell dated 9.7.1996 in respect of land measuring 20 kanals bearing Khasra No.205 (10-0), 206/2 (10-0) with Nasib Kaur @ ₹1,80,000/- per acre, i.e., total sale consideration of ₹4,50,000/- against the payment of ₹3,25,000/- as earnest money. As per the averments, the aforementioned agreement to sell was witnessed by Dalip Singh and Gurdev Singh and the same was endorsed by Gulab Kaur and

Malkiat Kaur. The target date on the aforementioned agreement to sell was 10.6.1997. The agreement to sell was scribed by regular Deed Writer Gulshan Kumar Manchanda (PW-6). On 10.6.1997, the date for execution and registration of the sale deed was extended to 11.11.1997, but a sum of ₹1,00,000/- stated to have been paid in the presence of Joginder Singh and Mangal Singh and the same was endorsed by Malkiat Kaur and Gulab Kaur. It has been further pleaded that the sale deed was not executed. Since the vendor was delaying the execution of the sale deed, therefore, a legal notice dated 21.11.1997 (Ex.P5) was served upon the defendant calling upon him to execute the sale deed within a week, but he did not come forward necessitating the appellant-plaintiff to institute the suit on 8.1.1998.

The defendant appeared and denied the execution of the agreement to sell, much less the payment of the earnest money. In the alternative, it was stated that if at all the plaintiff was not able to prove the execution of the agreement to sell, the earnest money was to be forfeited as he was not ready and willing to perform his part owing to his absence before the Sub Registrar on the stipulated date. Even the presence of the daughters, i.e., witnesses of the endorsement in the agreement to sell was emphatically denied. Replication was filed by denying the averments made in the written statement and reiterating that of the plaint.

The trial Court, on the basis of the pleadings of the parties, on 19.5.1998 framed the following issues:-

- “1) Whether the defendant executed an agreement to sell dated 9.7.1996 in favour of the plaintiff as alleged? OPP*
- 2) Whether the plaintiff always remained ready and willing and is still ready and willing to perform his part of contract? OPP*
- 3) Whether the plaintiff is entitled to specific performance*

of the agreement or alternative relief for recovery? OPP

4) Whether Gulab Kaur and Malkiat Kaur daughters of defendant are necessary parties as alleged? OPD

5) Whether the suit is not maintainable as alleged? OPD

6) Relief.”

Appellant-plaintiff in support of of the aforementioned case, examined PW-1 Assa Singh (GPA of the plaintiff), PW-2 Mangal Singh (witness to extension), PW-3 Bikramjeet Singh, Advocate, who served the legal notice, PW-4 Gurdev Singh (witness to the agreement to sell), PW-5 Anil Kumar Gupta (Fingerprint Expert) and PW-6 Gulshan Kumar Manchanda (Regular Deed Writer). On the other hand, defendant herself appeared as DW-1 and also examined DW-2 Joginder Singh (witness to extension). The trial Court, vide judgment and decree dated 7.9.2005 dismissed the suit, but, however, the Lower Appellate Court remanded the matter to the trial Court vide order dated 7.5.2007. The aforementioned order of remand was challenged by the defendant by filing SAO No.32 of 2007, but the same was dismissed. Vide judgment and decree dated 11.3.2008, the suit was decreed. However, the appeal preferred by the defendant was allowed dismissing the suit.

Mr.Aakash Singla, learned counsel representing the appellant-plaintiff, in support of the memorandum of appeal, has raised the following submissions:-

a) PW-4 Gurdev Singh had not only proved the execution of the agreement to sell but also the payment of ₹3,25,000/- as earnest money;

b) Signatures of Malkiat Kaur and thumb impression of Gulab Kaur had been proved through the testimony of PW-5

Anil Kumar Gupta, Fingerprint Expert;

c) There were admitted signatures bearing the same endorsement in the agreement to sell of even date in respect of different land, i.e., 30 kanals 11 marlas (Ex.P7), which was agreed to be sold for a total sale consideration of ₹6,87,375/- against the receipt of payment of ₹5,00,000/-;

d) The witnesses were the same. PW-6 Gulshan Kumar had also proved the execution of the agreement, much less registration. Nasib Kaur DW-1, who was owner of another portion of land measuring 30 kanals 11 marlas bearing Khasra No.206/1 (6-0), 190 (7-04), 191 (7-16), 192 (7-02) and 200(2-09) for which the defendant had executed a sale deed dated 11.11.1997 (Ex.P45) for land measuring 21 kanals 11 marlas as there was dispute with regard to the balance area;

e) Ex.P7 another agreement to sell for which sale deed has been executed. Similar extension as in the agreement to sell Ex.P3 in dispute, whereby another amount of ₹24,500/- was paid. The Lower Appellate Court has committed illegality and abdicated in observing that the agreements to sell Ex.P1 and Ex.P7 are of the same land, but bore different khasra numbers, much less area and even the parties were different, for, in Ex.P7 for which sale deed has been executed, Nasib Kaur has 1/6th share, whereas Gulab Kaur and Malkiat Kaur 5/6 share and as per the agreement in dispute, i.e., Ex.P3, only Nasib Kaur was owner of the land;

e) No evidence has been led that Nasib Kaur was blind

because, during her cross-examination, she remembered the words as were stated in the written statement, which were actually put to her;

f) Non-appearance of the appellant-plaintiff would not be fatal to the case, for, the attorney, namely, Assa Singh had all the knowledge of the principal with regard to the suit property and other activities. Therefore, the defendant could not be said to have been denied the right of cross-examination. Nasib Kaur did not deny the receipt of ₹5,00,000/- vide Ex.P7 and as well as ₹24,500/-. There is not single averment or evidence on record with regard to forgery committed by the plaintiff regarding the receipt of ₹1,00,000/- of the daughters and, thus, urges this Court for setting-aside the judgment and decree of the Lower Appellate Court.

Per contra, Mr.Harsh Aggarwal, learned counsel for respondent No.1(b) submits that the agreement to sell was emphatically denied. None of the witnesses have deposed that payment of ₹3,25,000/- on 9.7.1996 or ₹1,00,000/- on 10.6.1997 was ever paid in their presence. Even the receipt of the money has not been proved what to talk of the agreement to sell. Handwriting Experts toe to the line of the party, who engages them. PW-6 Gulshan Kumar Manchanda also did not, through a specific question, state that the money was paid in his presence or weighed in the mind of the Lower Appellate Court, being the last Court of fact and law while allowing the appeal and dismissing the suit and, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the

paper book, records of the Court below and of the view that there is no force and merit in the submissions of Mr.Singla, for, there were two different agreements to sell, one for 20 kanals on 9.7.1996 for a sum of ₹4,50,000/- against payment of ₹3,25,000/- as earnest money vis-a-vis Ex.P7 for land measuring 30 kanals 11 marlas, for which the sale deed dated 11.11.1997 (Ex.P45) was executed for a sum of ₹4,85,000/-. It has nowhere come in the pleadings that the amount would be adjustable in the other agreement. There is no reference of the agreement to sell in either of the pleadings or vice-versa.

Gulshan Kumar when appeared as PW-6, through a specific question, did not say that ₹3,25,000/- was paid in his presence. Therefore, in my view, the entry recorded in the register pales into insignificance. Even Mangal Singh PW-2 also feigned ignorance about the receipt of ₹1,00,000/- by Nasib Kaur or by Malkiat Kaur.

There is another aspect of the matter. Even the appellant has not been able to show that he was ever ready and willing to perform his part of the agreement as he did not appear before the Sub Registrar for execution and registration of the sale deed on the stipulated date. There is no affidavit or application proved on record.

The stand in the written statement was that in case of non-performance of the contract on the part of the plaintiff, the earnest money was to be forfeited, but that did not tantamount to admission of the agreement to sell. No doubt, the Lower Appellate Court, after examining both the agreements to sell Ex.P1 and Ex.P7, found that the parties and as well as the land were the same, but the fact of the matter is that both the endorsement were different and the land was also different, for, Nasib Kaur

was owner to the extent of 1/6 share, Gulab Kaur and Malkiat Kaur to the extent of 5/6 share, whereas as per the agreement to sell in question, i.e., Ex.P1, the land was owned by Nasib Kaur. Thus, the finding, in my view, cannot be read against the appellant-plaintiff and would be an obiter. It does not cast any cloud on the sale deed dated 11.11.1997, which has not been challenged.

For the reasons stated above, I do not find any illegality or perversity in the impugned judgment and decree of the Lower Appellate Court. No substantial question of law arises for determination. Resultantly, the appeal is dismissed.

March 01, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No