

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 5158 of 2012(O&M)

Date of Decision:6.9.2018

Khushwant Singh

---Appellant

vs.

Major Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. I.S.Bajwa, Advocate
for the appellant

Mr. Gurmeet S.Saini, Advocate
for the respondent

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession by way of specific performance of agreement to sell dated 6.11.2007 filed by the respondent-plaintiff was decreed by the trial court vide judgment and decree dated 19.1.2012 that came to be affirmed in appeal filed by the unsuccessful defendant-appellant, by the Additional District Judge, Ferozepur.

In brief, the case of the respondent-plaintiff is that the appellant agreed to sell the suit land measuring 8 kanal, situated at village Waras Wala Jattan, Tehsil Zira, District Ferozepur for sale consideration of

Rs. 3,75,000/- vide agreement to sell dated 6.11.2007. The sale deed was agreed to be executed on payment of balance sale consideration on or before 5.11.2008. On the stipulated date, respondent alongwith balance sale consideration and expenses of registration remained present in the office of Joint Sub Registrar, Makhu but the appellant-defendant did not turn up. The respondent got his presence marked in the said office. He always remained ready and willing to perform his part of the agreement. He has prayed for specific performance of agreement to sell with consequential relief of permanent injunction restraining the appellant from alienating the suit land except to the plaintiff. In the alternative, a prayer for money decree of Rs. 3,75,000/- including the earnest money of Rs. 1,24,000/-, damages and compensation of Rs. 2,51,000/- alongwith interest has been made.

The appellant-defendant filed the written statement and denied that he agreed to sell the suit land as per the terms and conditions incorporated in the agreement of sale propounded by the respondent. It is averred that the appellant was in need of money and he borrowed Rs. 1,00,000/- from the plaintiff and agreed to return the same with interest @ 2% per month within a period of one year. The plaintiff obtained his signatures on blank papers. The answering defendant returned the said amount to the respondent and requested for return of blank signed papers but the respondent ensured that the same would be returned later. The respondent converted the blank signed papers in agreement to sell and filed the present suit.

The respondent filed replication, reiterated his stand taken in the plaint while controverting the allegations with regard to the appellant

having obtained a loan and signed the blank papers.

The controversy between the parties led to framing of following issues:-

1. Whether the defendant entered into an agreement to sale dated 6.11.2007 in favour of the plaintiff on receipt of Rs. 1,24,000/- as earnest money? OPP
2. Whether the plaintiff is ready and willing to perform and of part of contract? OPP
3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
4. Whether the plaintiff is entitled in the alternative relief for recovery of Rs. 3,75,000/- if the relief of specific performance is not granted? OPP
5. Whether the plaintiff has not come to the Court? OPD
6. Whether the agreement is a false, fabricated and ante dated document? OPD
7. Relief

To prove his case, the respondent-plaintiff examined Sukhdev Singh PW1, Satish Kumar Deed Writer PW2 and himself appeared in the witness box. To rebut evidence of the respondent, the appellant appeared in the witness box.

Having heard counsel for the parties in the light of materials on record, the trial court allowed the principal relief of specific performance of agreement of sale with a direction to the appellant to execute the sale deed within three months from the date of order, on receipt of balance sale

consideration within the said period. The appellant was also restrained from alienating the suit property to somebody else.

As has been noticed hereinbefore, the appeal preferred by the unsuccessful defendant-appellant did not find favour with the first Appellate Court.

The sole submission made by counsel for the appellant is that plea of the appellant that he had obtained a loan of Rs. 1,00,000/- and signed blank papers at the behest of respondent-plaintiff or to say that he never intended or agreed to sell the suit land as has been projected by the respondent-plaintiff gets sufficiently substantiated from the testimony of Satish Kumar PW2 who has admitted in his cross examination to the following effect:-

“It is correct that I made an entry in register and I wrote '*rehan bajarai adalat*'. Voluntarily stated, that on top (*uppar*) I had written '*bai*' (sale) but on the bottom (*hethan*) it is written '*rehan*'”.

Counsel representing the respondent-plaintiff has supported concurrent findings recorded by the courts with the submission that no interference in the consistent findings recorded by the Courts is warranted as the same do not suffer from an error much less perversity. It is further argued that in the written statement, the appellant has raised a plea of borrowing an amount of Rs. 1,00,000/- for domestic purpose which is reiterated by him in his affidavit Ex. DW1/A filed by way of examination in chief but in the opening lines of his cross examination, he has stated that he has not mentioned in his affidavit that he had borrowed money from Major

Singh for domestic purpose. It is argued that this stand of the appellant shows that his plea in the written statement and affidavit tendered by way of examination in chief is not worthy of credence and reliance.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, the agreement to sell Ex. P1 bears the signatures of appellant Khushwant Singh. The respondent/plaintiff examined one of the attesting witnesses of the agreement namely Sukhdev Singh. Counsel for the appellant has not pointed out any materials brought forth in cross examination of Sukhdev Singh and Major Singh plaintiff to discard or disbelieve their testimony to the effect that the appellant agreed to sell the suit land as per the terms and conditions incorporated in the agreement of sale Ex. P1.

The plea of the appellant is that he had borrowed a sum of Rs. 1,00,000/- which was to be paid within one year and interest was agreed to be paid @ 2% per month. He has also raised the plea that he returned the amount of Rs. 1,24,000/- and demanded for return of the papers on which his signatures were obtained. No date, month or year when the appellant returned a sum of Rs. 1,24,000/- to the respondent is mentioned in the written statement when otherwise, there is no documentary evidence to support plea of the appellant in this regard. It does not appeal to reason/logic that if a person had borrowed money and the lender has obtained his signatures on blank papers, the loanee would return the amount without insisting for return of papers he would certainly insist for execution of a document/writing or at least a receipt as an evidence of return

of amount. This fact alone is sufficient to falsify and belie plea of the appellant that he borrowed a sum of Rs. 1,00,000/- from the respondent or he returned the amount of Rs. 1,24,000/- to the respondent/plaintiff but the respondent refused to return the papers and misused the same by preparing an agreement of sale. As has been rightly argued by counsel for the respondent, appellant even denied his having raised a plea in his affidavit that he had borrowed the money from Major Singh for domestic purpose.

This brings the Court to the statement of Satish Kumar particularly his statement in cross examination, extracted hereinbefore. Agreement Ex. P1 and entry in the register maintained by Satish Kumar Ex. P2 are the documents in handwriting of Sh. Satish Kumar. The writing of Satish Kumar is not very neat and clearly legible. It appears that either Satish Kumar was not able to decipher his own writing or he intentionally stated certain wrong facts taking advantage of his poor handwriting.

I have carefully gone through the original agreement of sale as well as document Ex. P2, a copy of the relevant entry in the register maintained by Satish Kumar. Perusal of both these documents leaves no manner of doubt that there is no reference to 'rehan'. The word 'registry' has been read as 'rehan'. In the agreement of sale, there is clear reference to sale of land measuring 8 kanals out of land comprising various khasra numbers totalling 97 kanal 1 marla @ Rs. 3,75,000/- per acre and receipt of Rs. 1,24,000/- in the presence of witnesses. It has further been recited that vendor would be bound to get the sale deed registered on 5.11.2008 in the office of Sub Registrar, Makhu. In case the vendor is unable to get the sale

deed registered within the stipulated period, registry was agreed to be got done through court and expenses were agreed to be borne by the purchaser. It was further written that the vendor has not agreed to sell this land to somebody else nor any case is pending in any court. In the last line of the agreement, it says '*lehaja ikrarnama bai and vasuli rakam Rs. 1,24,000/- hun*'. In the entry Ex. P2 again there is no reference to 'rehan' therefore, the appellant cannot derive any advantage to his contention from the aforesaid extracted cross examination of Satish Kumar, Deed Writer.

This apart, it is not the plea of the appellant that he agreed to mortgage his land as against sale, propounded by the respondent.

The appellant had miserably failed to substantiate his plea that he had taken loan of Rs.1,00,000/- from the respondent or his signatures were obtained on blank papers which were later converted into agreement of sale. The self serving statement of the appellant coupled with the facts discussed hereinbefore are not at all sufficient to successfully challenge the concurrent findings recorded by the courts when otherwise no question of law has been raised for determination by this Court.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

6.9.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No