

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Regular Second Appeal No.3644 of 2011 (O&M)

Reserved on : May 1st, 2018

Decided on: 16th May, 2018

Nirmal Singh

..Appellant

versus

Arwinder Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. B.R.Mahajan, Senior Advocate,
with Ms. Tanika Goyal, Advocate
for the appellant.

Mr. Divjyot Singh Sandhu, Advocate,
for the respondent.

RAMENDRA JAIN, J.

1. The defendant (appellant herein) has approached this court by filing the instant appeal against judgments and decrees dated 26.8.2008 and 23.5.2011 of the trial court and the first appellate court, Jalandhar, respectively, whereby the suit filed by the plaintiff-respondent for specific performance of the agreement to sell dated 14.6.2000, was decreed, which in appeal, was also affirmed.

2. The facts necessary for disposal of this appeal are that respondent-plaintiff filed a suit for specific performance of contract pleading that appellant, vide agreement dated 14.6.2000, agreed to sell plot no.1049 measuring 100 sq.yards, situated in Urban Estate, Phase-II, Jalandhar, for a total sale consideration of Rs.1,50,000/-. Out of this total amount, the plaintiff (respondent herein) paid a sum of Rs.1,00,000/- to the

appellant. As per terms and conditions of the agreement, the appellant had to get the sale deed executed in favour of the respondent on 14.7.2000 after receipt of the balance sale consideration and other expenses. The respondent was ready and willing to perform his part of agreement, but on 14.7.2000, the appellant, as agreed, did not turn up to the office of the Sub Registrar, Jalandhar, to get the sale deed executed in favour of the respondent. He is still ready and willing for execution of the sale deed on payment of balance sale consideration, but the appellant was avoiding execution thereof in his favour.

3. Per contra, the appellant, in his written statement, raising preliminary objections regarding maintainability of the suit, on merits, took stand that he never agreed to sell the plot in question. The agreement dated 14.6.2000 was a forged and fabricated document. He never received the amount of Rs.1,00,000/- as earnest money. In fact, the receipt issued by the concerned office with respect to deposit of the installment of the plot might be linked with the same. He handed over some blank papers duly signed by him to one S. Baljinder Singh along with requisite money for depositing the amount of installment with the Estate Officer, Jalandhar. On coming to know that S.Baljinder Singh, was not in a position to go to Jalandhar for depositing the installment in time, the authority letter typed in his favour, signed in blank, was changed in the name of Sant Parkash Singh by him. He also handed over other papers signed in blank to Sant Parkash Singh stating that in case any objection is raised with respect to overwriting in the original authority letter, he would prepare a fresh one on blank papers. However, vide public notice dated 5.6.1989, he got the authority letter and other blank signed papers given to Sant Parkash Singh

cancelled. Subsequently, on 18.12.1988, Sant Parkash Singh got prepared a forged agreement to sell on blank papers signed by the appellant. On 9.11.1990, he, on the basis of forged and fabricated document, filed a suit for specific performance in respect of the plot in dispute which, vide judgment and decree dated 26.11.1999 was dismissed by the court of Shri D.R.Arora, Civil Judge (Senior Division), Jalandhar. Appeal preferred against the said judgment was also dismissed vide judgment and decree dated 02.1.2002 by Additional District Judge, Jalandhar.

4. Replication to the written statement was filed by the respondent controverting all pleas taken up by the appellant in his written statement. On the basis of the pleadings, the following issues were framed:

- “1. Whether the plaintiff is entitled for possession by way of specific performance? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether the defendant is the owner of the plot in dispute and he never entered into an agreement? OPD
4. Whether the plaintiff has filed the suit on the basis of forged and fabricated document?OPD
5. Whether the plaintiff has filed the present suit with mala fide intention? OPD
6. Relief.

5. The respondent, in order to substantiate his case, examined as many as five witnesses. He himself stepped into the witness box as PW1 and reiterated averments made in the plaint. He also proved agreement to sell Ex.P1 and affidavit Ex.P2 whereby the respondent got his presence

marked in the office of Sub Registrar, Jalandhar. He also examined Inder Singh, who, vide his affidavit Ex.PB, corroborated the case of the respondent. Shri Vijay Arora, Bank Officer, Allahabad Bank, Kapurthala, while appearing into the witness box as PW3, proved the computer copy of statement with respect to account no.3455 in the name of Inder Singh son of Amar Singh, commencing from 14.6.2000 to 15.8.2001 as Ex.P3/A. Rajan Chauhan, Clerk, Special Land Acquisition, D.C. Office, Jalandhar stepped into the witness box as PW4 who brought the record pertaining to entry no. 1265 dated 14.7.2000 and identified the signature of Shri Parveen Chhiber, Naib Tehsildar, Jalandhar, on the affidavit furnished by the respondent Arwinder Singh. Shri Parveen Chhiber, Naib Tehsildar, while appearing into the witness box as PW5, deposed that on 14.7.2000 he attested one affidavit Ex.P2 which bears his signature.

6. On the other hand, appellant Nirmal Singh himself appeared into the witness box as DW1 and reiterated his stand taken in his written statement by furnishing his affidavit Ex.DW1/A and also proved documents Ex. D1 to Ex.D5. Indu Bala, Senior Assistant Accounts, PUDA, while appearing into the witness box as DW2 deposed that she has brought the record relating to the allotment of residential plot bearing no.1049/II, Phase II, Jalandhar. She testified that vide letter no. 6658 dated 31.10.1986, the plot was allotted in favour of Nirmal Singh, resident of 1760, Sector 23, Chandigarh. As per the record, all installments and additional price of the plot have also been deposited by the appellant. She proved copies of the Demand and Collection Register as Ex. DW2/A. Shri Hardeep Singh, Clerk, PUDA, Jalandhar, while appearing in the witness box as DW3 deposed that as per the record, plot no.1049, Urban Estate, Phase-II, Jalandhar was

allotted to Nirmal Singh on 31.10.1986. He proved the copy of allotment letter as Ex.DW3/A, letter dated 1.12.1986 as Ex.DW3/B, whereby he deposited installments. He further proved applications Ex.DW3/C to Ex.DW3/E and Ex.DW3/F to Ex.DW3/L vide which the appellant deposited the installments. Shri Pankaj Malhotra, Clerk, Judicial Record Room, Jalandhar, stepped into the witness box as DW4 and brought the judicial file relating to Civil Suit No.587 of 1990 titled as Sant Parkash Singh versus Nirmal Singh decided by the court of Shri D.R.Arora, the then Civil Judge (Senior Division), Jalandhar. He also brought receipts Ex.DW4/1 to Ex.DW4/11, issued by PUDA in the name of Nirmal Singh.

7. After hearing arguments raised by both learned counsel for the parties, the suit of the respondent was decreed. Appeal filed by the appellant was also dismissed by the first appellate court vide judgment and decree dated 23.5.2011.

8. Learned counsel for the appellant has vehemently contended that approach of both the learned courts below in decreeing the suit of the respondent holding that the execution of agreement to sell dated 14.6.2000 (Ex.P1) has been proved on the strength of oral as well as documentary evidence adduced by the respondent is erroneous, perverse and is not sustainable in the eye of law, especially when one of the marginal witnesses of the alleged agreement, namely, PW2 Inder Singh, is father of the respondent, who, being an interested witness, wishes for the success of the suit. The alleged agreement to sell dated 14.6.2000, being forged, and fabricated, misusing blank signed papers, cannot be relied upon, inasmuch as the same was never executed nor did he receive any earnest money. Both the learned courts below did not appreciate this important aspect of the

matter that during the pendency of the appeal filed by one Sant Parkash Singh, the present suit was filed by the same counsel Mr. Anand Pandit, who had earlier filed the suit on behalf of Sant Parkash Singh, relating to the same plot, which was dismissed by the court of Shri D.R.Arora, Civil Judge (Senior Division), Jalandhar, and appeal filed against this judgment and decree, was also dismissed by Additional District Judge, Jalandhar on 2.1.2000. The respondent did not give any notice to the appellant prior to the execution of the alleged sale deed of the plot in question.

9. On the other hand, learned counsel for the respondent has assiduously contended that both the learned courts below, after appreciating the entire material available on the record in its correct perspective, rightly decreed the suit in favour of the respondent, holding that the appellant entered into an agreement to sell his plot with the respondent for a total consideration of Rs.1,50,000/- out of which, Rs.1,00,000/- was paid as earnest money, but he did not turn up to the office of Sub Registrar, Jalandhar, to get the sale deed registered in favour of the respondent on 14.7.2000. Therefore, the instant appeal filed by the appellant, being without any merit, deserves to be dismissed. He lastly contended that the most important witness, namely, Baljinder Singh, to whom the authority letter and other blank signed papers were handed over to deposit the installment of the plot, was not examined by the appellant.

10 Having given anxious consideration to the submissions raised by learned counsel for the parties, this court is of the view that the instant appeal deserves to be accepted for the reasons to follow:-

11 Before delving into the matter involved with respect to sale of a plot in question by way of agreement to sell dated 14.6.2000, allegedly,

executed between the parties in the instant appeal, this court, would, first of all, like to refer to the back-ground of earlier litigation between Sant Parkash Singh and Nirmal Singh in relation to the same plot bearing No.1049, measuring 100 sq.yards, situated at Urban Estate, Phase-II, Jalandhar, which was, allegedly, sold by Nirmal Singh to Sant Parkash Singh by way of an agreement to sell dated 18.12.1988 for a total consideration of Rs.20,000/-.

12 A perusal of averments in the written statement reveals that the appellant-defendant was allotted plot No.1049, measuring 100 sq. yards, situated at Urban Estate, Phase-II, Jalandhar, by the Estate Officer, Jalandhar, vide allotment letter dated 31.10.1986, Ex.DW3/A. It was pleaded that 25% amount of the purchase price of the plot was paid at the time of allotment of the plot. The remaining amount was to be paid in four equated six monthly installments along with interest @ 7% per annum. Since he was to go out of India and could not have been able to deposit above six monthly installment himself, he handed over some blank signed papers for depositing the same to his friend S. Baljinder Singh, who, being in government job, and busy in other affairs, would not have been able to deposit the installment of the plot, therefore, he further handed over blank signed papers to one Sant Parkash Singh, being his class mate, since the time of school days who, had, oftenly, been visiting Baljinder Singh's house in Chandigarh, for depositing last sixth installment of the plot on behalf of the appellant. He, taking undue advantage of the blank signed papers of the appellant, got prepared a forged and fabricated agreement to sell dated 18.12.1988 in the presence of the witnesses for alleged consideration of Rs.20,000/- mentioning that Rs.18,000/- has been paid as earnest money.

The assertion of conversion of blank signed paper into the alleged agreement to sell of the plot in question can be gauged from the fact that on 18.12.1988, he was out of India and in Abu Dhabi, a Arabian Country. On coming to know about the misuse of the blank signed papers by said Sant Parkash Singh, he published a public notice dated 5.6.1989 in the 'Tribune' cancelling the authority of Sant Parkash Singh to deal with the plot in question in any manner.

13 A perusal of the record further shows that on 9.11.1990 said Sant Parkash Singh filed Civil Suit No.587 of 1990 for specific performance of alleged agreement to sell dated 18.12.1988, which was dismissed by the Court of Shri D.R.Arora, Civil Judge (Senior Division), Jalandhar vide judgment and decree dated 26.11.1999, holding that the appellant had never agreed to sell the plot in dispute in favour of said Sant Parkash Singh. Even appeal preferred by Sant Parkash Singh was dismissed by Additional District Judge, Jalandhar, vide judgment and decree dated 2.1.2002.

14 During the course of hearing of this appeal, the argument, as projected and raised on the basis of pleadings set out by both the parties before this court, revolves around the legality and veracity of the agreement to sell plot, dated 14.6.2000, allegedly, executed by the appellant in favour of respondent Arwinder Singh.

15 It is an admitted case of the appellant that the agreement to sell dated 14.6.2000 (Ex.P1) bears his signatures, but the execution of alleged agreement to sell the plot and the receipt of earnest money in lieu thereof was denied. It is worth mentioning that after the suit filed by Sant Parkash Singh was dismissed vide judgment and decree dated 26.11.1999 and during the pendency of Civil Appeal No.12 dated 07.01.2000 filed by him,

respondent Arwinder Singh, in connivance with said Sant Parkash Singh, got prepared another agreement to sell dated 14.6.2000 relating to the same plot in question in his favour and filed Civil Suit No.324 dated 28.2.2001 for possession by way of Specific Performance through the same counsel Shri Anand Pandit, who had earlier filed suit on behalf of Sant Parkash Singh without making any reference of the earlier suit relating to the same property.

16 This court finds force in the contention of the learned counsel for the appellant that the respondent, in connivance with Sant Parkash Singh, got prepared a false and fabricated agreement to sell dated 14.6.2000, allegedly, executed between Nirmal Singh and Arwinder Singh on the basis of blank signed paper in his possession and filed a suit for specific performance of agreement to sell dated 14.6.2000, keeping in view averments in his written statement, asserting that he never entered into any such agreement to sell plot, dated 14.6.2000 with the respondent nor did he receive any alleged earnest money in lieu of plot nor did he even know him personally as has been deposed by him in his examination-in-chief while appearing as DW1 into the witness box before the trial court. He, during his cross-examination, deposed that Baljinder Singh was his cousin, who was employed with P.W.D. (B&R) and now has retired from service. Since he was to proceed to Abu Dhabi, therefore, he handed over him blank signed papers for depositing the installment of the plot. He had not got lodged any FIR against Sant Parkash Singh. Volunteered, proceedings under section 340, Code of Criminal Procedure, were pending against him. He admitted that he was present in India from 9.1.2000 to 24.6.2000. His testimony remained unshattered even after lengthy cross-examination conducted by

the learned counsel for the respondent-plaintiff. Indu Bala, Senior Accounts, PUDA, Jalandhar, while appearing into the witness box DW2, has deposed that as per record, all the installments of the plot had been duly paid by Nirmal Singh.

17 Since both the learned courts below have not been able to construe the evidence, facts and circumstances of the case on record in its correct perspective, therefore, in order to arrive at a right conclusion, it would be imperative to probe the oral as well as documentary evidence brought on record meticulously. The respondent-plaintiff Arwinder Singh, while appearing in the witness box as PW1, has specifically deposed during his cross-examination that “ I have mentioned in my petition that agreement to sell was read over to the parties after writing and after admitting the contents to be correct, the defendant had signed the agreement. Thereafter, it was signed by the deponent and the marginal witnesses in the presence of each other. **The attention of the witness was drawn to his petition, wherein it was not so mentioned.**”

18 Further it has come in the testimony of this witness that “I have stated in my petition that on 14.7.2000, I appeared in the office of Sub Registrar, Jalandhar, along with the balance sale price and the necessary expenses required for the execution and registration of sale deed and remained present till the close of office hours. The attention of the witness was drawn towards his petition, where it was not so recorded except that on 14.7.2000, I appeared in the office of Sub Registrar, Jalandhar. However, it is mentioned that I kept on waiting. I have not mentioned in my petition that ultimately I got my presence marked with the office of Sub Registrar, Jalandhar, to the effect that I have appeared before him, but the defendant

did not come present in his office on that day so as to execute the sale deed in his favour.”

19 Now the moot points that need to be gone into are - as to how and by whom respondent-plaintiff Arwinder Singh came in contact with appellant-defendant Nirmal Singh and a deal with regard to sale of the plot in question struck in between them and how Arwinder Singh, in connivance with Sant Parkash Singh, got prepared a forged agreement to sell the same very plot, dated 14.6.2000 and got engaged the same counsel, which he had earlier engaged in the civil suit filed by him in relation to the same very plot, which he had lost from the courts below. All these points can be dealt with by referring to the testimony of the respondent-plaintiff, who while appearing as PW1, has specifically deposed that there was no middleman in this alleged transaction. A perusal of the record further reveals that Nirmal Singh belonged to Village and Post Office Phallewal District Ludhiana, whereas respondent Arwinder Singh was the resident of Mohalla Jatpura, New Abadi, Kapurthala. During his cross-examination, the respondent specifically deposed before the trial court that “ Nirmal Singh met me in the Train before the alleged execution of the agreement. I was coming from Delhi and Nirmal Singh was also coming from Delhi. Nirmal Singh was about 48 years of age and residing in Foreign country. I do not remember the name of the country, where Nirmal Singh resides. It might be some Arab country. I have seen the sale deed of the property in dispute from Nirmal Singh and some receipts of Urban Estate.”..... “Document Ex.P1 was got typed by Nirmal Singh himself. All the signatures on Ex.P1 were got appended in my house. It was about 11.30/12.00 A.N at that time..... “It is correct that neither the father name nor the addresses of the witnesses are

mentioned on Ex.P1. The second marginal witness is not known to me as he had come with Nirmal Singh. I cannot tell the name of second marginal witness even after reading the same. There was no other person present at that time except me my father, the defendant and the second marginal witness. It is correct that different pens have been used on Ex.P1. It is correct that stamp papers were easily available in the month of June, 2000. I withdrew Rs. one lac from Allahabad Bank. I can produce the same. It is correct that no such record has been placed by me in the court. It is correct that no written notice was ever served by me upon the defendant before the alleged dated 14.7.2000. Vol. the date was already fixed. On 14.7.2000, I waited for the defendant outside the office.”

20 Further this witness has specifically deposed that “.....I do not know whether the counsels for Sant Parkash Singh is also my counsel. It is correct that no stamp paper was purchased and prepared by me on 14.7.2000 for sale deed..... “It is correct that I never issued any notice to the defendant after 14.7.2000. Vol. I went to meet him personally. Vol. On next day, I and my father went to his house, but he did not meet us.”

21 Now coming to the testimony of PW2 Inder Singh, the father of the respondent, who, during his cross-examination, deposed before the trial court that “ The Ex.P1 was brought by Nirmal Singh prepared. I met Nirmal Singh only once in my life time. He may be 42 to 45 years old. He is the resident of Ludhiana. I never visited his house in my life time. At the time of execution of document Ex.P1, my son, the defendant and one other person was present..... “ I visited the office of Sub Registrar, Jalandhar on 14.7.2000. We prepared ourselves for the execution of sale deed before the arrival of Nirmal Singh. We went to Nirmal Singh on 13.7.2000 and met

him there. Again said, his relative told that he has gone out of station.....”

The amount was withdrawn by me from my account in Allahabad Bank. I was not present when the transaction/deal was made.

22 The depositions of respondent Arwinder Singh as PW1 and Inder Singh, his father as PW2 are contradictory to each other in material particulars with regard to their visit by the respondent himself alone or by both (respondent and his father) to the appellant's house, either on 13.7.2000 or on 14.7.2000. The depositions made by PW1 Arwinder Singh and PW2 Inder Singh with respect to handing over the alleged amount of Rs.1,00,000/- to Nirmal Singh on the alleged date of execution of the agreement to sell Ex.P1, creates a doubt in the mind of the court in view of the fact that DW1 Nirmal Singh, in his examination-in-chief, has specifically deposed that he was doing job in Abu Dhabi, came in India with return visa on 09.01.2000 and thereafter returned to Abu Dhabi on 24.6.2000 on that return visa and then came back to India on 12.5.2001. Though he was present in India on 14.6.2000, the date of alleged execution of agreement to sell between the parties, but both respondent and his father did not meet him. It shows that they never visited the house of the appellant. The sequence of events clearly shows that the alleged amount of Rs.1,00,000/- was never passed on to the appellant-defendant. Therefore, the presence of the appellant at the time of execution of the alleged agreement to sell the plot in question is doubtful for the reason that the story put forth by the respondent-plaintiff regarding his meeting with the appellant in a train while coming from Delhi together is concocted one and after thought, particularly when, the respondent had no-where pleaded in his plaint regarding his meeting with the appellant. In such circumstances, it

can easily be presumed that the respondent engineered the aforesaid plea of purchase of the plot subsequently and introduced the same while deposing before the trial court with the sole motive to grab the plot in question fraudulently and with dishonest intention. A cursory glance of the deposition made by him clearly shows that he cleverly set up a new story of seeing the documents of the plot in question while travelling in the train as if Nirmal Singh was in dire necessity of selling his plot and used to show documents thereof to any one, who come across to him, even while travelling from one place to another. The deposition made by the respondent-plaintiff introducing a false story before the trial court is totally beyond pleadings, which, in my considered opinion, has no legs to stand and cannot be relied upon being without any evidentiary value in the eye of law. Therefore, this false and concocted story, put forth by the respondent, in my mind, does not prove to be helpful in establishing that any agreement with respect to sale of plot in question was ever executed between the parties. Rather, the sequence of events clearly spells out that it is the respondent, who, in connivance with Sant Parkash Singh, got prepared a forged agreement to sell dated 14.6.2000 on the basis of old blank signed papers of the appellant, which he was possessing with him for using the same with dishonest intention.

23 The dishonest intention of Sant Parkash Singh can be gauged from the fact that he, earlier filed a civil suit on 09.11.1990 by preparing a forged agreement to sell dated 18.12.1988 by misusing the blank signed papers of the appellant in relation to the same plot. A perusal of the record further reveals that in both the suit, one was filed by Sant Parkash Singh and another was Arwinder Singh regarding the same very plot, the counsel

engaged was Mr. Anand Pandit, who cleverly, drafted the plaint without mentioning the fact that he had earlier filed suit on behalf of Sant Parkash Singh regarding the same very plot. Rather, he took undue advantage of blank signed papers of the appellant, which was in possession of Sant Parkash Singh and got prepared a forged agreement to sell plot in question, dated 14.6.2000 on behalf of Arwinder Singh and filed another suit on his behalf regarding the same very plot in the Civil Court, knowing the fact that earlier suit had been dismissed and appeal against the decision of the trial court was pending before the first appellate court.

24 So far as the legality and veracity of the alleged agreement to sell the plot, dated 14.6.2000 is concerned, the signature of the appellant Nirmal Singh thereon is not disputed, but its execution and receipt of the earnest money was denied. A cursory glance of the agreement to sell dated 14.6.2000 shows that it is not a registered document. It has been written on a simple paper in Gurmukhi language. The contents of the agreement were typed in such a manner that it might not go beyond the signature made by the appellant on a blank signed paper. It further shows that the signature of the appellant is in the right corner of middle of the paper. Surprisingly, the signatures of Inder Singh on the left side and that of Arwinder Singh in the middle, are parallel to the signature of Nirmal Singh, on the right side of the alleged agreement, thereby making a straight line therein. One more important factor that can be gauged from the naked eye is that the signature of one Shamsher Singh was got done just down below the signature of Inder Singh on its left side. The mode of typing on the alleged agreement on the right side of its line is not proper and similar where the last word in each line ends. While typing the alleged agreement, a clever devise was adopted

by minimising the contents of the agreement, so that signature of the appellant could be adjusted. Moreso, in the alleged agreement, the description and boundaries of the plot have not been mentioned, as required under law.

25 Placing reliance upon the alleged agreement to sell dated 14.6.2000 by both the learned courts below that it was executed between the parties validly, is erroneous based upon misconstruing of the evidence available on the record. In such circumstances, the findings recorded by both the learned courts below that the agreement to sell was executed between the parties in the presence of witnesses are legally untenable, being contrary to pleadings and deposition by PW1 Arwinder Singh before the trial court.

26 The finding of the learned courts below that selection of Inder Singh, father of the respondent as one of the marginal witnesses to the agreement to sell, allegedly, executed between the parties cannot at all be said to be wrong, keeping in view the fact that no body wants to take a risk of choosing a stranger with a view to avoid possibility of winning over by the other party, cannot at all be countenanced for the simple reason that the alleged agreement was got prepared in a fraudulent and clandestine manner, citing the witness of his own choice. This fact is quite evident from the alleged agreement to sell that another marginal witness to the agreement namely, Shamsheer Singh was not examined deliberately or purposely, so that truth could not be elicited as to whether the paper was blank or signature of Nirmal Singh was already there or the contents of the agreement were made cut short so as to adjust the signature of Nirmal Singh. Had it not been so, the respondent-plaintiff could have brought the

said Shamsheer Singh in the witness box to depose the truth of the case.

27 The plea of the respondent-plaintiff Arwinder Singh that he waited outside the office of the Sub Registrar, Jalandhar, till the office hours were over, but the appellant did not turn up to the office of the Sub Registrar, Jalandhar to get the sale deed registered and then he got his presence marked by moving an affidavit, Ex.P2, cannot be substantiated, firstly, in view of the fact that he did not plead this averment in his plaint, when he was confronted with the specific portion and secondly, in order to show his bona fides, he did not place on record the copy of affidavit Ex.P2 at the time of filing of the suit. Instead, he admitted in his deposition while appearing as PW1 in the witness box that it was filed on the record of the trial court later on. More importantly, both the learned courts below did not give any weightage to this important aspect of the matter that the date fixed for execution/registration of the sale deed was 14.7.2000, but the respondent did not purchase stamp papers for the execution of the sale deed of the plot in question, but kept on waiting the appellant to come to the office of the Sub Registrar, Jalandhar. PW1 Arwinder Singh was confronted with the averment in the plaint, wherein it was not so recorded, except that on 14.7.2000, he duly appeared in the office of the Sub Registrar, Jalandhar. However, it was mentioned that he kept on waiting, but he did not plead in his plaint that ultimately, he got his presence marked with the office of the Sub Registrar, Jalandhar to this effect that he duly appeared before the Sub Registrar, Jalandhar, but the appellant did not come present in the office of Sub Registrar, Jalandhar, on the relevant date, so as to execute the sale deed in his favour. It is in this context that it was mandatory on part of the respondent to disclose the entire facts and purpose of his arrival in the office

of the Sub Registrar, Jalandhar along with documentary proof for marking his presence there genuinely. Except for sitting, waiting for the appellant to come present till evening outside the office of the Sub Registrar, Jalandhar and to create evidence, does not make him entitled in establishing his case in his favour in any manner. In fact, the respondent has not been able to prove that any agreement to sell was executed between them. Had the agreement to sell the plot in question been executed genuinely between the parties, there could not have been any reason for the appellant to get the sale deed registered on the relevant date, especially when he was present in India on 14.7.2000. In the event of non availability of the appellant on the alleged date of registration of the sale deed, he must have informed the respondent well in time and could have got another appropriate date fixed for execution of the sale deed before he was proceeded abroad. Both the learned courts below have not dealt with this point in letter and spirit on the basis of evidence available on the record and admitted the presence of the respondent on the relevant date in the office of the Executive Magistrate on the basis of affidavit Ex.P2 which was got attested from the Executive Magistrate, Jalandhar. The finding recorded by both the learned courts below that the respondent waited outside the office of the Sub Registrar, Jalandhar, to get the sale deed registered, but the appellant did not turn up is liable to be reversed for the reasons recorded hereinbelow.

28 A perusal of the affidavit Ex.P2 spells out that undoubtedly, the same was put up before the Executive Magistrate, Jalandhar by the respondent for marking his presence showing that the appellant did not turn up to get the sale deed executed on 14.7.2000. It is worth mentioning that one is required to disclose the purpose for which he had arrived to the office

of the Sub Registrar by moving a separate application along with copy of agreement to sell, whereupon necessary order is passed by the Sub Registrar, but such course was not adopted by the respondent. Instead, he got typed an affidavit from the typist and put up the same for its attestation before the Misc. Clerk, who, along with register, put up the same before the Executive Magistrate after making an entry in the relevant register. The affidavits, without being introduced the contents thereof, are always attested and signed by the Executive Magistrate, in a routine manner, after stamping the same with writing 'Attested as identified' and containing the designation Executive Magistrate, Jalandhar by the Reader of the Executive Magistrate making an entry thereof in the relevant register.

29 The findings recorded by both the learned courts below that the respondent appeared before the Executive Magistrate, Jalandhar and submitted affidavit Ex.P2, after the same was signed and attested by him, are liable to be reversed in view of the fact that the respondent did not appear before the Executive Magistrate with the copy of agreement to sell along with application for marking his presence before him. Therefore, in such circumstances, this court is of the view that the presence of a person cannot be marked, unless application, reduced in writing, is filed before the concerned authorities. Mere producing affidavit Ex.P2 duly attested by Executive Magistrate is not sufficient to draw an inference that in fact, the respondent, while appearing before the Executive Magistrate, Jalandhar, got his presence marked disclosing this fact that he appeared before him for getting the sale deed executed, but the vendor did not appear till the close of the office hours.

30 An argument of the learned counsel for the respondent that the

appellant failed to produce the most important witness, namely, Baljinder Singh to whom, the blank signed papers were handed over to deposit the last installment with the concerned office does not find favour with this court for the simple reason that he had handed over all the blank signed papers of the appellant to Sant Parkash Singh in good faith, being a class fellow of his school days, for depositing the last installment of the plot in question. However, at a later stage, on coming to know that said Sant Parkash Singh had misused his blank signed papers, he got the authority letter and other blank papers cancelled by way of publication dated 5.6.1989, but by that time, he had already prepared a forged agreement to sell dated 18.12.1988 and filed a civil suit no.587 of 1990 on 9.11.1990, which, ultimately, was dismissed vide judgment and decree dated 26.11.1999 of the trial court. Appeal filed against the decision, was also dismissed vide judgment and decree dated 02.1.2002 of the first appellate court.

31 The facts and circumstances, as referred to above, based on the evidence discussed above, clearly establish that approach of both the learned courts below in deciding the suit as well as appeal in favour of the respondent and against the appellant is legally untenable, in view of the fact that both the learned courts below have misread and misconstrued the entire evidence brought on the record and arrived at an erroneous conclusion, based on conjecture and surmises, without appreciating the same in its correct perspective holding that the appellant had executed an agreement to sell dated 14.6.2000 (Ex.P1) in favour of the respondent. Therefore, this court unhesitatingly, on the basis of the evidence minutely scanned and discussed above, comes to the conclusion, that the concurrent

findings recorded by both the learned courts below are illegal, perverse, being contrary to the material on record and are, therefore, liable to be reversed.

32 In view of the foregoing reasons, the appeal filed by the appellant succeeds. Consequently, the concurrent findings recorded by both the learned courts below against the appellant-defendant are reversed holding that the agreement to sell dated 14.6.2000, allegedly, executed in favour of the respondent-plaintiff is forged and fabricated. The suit filed by the respondent-plaintiff is, accordingly, dismissed and the appeal preferred before the first appellate against the decretal of the suit is also dismissed.

16th May, 2018
VK

(RAMENDRA JAIN)
JUDGE

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|----|-------------------------------|--------|
| 1. | Whether speaking/non-speaking | Yes/No |
| 2. | Whether Reportable | Yes/No |