IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 19.04.2018

1. RSA No.130 of 2015

Kesar Singh (deceased) through his LRs
Harwinder Singh and others **...... Appellants**

Versus

Harbhajan Singh **...... Respondent**

2. RSA No.132 of 2015

Kesar Singh (deceased) through his LRs
Harwinder Singh and others **...... Appellants**

Versus

Saun Singh (deceased) through his LRs
Harbhajan Singh etc. **...... Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Amit Jain, Advocate
for the appellant.

Mr. Kunal Dawar, Advocate
for the respondents.

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ANIL KSHETARPAL, J. (ORAL)

Vide this judgment, I shall be disposing of two regular second appeals bearing RSA No.130 of 2015 and RSA No.132 of 2015. Although the parties in dispute is slightly different, however, the issues to be decided are common and the parties to the litigation are largely the same. Learned counsel for the parties are agreed that both the appeals be disposed of through a common judgment.

In both the regular second appeals, the suits were filed for specific performance of the agreement to sell dated 17.06.2002 and

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20.06.2002. In one case, Harbhajan Singh was the plaintiff whereas in other case, his father was the plaintiff. The defendant-appellant is common in both the suits. Both the plaintiffs have filed separate suits claiming that the defendant-appellant has failed to perform his part of the agreement to sell. In the written statement, it was pleaded that the property is a co-parcenary property and there was neither any agreement to sell between the parties nor any earnest money was received. It was further pleaded that the parties to the litigation are having good terms and the defendant-appellant used to borrow the amount from the plaintiffs and their family members. Learned trial Court after appreciating the evidence available on the file held that the agreement to sell is proved and the earnest money has been paid. However, the learned trial Court while relying upon the entries Ex.D-X, D-Y, and D-4 held that previously also there was an agreement to sell between the parties and it is proved on file that in fact the intention was not to sell the property but to secure the payment of loan.

The relevant findings of the learned trial Court in this regard is extracted as under:-

> *"Thirdly defendant in this case has produced on file two other agreement to sell marked A and B in favour of Harbhajan Singh by defendant. Though these documents are not proved by the defendant as the original were not with the defendant but the corresponding entries in the register of the Deed writer have been proved on file by defendant as Ex.DX, Ex.DY and Ex.D4 by examining DW2 Arvinder Singh. The perusal of entries reveals that as per Ex.DX, Harbhajan Singh the plaintiff has entered into the agreement to sell of 16 kanals of land with the defendant and the entry of the same at Sr.1179. At that time he had paid Rs.One lac as earnest money. This agreement is dated 5.11.1996 and sale consideration was Rs.4,00,000/-. Subsequently as per the entries Ex.PY, Harbhajan Singh entered*

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into the agreement to sell with Kesar Singh qua the land 16K-3M in the year 1998 and paid Rs.1,25,000/- as earnest money. On the same day, another agreement to sell was executed in favour of as per entry Ex.D4 of land measuring 16 kanal qua which the earlier agreement to sell which was entered in the register of DW2 Arviinder Singh as Ex.DX was entered into and Rs.1,25,000/- was paid as earnest money. So, these documents clearly shows that earlier also, the defendant has executed the agreement to sell of property in dispute with the plaintiff Harbhajan Singh and these agreement to sell were not enforced, rather, one after the other agreement to sell were executed. These three agreements to sell are qua the same area of the land qua which the present suit has been filed. The counsel for the plaintiff has come with the plea that this evidence of the i.e. the document Ex.DX and Ex.DY and Ex.D4 and Mark A and Mark B cannot be read into evidence, because these are beyond pleadings as they have not been pleaded in the written statement and not put to the plaintiff when he was cross examined. But I do not find any force in the contention of counsel for the plaintiff because the defendant in the written statement has taken the specific plea that previously also the plaintiff used to get the agreement to sell in his favour. The signatures of the defendant on the blank papers to secure the loan, which is sufficient for pleading of the facts and to corroborate that pleadings, this evidence is in admissible in evidence. So when there are several transactions between the plaintiff and defendant and various agreement to sell were executed, which was not enforced then it can be safely concluded that the agreement to sell Ex.P-1 was written as a security document not for the purpose of selling the land by the defendant in favour of the plaintiff. Apart from this, in the present case, the stamp papers of agreement to sell Ex.P1 were purchased by the plaintiff from Major Singh, stamp vendor on 17.6.2002 and they were entered at Sr. No.2646. Today, another case titled as Saun Singh Vs. Kesar Singh between the father of the plaintiff

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which is now being prosecuted by the present plaintiff as the father of the plaintiff had died is pending. The stamp papers of the agreement to sell of that suit was also purchased from Major Singh and they were entered at the Sr. No.2945. Meaning thereby that the stamp papers of this agreement to sell as well as the agreement to sell in favour of Saun Singh were purchased on the same day. The date of scribing of both the agreements to sells was mentioned differently. If the defendant is to enter into the agreement to sell with the plaintiff and stamp papers were if purchased on the same day, then both the agreements were to be scribed on the same day and even the witnesses of both the agreement to sells are the same."

Thus, the Court ordered refund of the earnest money along with the interest.

Plaintiff-respondent filed the first appeal in both the suits. Learned First Appellate Court has reversed the finding of the learned trial Court and granted relief of specific performance of agreement to sell. The learned First Appellate Court has given following reasons to reverse the findings of the learned trial Court:-

1. The agreement to sell is proved on file and the defence of the defendant that the signatures were obtained on blank paper is not proved.
2. The defendant never made any complaint to the Police after coming to know that the plaintiff has converted blank signatures into agreement to sell.
3. Legal heirs of defendant-Kesar Singh have not pleaded that there were any previous agreement to sells between the parties.
4. Kesar Singh was a wise man and therefore, once an agreement to sell is proved, the specific performance has to be granted.

In the considered opinion of this Court, the following substantial

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question of law arise for determination:-

> "Whether relief of specific performance of agreement to sell is mandatory if execution of the agreement to sell is proved, although, it is established that the agreement to sell was executed so as to secure the loan amount."

Learned First Appellate Court has clearly overlooked the provision of Section 20 of the Specific Relief Act, 1963. Section 20 of the Specific Relief Act clearly provide that grant of relief of specific performance of the agreement to sell is discretionary and the Court would grant the relief or deny the same based upon sound judicial principles on the basis of cogent reasons.

In the considered opinion of this Court, the learned trial Court had given cogent reasons for denying the specific performance of the agreement to sell. The plaintiffs in both the suits did not come to the Court with clean hands. As per the entry Ex. D-X, there was an agreement to sell between Harbhajan Singh-plaintiff and Kesar Singh dated 04.11.1996. As per the entry Ex.D-Y, there was another agreement dated 27.05.1998 with same Harbhajan Singh. As per entry Ex.D-4, one more agreement was there between Harbhajan Singh and Kesar Singh. As per the agreement to sell Ex.D-X, the earnest money was Rs.1,00,000/-. After a period of six years i.e. in 2002, there was another agreement to sell, specific performance whereof is being sought, the earnest money became Rs.1,96,000/-. In second agreement dated 20.06.2002, the earnest money became Rs.2,08,000/-. The land agreed to be sold was same in the agreements dated 04.11.1996 and 20.06.2002. Similarly in the agreement dated 27.05.1998, Rs.1,25,000/- was the earnest money with respect to the land measuring 16 kanal and 03 marlas. In the second agreement dated 17.06.2002, the earnest money came

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to be Rs.1,96,000/-. The land agreed to be sold remained the same. Still further, there was another agreement Ex.D-4 between the parties. Such being the position, the learned trial Court rightly came to conclusion that in fact these agreements were being executed not for execution of the sale deed but only for the purpose of securing the loan amount.

The reasons given by the learned First Appellate Court are totally erroneous. First reason assigned is that Kesar Singh was a wise man. Kesar Singh has signed all the agreements in local language i.e. Punjabi. There is no evidence available on the file that Kesar Singh was educated or wordly wise. Second reason given by the learned First Appellate Court is that no complaint has been fled before the Police. Both the Courts have found that the agreement to sell was executed but it was for the purpose of securing the loan. Hence, there was no question of any complaint to the Police once the civil suit was pending. Next reason assigned by the learned First Appellate Court is that the evidence with regard to Ex.D-X, D-Y, and D-4 is beyond pleadings.

In the considered opinion of this Court, even this reason is totally incorrect. It has been pleaded by the defendant that he used to borrow the amount from the plaintiff. The pleadings have to be concise. The evidence is not required to be pleaded as per the provisions of Order 6 Rule 2 of the Code of Civil Procedure. Hence, the reason given by the learned First Appellate Court is erroneous.

Next reason assigned by the learned First Appellate Court is that the plea set up by the defendant is contradictory. In the considered opinion of this Court, the plea is not contradictory. Once the defendant has defended the suit for specific performance of the agreement to sell on the ground that he used to borrow the amount, then plea of agreement to sell being for the

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purpose of security is obvious. A defendant is entitled to defend the suit on by taking all the possible defences.

Learned counsel for the respondent-plaintiff has vehemently argued that the entries Ex.D-X, D-Y and D-4 have not been put to the plaintiff when he appeared in the evidence. The contention of the learned counsel is incorrect. Learned counsel for the appellant has to read the entire statement of the plaintiff. Photocopies of the agreement to sell were put to the plaintiff when he appeared in evidence. These entries in the register of the scribe are pertaining to the aforesaid agreement to sell only. Therefore, the attention of the plaintiff to the earlier agreement to sell was certainly drawn and put to him. It was for the plaintiff to explain the position.

Next argument of learned counsel for the respondent is that these entries are beyond pleadings. The aforesaid fact has already been discussed by this Court while discussing the reasons given by the learned First Appellate Court.

In view of the aforesaid, question of law as framed earlier, is answered in favour of the defendant-appellant.

Hence, judgments passed by the learned First Appellate Court in both the suits are set aside and the judgments passed by the learned trial Court ordering refund of the earnest money along with interest are restored.

Both the appeals are allowed.

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned Yes / No

Whether Reportable Yes / No

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