

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

**RSA-2135-2016 (O&M)
Date of Decision: May 23, 2018**

Skinder Singh

...Appellant

Versus

Gurmail Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Mohd. Yousaf, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

Suit filed by the appellant-plaintiff was dismissed by the Trial Court, vide judgment and decree, dated 03.11.2012. As even the appeal preferred against the said decree failed and was dismissed on 17.12.2015, the appellant-plaintiff is in Regular Second Appeal. The parties to the *lis*, hereinafter shall be referred to their original positions in the suit.

The plaintiff prayed for a decree for specific performance of the agreement, dated 31.05.2004, as regards a land measuring 16 Bighas 5 Biswas, situated in village Ratolan, Tehsil Malerkotla, District Sangrur. In the alternate, the plaintiff also prayed for a decree for Rs.4,00,000/-, i.e. Rs.2,00,000/- being earnest money and Rs.2,00,000/- by way of damages with cost. In brief, the case set out by the plaintiff was that Hardayal Singh, predecessor-in-interest of the defendants, represented himself to be the owner in possession of the suit land. He executed the agreement, dated

31.05.2004, in favour of the plaintiff. The sale consideration was settled at Rs.63,000/- per bigha alongwith share in electric motor, electric connection, kotha motor, bore and khal etc.. A sum of Rs.2,00,000/- were paid by the plaintiff to late Hardayal Singh by way of earnest money. And the parties had agreed to execute the sale deed up to 30.12.2004. Although the plaintiff had always been ready and willing to perform his part of the contract, but Hardayal Singh had been putting off the matter on one pretext or the other. Subsequently, Hardayal Singh passed away, and his successor-in-interest, i.e. the defendants refused to execute the sale deed, thus, the suit.

In the written statement filed on behalf of the widow and son of deceased Hardayal Singh, it was pleaded that late Hardayal Singh was mentally retarded, and was undergoing a treatment from a Psychiatric clinic. He was hardly in a position to think good or bad for himself. The execution of the agreement, dated 31.05.2004, was denied being a fabricated document. Thus, there was no occasion either to receive the earnest money.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that the plaintiff had examined the scribe of the alleged agreement, namely, Sham Lal Gupta (PW-1), who only proved the affidavit (Ex.P-6), as regards the presence of the plaintiff in the office of Sub Registrar, Malerkotla. Nothing was stated by him as regards execution of the agreement or that he scribed the agreement Ex.P-1. Although, Harbans Singh (PW-2), one of the attesting witnesses of the agreement, submitted that Sham Lal Gupta scribed the agreement, and he entered the same in his register. Likewise, the other attesting witness, namely, Jarnail Singh (PW-3) also deposed on the similar

lines. However, for the alleged scribe (PW-1) himself did not state that he scribed the agreement, the testimony of the attesting witnesses PW-2 and PW-3 lost its credence or credibility. Further, Harbans Singh, PW-2, conceded in his cross-examination that he did not remember the name of the scribe. He also did not remember if the scribe had entered the agreement in his register. He also pleaded ignorance if all this was even stated in his affidavit Ex.PW-2. So much so, he admitted that he did not even know if the version set out in his affidavit Ex.PW-2, read as his examination-in-chief, was correct. Meaning thereby, he did not even admit the contents of his own affidavit, which in turn disproved the version of the plaintiff. Jarnail Singh (PW-3), the other attesting witness of the agreement conceded that the plaintiff happened to be his brother-in-law. And, even though he stated that the agreement was scribed by Sham Lal Gupta, but he did not remember if it was entered in his register. However, in his affidavit Ex. PW-3, he had affirmed that the agreement, dated 31.05.2004, was entered by the scribe in his register. Likewise, Shiv Kumar Bansal, Stamp Vendor, PW-4, deposed that though Hardayal Singh had purchased stamp papers from him, but conceded in his cross-examination that he had not written the words mentioned at Point- 'A' in Ex.P-8, at the time of issuance of the stamp paper. An entry was recorded on Ex.P-8, as regards issuance of the stamp paper in the name of Hardayal Singh, and at Point- 'A', the alphabets 'LTI' were written. But, this witness clearly denied to have written the same. As regards the plea that signatures or thumb impression of Hardayal Singh were admitted by the defendants, it was held that admission of signatures or thumb impression was inconsequential, as the burden of proof to prove that

the agreement in question was validly executed, was upon the plaintiff. The plaintiff was required to prove that the executant was fully conscious of the agreement and the contents thereof, and it was thereafter he affixed his thumb impression or signatures thereupon. That being so, the only and the inevitable conclusion that could be reached was: the suit filed by the plaintiff was devoid of merit.

On being pointedly asked, learned counsel for the appellant-plaintiff could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the position on record or suffered from any material illegality.

No question of law, much less any substantial question of law arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

May 23, 2018

P Kapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO