

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1497 of 2014 (O&M)

Date of Decision: 21.12.2018

Munesh Devi

.....Appellant

VERSUS

Surender Singh and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajesh Arora, Advocate
for the appellant.

Mr. C.B. Goel, Advocate
for the respondents.

SURINDER GUPTA, J.

Plaintiff-respondent Surinder Singh filed suit for decree of possession and specific performance of agreement to sell dated 22.12.2005 in respect of the land bearing Rect. No. 98, *killa* no. 5/2/2 (3-9), Rect. no. 81, *killa* no. 20/1 (4-0) total measuring 7 *kanals* 9 *marlas* situated in revenue estate of Narhera Tehsil Pataudi, District Gurgaon (now Gurugram) to the extent of 66/149 share which comes to 3 *kanals* and 6 *marlas*.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendants' as per civil suit.

3. The suit was decreed and sale deed no. 2359 dated 27.02.2006 executed by defendant no. 1-Bhag Singh in favour of defendant no. 2-Munesh Devi (appellant) was declared as null and void. Defendant no. 2 filed appeal which was dismissed by Additional District Judge, Gurgaon (now Gurugram) vide judgment dated 20.01.2014. Against the concurrent judgments of Courts below defendant no. 2-Munesh Devi has filed this appeal.

4. I have heard learned counsel for parties and gone through the paper-book and lower Court record with their assistance.

5. Case of plaintiff, in brief, is that he had entered into agreement dated 22.12.2005 with defendant no. 1 for purchase of the suit land for a sale consideration of ₹6 lakhs per acre and paid ₹30,000/- as earnest money. The date for registration of the sale deed was fixed as 25.02.2006. He approached defendant no. 1 to get the sale deed executed who asked him to wait till 25.02.2006. It was holiday on 25.02.2006 and 26.02.2006 being Saturday and Sunday. Plaintiff after intimating defendant no. 1 reached the office of Sub-Registrar, Pataudi on 27.02.2006 with balance sale consideration and other expenses but defendant no. 1 did not turn up. At about 03.00 p.m., defendant no. 1 came to the office of Sub-Registrar and in place of getting the sale deed registered in favour of plaintiff, got the same executed in favour of defendant no. 2 without any sale consideration despite opposition from plaintiff. It was alleged that sale deed executed by defendant no. 1 in favour of defendant no. 2 is not binding on plaintiff and defendant no. 2 is bound to join defendant no. 1 at the time of execution of sale deed as per agreement dated 22.12.2005 in his favour.

6. Defendant no. 1 contested suit with the plea that agreement dated 22.12.2005 is forged and bogus document. Being an ex-serviceman and educated person he had been signing documents while agreement dated 22.12.2005 does not bear his signatures. He had entered into agreement to sell the suit land with defendant no. 2 on 27.10.2005 and had received ₹50,000/- as earnest money. The last date for execution and registration of the sale deed was fixed as 27.02.2006 and as per agreement dated 27.10.2005 the sale deed was executed in favour of defendant no. 2. All the

averments of plaintiff were contested, controverted and denied.

7. Defendant no. 2 in her separate written statement also alleged agreement dated 27.10.2005 executed by defendant no. 1 in her favour and execution of the sale deed dated 27.02.2006 in pursuance of that agreement. Agreement dated 22.12.2005 propounded by plaintiff was alleged to be illegal, null and void.

8. Pleadings of parties led to framing of the issues as follows:-

- (1) Whether defendant no. 1 executed an agreement of sale in plaintiff's favour on 22.12.2005 and received ₹30,000/- as earnest money on the same day? OPP.
- (2) Whether the plaintiff is ready and willing to perform his part of contract? OPP.
- (3) If above issues are proved, whether the plaintiff is entitled to the decree of possession by specific performance as prayed for? OPP.
- (4) Whether the suit of the plaintiff is not maintainable in the present form? OPP.
- (5) Whether the plaintiff has no locus standi to file the present suit? OPD
- (6) Whether the plaintiff is stopped by his own act, conduct to file the present suit? OPP.
- (7) Whether the agreement dated 22.12.2005 is forged and fabricated document? OPD.
- (8) Whether defendant no. 1 executed agreement to sell dated 27.10.2005 in favour of defendant no. 2 with respect to the suit property? OPD.

(9) Relief.

9. Learned Civil Judge (Sr. Division), Pataudi held that execution of agreement dated 22.12.2005 by defendant no. 1 in favour of plaintiff and readiness and willingness of plaintiff to get the sale deed executed as duly proved. Stamp papers of agreement dated 27.10.2005 was purchased from Ajay Pal, Stamp Vendor about whom it was observed that in case Civil Suit No. 14 dated 23.01.2011 title "Umed etc. vs. Dhanwati etc" decided on 31.01.2001, stricture was passed against him to the effect that he had indulged in interpolation of record. Register of sale of stamp papers was not produced and it was alleged by him that the same was lost but no copy of FIR was produced. Keeping in view the conduct of Ajay Pal, learned trial Court observed that "he is a habitual miscreant and is in habit of selling ante dated stamp papers." A note was also taken of the fact that the land in dispute is situated in Patuadi but defendant no. 1 took the help of this stamp vendor at Gurgaon (Gurugram). Taking note of all the facts and circumstances, learned Civil Judge (Sr. Division) observed as follows:-

".....Thus, defendant no. 1 and 2 in collusion with DW6 have in fact procured the ante-dated stamp papers in order to draft the agreement to sell Ex. DW3/A. The said fact is further evident from the fact that agreement to sell Ex. DW3/1 was adduced in the Court for the first time alongwith affidavit of DW3 Bhag Singh. No explanation, worth the name, is tendered in the Court to explain why the said agreement to sell or the copy of the same was not filed at the time of filing written statement. The said fact further raise doubt regarding the authenticity of the agreement to sell Ex. DW3/1."

10. The other fact which created suspicion in the mind of trial Court about the agreement was non-payment of sale consideration at the time of execution of sale deed. Though, it was alleged that sale consideration had been paid on 27.02.2006 but before the Sub-Registrar no payment was made. Another very important fact, which weighed while discarding agreement dated 27.10.2005, is the relationship of defendant no. 1 and husband of defendant no. 2. Admittedly, husband of defendant no. 2 is the nephew of defendant no. 1 and keeping in view this fact learned trial Court observed that “being closely related to DW1, DW2 had knowledge about the execution of agreement to sell Ex. PA. Rather they have entered into agreement to sell Ex. DW3/1 to defeat valuable rights of the plaintiff.”

11. Learned Ist Appellate Court also found the agreement to sell dated 27.10.2005 in favour of defendant no. 2 (Ex.DW-3/1) as surrounded by suspicious circumstances and recorded the reason for reaching the conclusion as follows:-

“15. The said agreement to sell was not scribed by regular deed writer of Pataudi, but instead both the parties thought it very convenient to come to Gurgaon to get the same drafted from an Advocate Sh.Sunil Kumar Sharma DW5/A, who when appeared in the witness box , admits that he is colleague of Dinesh Pal Singh, the husband of defendant No.2. Why the agreement to sell could not be scribed from a regular deed writer of Pataudi? Why it was got drafted from an Advocate of Gurgaon? Why the stamp vendor Ajay Pal DW6 could not produce the stamp register to prove the sale of stamp of ₹5/- of Ex.DW3/1, vide entry No.58710? Why the stamp does not bear the signature of defendant No.1? Reasons for all these shortcomings are not far to seek. It is evident on

the file that since defendant No.1 Bhag Singh, who appeared in the witness box as DW3, admittedly, is uncle of Dinesh Pal Singh, DW5, the husband of defendant No.2, therefore, this is another reason to raise eye brows regarding the due execution of agreement to sell in favour of defendant No.2. Said agreement to sell did not see the light of the day at an earlier point of time and defendant No.1 as DW3 categorically admitted that it was submitted in the court for the first time with his affidavit, while this witness appeared in the court. No cogent reason could be explained by this witness as to why he, Dinesh Pal Singh and Brijesh came all the way from Narhera to Gurgaon Court for the execution of the agreement to sell. Defendant No.2 is the resident of village Narhera. When the impugned sale deed Ex.DW1/A was executed in Tehsil Pataudi, then the compelling reasons for the defendants to come to Gurgaon for the execution of agreement to sell, were to be explained by the defendants. Sunil Kumar Sharma DW5/A did not maintain the register of drafting the documents. Though he claims that earnest money of ₹50,000/- was paid by Dinesh Pal Singh to defendant No.1 in his presence but as discussed earlier, Dinesh Pal Singh is his colleague for many years. Therefore, the acceptance of the statement of DW5/A is fraught with the danger of legalizing an ante dated agreement to sell in favour of defendant No.2.”

12. Learned Ist Appellate Court took note of the fact that defendant no. 1 while appearing as DW-3 admitted that one of the witness of agreement dated 22.12.2005, in favour of plaintiff, namely, PW-8 Vijay Pal Singh, is his younger brother with whom he had not animosity.

13. Learned counsel for the appellant has argued that agreement dated 22.12.2005 alleged to have been executed by defendant no. 1 was not

bearing his signatures despite the fact that defendant no. 1 was an educated person and had been appending his signatures. On the other hand agreement dated 27.10.2005 bears his signatures as well as his thumb impression. Courts below have over relied on the conduct of stamp vendor for which defendant no. 2 could not be held responsible as she had just purchased the stamp paper from him. It was not proved that stamp paper sold by stamp vendor, on which agreement dated 27.10.2005 was scribed, was ante-dated. Though, the land in dispute is situated at Pataudi still there is no bar for defendant no. 2 or her husband to purchase stamp paper from Gurugram (Gurugram).

14. The above submissions were also raised before learned Courts below and have been rightly discarded. If defendant no. 1 could sign, there was no reason for defendant no. 2 to take his thumb impression on agreement dated 27.10.2005. Learned trial Court has taken note of the fact that because of old age hands of defendant no. 1-Bhag Singh were shivering and he could not properly put his signatures. Even otherwise Bhag Singh has not come up with any explanation about his thumb impression on the agreement of plaintiff. So far as the sale deed in favour of defendant no. 2 is concerned the same appears to be a deal within the family to defeat the right of plaintiff.

15. The fact that the sale deed was got executed by defendant no. 1 in favour of wife of his nephew speaks in volume about the conduct of defendants no. 1 and 2 and attempt made by them to defeat agreement dated 22.12.2005. Both the Courts below have looked into the evidence on file and all the facts and circumstances while concluding that agreement dated 27.10.2005 and sale deed dated 27.02.2006 are illegal, null and void and

have been created to defeat the right of plaintiff.

16. I find no legal or factual infirmity in the findings of fact recorded by Courts below calling for any interference in this appeal. No substantial question of law requiring determination arises for consideration. This appeal has no merit and the same is dismissed.

December 21, 2018
jk

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>