

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

RSA No.3169 of 2012 (O&M)

Date of Decision: 18.09.2018

Harpal Singh

---Appellant

Versus

Jagjit Singh and others

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.Bhavnik Mehta, Advocate for the appellant.

Mr.Kanwaljit Singh, Sr.Advocate with
Mr.Sarthak Gupta, Advocate for respondent No.1 – caveator.

HARINDER SINGH SIDHU, J.

The plaintiff has filed this regular second appeal against the judgments of the Courts below whereby his suit has been dismissed.

The plaintiff had filed a suit for possession by way of specific performance of agreement to sell dated 25.10.2002 regarding land measuring 36 K 1 M bearing Qilla No.138/18 (7-11), 19 (7-11), 138/14(4-9) 22/1 (3-7), 22/2 (4-13), 138/13 (8-0) bearing Khata and Khatauni No.934/1290 and 1291 situated in village Majitha, Tehsil and District Amritsar along with rights of khal, passage, canal water etc. It was his case that the defendant-Surinder Kaur of her own accord and free will entered into an agreement to sell dated 25.10.2002 for sale of the aforesaid land at the rate of Rs.3,50,000/- per acre. She received a sum of Rs.4,00,000/- from the plaintiff at the time of execution of the agreement. It was

agreed that the sale deed would be executed and registered on 02.05.2003. In case of failure of the defendant to execute the sale deed in favour of the plaintiff, she would be liable to pay Rs.8,00,000/- to the plaintiff but would still remain bound to execute the sale deed in favour of the plaintiff. Before the stipulated date for execution of the sale deed i.e. 02.05.2003, the plaintiff served the defendant with a legal notice dated 26.04.2003 through his counsel calling upon her to execute the sale deed. On the stipulated date the plaintiff went to the office of Assistant Sub-Registrar Majitha along with balance sale consideration and money for incidental expenses but the Assistant Sub-Registrar did not attend the office on that date. On 05.05.2003, the plaintiff again attended the office of Assistant Sub- Registrar Majitha from 9.00 am to 5.00 pm but the defendant did not turn up. Ultimately, the plaintiff got his presence marked by moving an application and swearing an affidavit in this regard. The plaintiff always was and still is ready and willing to perform his part of contract but the defendant has defaulted. Hence, the suit.

During the pendency of the suit, defendant Surinder Kaur died. Her legal representatives namely Jagjit Singh, Simarpal Kaur and Amartpal Kaur were brought on record.

Jagjit Singh filed written statement on his own behalf. Simarpal Kaur and Amartpal Kaur filed a separate joint written statement. In his written statement Jagjit Singh categorically denied that Surinder Kaur had entered into an agreement to sell dated 25.10.2002 or had received earnest money of Rs.4,00,000/- from the plaintiff. It was his case that the agreement was false and fabricated. It was also stated that no legal notice dated 26.04.2003 was received.

It was explained that in fact Surinder Kaur was suffering from brain tumor and

had been bed ridden since June, 2002. She was under treatment at Muni Lal Chopra Hospital, Amritsar. The doctors had informed that she would not be able to survive. Being religious minded, she was taken to various Gurudwaras for performing Ardas for her well being. On 23.10.2002, when she was at Gurudwara Ramdas, she suddenly fell seriously ill. She was admitted in Primary Health Centre, Ramdas. From there, she was shifted to Muni Lal Chopra Hospital, Amritsar. She was lying in an unconscious stage in Primary Health Centre, Ramdas on 25.10.2002 as such there was no question of her executing the alleged agreement to sell on that date. Moreover, she was an educated lady and would not execute the agreement by affixing her thumb impression. Simarpal Kaur and Amritpal Kaur took the same pleas in their written statement.

In support of his case, the plaintiff examined PW-1 Tejinder Singh-Numberdar who deposed that the defendant had agreed to sell the land measuring 36 Kanal 1 Marla to the plaintiff at the rate of Rs.3,50,000/- per Killa and the agreement dated 25.10.2002 was executed between the parties in this regard. The agreement was read over and explained to the parties by the scribe. After admitting the same to be correct, Surinder Kaur thumb marked the same in his presence and in the presence of other attesting witnesses. Plaintiff Harpal Singh also signed the same in the presence of all witnesses. Besides Tejinder Singh the agreement was attested by Jagjit Singh, Baljit Singh and Gurmit Singh. He deposed that Jagjit Singh attesting witness is the son of defendant Surinder Kaur. Gurmit Singh attesting witness is the real paternal uncle of Jagjit Singh. Gurmit Singh is the paternal uncle of Jagjit Singh being the real brother of his father.

PW-2 Baljit Singh also deposed in similar terms. PW-3 Rajbir Singh Clerk,

Amritsar Central Cooperative Ltd. Branch Office Majitha, District Amritsar proved four bank drafts all dated 01.05.2003 for a sum of Rs.3,00,000/-, Rs.3,00,000/-, Rs.3,00,000/- and 2,77,188/- in favour of Surinder Kaur daughter of Tara Singh. The duly certified copies of these bank drafts were proved as Ex. P-2 to Ex.P-5 and the certified copy of draft issue register as Ex.P-6. Further the application for cancellation of drafts was proved as Ex. P-7, certified copy of transfer voucher vide which the money was transferred again to the account of Harpal Singh was Ex.P-8. The plaintiff appeared as PW-4 and reiterated the contents of the plaint.

The defendant examined DW-1 Ravi Kumar, Manager, State Bank of India, who brought the original account opening form, which had the specimen signatures of defendant Surinder Kaur wife of Gurcharan Singh. He identified the signatures of the verifying officer on the said form as also the signatures of Ravi Kumar, Chief Manager, SBI, Batala.

DW-2 Dr. Nirvail Singh-Medical Officer, Primary Health Centre, Ramdas brought the original Bed Head Tickets of Bed No.9 pertaining to defendant Surinder Kaur. As per original record brought by him, Surinder Kaur was admitted in PHC, Ramdas on 23.10.2002 in unconscious condition. She remained under indoor treatment from 23.10.2002 from 25.10.2002 when she was referred to Guru Nanak Hospital, Emergency Department on 25.10.2002 at 7.00 pm. The said reference bears his signatures. The bed head ticket was prepared on 23.10.2002 by Nurse Ravinderjit Kaur. DW-2 identified her signatures on the said bed head ticket which contains the medical record and brief history of the patient.

He proved the record as Ex.D-2.

DW-3 Dr. Neeraj Jain Associate Professor, Radiotherapy, Sri Guru Ram Das Rotary Cancer Hospital, Mehta Road, Amritsar deposed on the basis of record brought by him that Surinder Kaur wife of Gurcharan Singh was admitted in the Sri Guru Ram Das Institute of Medical Sciences and Research, Amritsar on 24.12.2002 vide registration No.675/12/02. She was suffering from brain-tumor. She remained under his treatment in the hospital from 24.12.2002 to 28.01.2003. He proved Ex.D-5 and D-6, which is a brief history of the patient, written by him. The Radiotherapy prescribed by him is Ex.D-8 and D-9. Treatment details Ex.D-10 had been entered in the hand of Rajesh Kumar and DW-3 had initialled the same. He identified the handwriting of Rajesh Kumar as he was still working under him and he had seen him signing and writing. In cross-examination, he stated that the entry regarding every patient is made in the register also, which is maintained on a yearly basis. The said register is in the custody of the hospital. He categorically denied that the record was subsequently manipulated.

DW-4 Dr. Jatinder Singh, Medical Officer, Department of Neurosurgery Fortis Escort Hospital deposed that he worked in Muni Lal Chopra Hospital, the Mall Amritsar with Dr. R. Kamal. He joined the hospital in 2002 and worked there till 2007. He remained associated with Dr. Raj Kamal during the said period and he was still assisting him. He used to prepare the discharge record of patients admitted in the Hospital. As per the discharge record, patient Surinder Kaur was admitted in hospital on 19.06.2002 and discharged on 16.07.2002. She was suffering from Cerebrovascular accident. She was again admitted in the hospital from 25.10.2002 to 27.10.2002 vide registration No.1155/10.02 and from 9.11.2002 to 17.11.2002 vide registration No.1228/11/02

and from 18.12.2002 to 28.12.2002 vide registration No.1439/12/02. He stated that the record was prepared by him and was in his handwriting. The record attested by him was marked as Mark D-12 to Mark D-19. The admissibility of these documents was objected to but the objections were not sustained.

DW-5 Narinder Singh, Attorney of defendant Jagjit Singh tendered his affidavit Ex.DW-4/A reiterating the facts as per written statement. He proved on file the original Power of Attorney Ex.PW-4/1 given to him by Jagjit Singh defendant. He deposed that defendant Surinder Kaur was an educated lady, who had passed basic ST Examination in 1965. She used to sign the documents in English. She was holding a bank account in State Bank of India, Batala, where she gave her specimen signatures in English. He proved the documents signed by her as Ex.PW-4/2 to Ex.PW-4/11.

In rebuttal, the plaintiff examined PW-5 Sanjiv Sharma Fingerprint and Handwriting Expert. He compared the disputed thumb impression of Surinder Kaur on the agreement Ex.P-1 with her standard thumb impression on the file cover of Sri Guru Ram Das Institute of Medical Sciences and Research, Amritsar showing date of admission 24.12.2002. He opined that the disputed thumb impressions were similar with the standard thumb impressions and that the disputed thumb impressions were affixed by the same person who affixed the standard thumb impressions.

PW-6 Ved Parkash, Clerk of Sh. Vipin Sodhi, Advocate tendered affidavit Ex.PW-6/A, wherein he deposed that he was working with Vipin Sodhi, Advocate as Clerk for more than 20 years. He identified his signatures on the notice dated 27.01.2010.

Ld. Trial Court referred to the evidence of the defendant i.e. DW-2 Dr. Nirvail Singh, Medical Officer, Primary Health Centre, Ram Das, who categorically stated that the defendant- Surinder Kaur was admitted in Primary Health Centre on 23.10.2002 in an unconscious condition and remained there till 25.10.2002 when she was referred to Guru Nanak Dev Hospital, Emergency Hospital for further treatment at 7.00 pm and concluded that this documentary evidence established that defendant- Surinder Kaur remained in Primary Health Centre, Ram Das till 7.00 pm on 25.10.2002. The plaintiff claimed that the agreement to sell was got scribed at noon time on 25.10.2002, which was not acceptable in the face of the record of the Primary Health Centre, Ram Das showing her as being admitted in the said Centre till 7.00 pm on 25.10.2002. The version of DW-2 was further corroborated by DW-4 Dr. Jatinder Singh, who stated that she remained admitted in Muni Lal Chopra Hospital from 25.10.2002 to 27.10.2002. It was noticed that the record established that the defendant was suffering from brain tumour and was repeatedly admitted in Muni Lal Chopra Hospital. She remained admitted in the hospital from 19.06.2002 to 16.07.2002, from 25.10.2002 to 27.10.2002, from 9.11.2002 to 17.11.2002 and from 18.12.2002 to 28.12.2002 DW-3 Dr. Neeraj Jain, Associate Professor, Sri Guru Ram Das Rotary Cancer Hospital had proved that Surinder Kaur had remained admitted in the said institute from 24.12.2002 to 28.01.2003. Ld. trial Court held that on a collective reading of the aforesaid evidence including the documents relating to the admission and discharge of Surinder Kaur there remained no doubt that she was not capable of voluntarily entering into an agreement to sell. The alleged agreement appears to be the result of a fraud

committed by some other person and the same was not binding on the defendants. Regarding the report of PW-5 Sanjiv Sharma Fingerprint and Handwriting Expert, Id. Trial Court held that considering the overwhelming evidence of the doctors who treated her during that period indicating that the patient was unconscious and remained admitted in Hospital from time to time including from 23.10.2002 to 27.10.2002 no reliance could be placed on the solitary evidence of the expert. Further, Surinder Kaur was an educated lady, who used to append her signatures whenever required as is clear from the evidence of DW-1 Ravi Kumar, Manager, who brought the account opening form wherein the specimen signatures of the defendant were available. There was no reason why she should have not signed the agreement if she had entered into the same. Her thumb impression on Ex. D-4 at the time of her admission to Sri Guru Ram Das Hospital were obtained because she was unconscious. A further suspicious circumstance casting doubt on the agreement to sell was that the name of the husband of the deceased was not mentioned therein rather, she was mentioned as Surinder Kaur daughter of Tara Singh. The trial Court further held that as she was not in a position to enter into an agreement to sell there was no question of her receiving the earnest money. There was a big question mark as to who received the earnest money. Regarding the argument of the plaintiff that to prove a plea of fraud, the defendant had to appear in the witness box and that the evidence of Attorney, who is not well conversant with the facts of the case would not suffice, Id. trial Court held that as the incapacity of the defendant to enter into the agreement had been well established from the evidence of the doctors on record and consequently the fraudulent nature of the agreement was proved the non-appearance of the

defendant would not be material. Accordingly, the suit was dismissed.

Ld. Lower Appellate Court affirmed the findings of the trial Court. Additionally, ld. Lower Appellate Court held that there was no evidence led by the plaintiff to prove that on which date and from whom the stamp papers of the agreement were purchased and who was the person who brought the same. Even last line of page one shows that the thumb mark was affixed prior to scribing of the said document. Considering that the defendant was an educated lady the very fact that the agreement was thumb marked would demonstrate it was done when she was not conscious. There is also rubbing and cutting at Point A to A-1 on the first page which has not been explained by the plaintiff. Thus the appeal was dismissed.

Findings of facts have been recorded by the courts below. Learned counsel for the appellant has not been able to establish as to how these findings are perverse or against the record.

No question of law arises for decision in this appeal.

Dismissed.

September 18, 2018

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(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes
Yes/No