

202/2
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 7.5.2018

(1) RSA-1703-2014 (O&M)

Sukhjinder Kaur and others

.....Appellant

Versus

Tarlochan Singh and ors

..... Respondents

(2) RSA-2053-2014 (O&M)

Jagdev Singh

.....Appellant

Versus

Tarlochan Singh and ors

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Harinder Sharma, Advocate for the appellants
(RSA-1703-2014).

Mr. P.L.Singla, Advocate
for appellant (RSA-2053-2014) and
for respondent No. 2 (RSA-1703-2014).

Mr. Brijeshwar Singh, Advocate
for respondent No. 1 (RSA-1703-2014 and 2053-2014).

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1. *Whether the Reporters of local newspaper may be allowed to see the judgment ? No*
2. *To be referred to the Reporter or not. Yes*
3. *Whether the judgment should be reported in the digest ? Yes*

KULDIP SINGH J. (ORAL)

By this single judgment, I will dispose of two regular second appeals i.e. **RSA-1703-2014** titled as **Sukhjinder Kaur and others versus Tarlochan Singh and ors** and **RSA-2053-2014** titled as **Jagdev Singh versus Tarlochan Singh and ors** as the common facts and law are involved in both the appeal. For brevity, the facts are being taken from **RSA-1703-2014**.

Impugned in both the appeals is the judgment dated 26.11.2013 passed by learned Additional District Judge, Moga affirming the judgment

and decree dated 22.3.2012, passed by learned Civil Judge, (Senior Division), Moga, vide which the suit filed by the plaintiff was decreed with costs to the effect that the plaintiff is entitled for specific performance on the basis of agreement to sell dated 12.06.2001 and the defendants were directed to execute the sale deed in favour of the plaintiff within three months on deposit of balance sale consideration by the plaintiff and the plaintiff was directed to deposit the balance sale consideration amount within two months, failing which the plaintiff would be entitled to get sale deed executed through the Court.

Brief facts of the case are that plaintiff-Tarlochan Singh filed a suit for possession by way of specific performance of contract dated 12.6.2001, regarding the land measuring 16 kanals bearing khasra No. 13//5 (8-0), 15 (8-0) Khewat No. 150, Khatauni No. 249-250 vide jamabandi 1997-1998 situated in the area of revenue estate of Singha Wala, Tehsil and District Moga. The case of the plaintiff is that defendant No. 1-Inder Singh son of Roor Singh entered into an agreement to sell dated 12.6.2001 with the plaintiff for sale of land measuring 16 kanals for total sale consideration of Rs. 4.00 lacs. Rs. 3,75,000/- were paid as earnest money on 12.6.2001. The sale deed was to be executed on or before 30.5.2002. On 30.5.2002, Plaintiff-Tarlochan Singh went to the office of Sub Registrar, Moga along with balance sale consideration and other necessary expenses and got his presence marked but defendants did not turn up.

The stand of the defendant No. 1 is that he never executed the alleged agreement to sell and the same is forged and fabricated one. Defendant No.1-Inder Singh son of Roor Singh claimed that upto the year

1993-1994, he was cultivating the land and since he has become old, therefore, his son Bhajan Singh is cultivating the said land. Defendant No. 1 was selling his crop with Amar Nath of firm M/s Amar Nath Yogesh Kumar, Commission Agent, Moga Mandi prior to 1993 and from 1994-1998, his son- Bhajan Singh sold the crop with Amar Nath. On 2.9.1994, Bhajan Singh son of defendant No. 1 borrowed a sum of Rs. 87,000/- from Amar Nath and the said Amar Nath got executed one agreement to sell in his favour as security from the Bhajan Singh son of defendant-Inder Singh regarding his land measuring 16 kanals of land bearing khasra No. 12//19 and 23. On 11.6.1996, Bhajan Singh received another sum of Rs. 18,000/- from said Amar Nath and *Yaaddastanama* was executed. Again on 23.6.1997, Bhajan Singh son of defendant No. 1 borrowed another sum of Rs. 1,30,000/- from said Amar Nath and after adding previous due amount of Rs. 1,05,000/- with interest @ Rs. 2% per month, said Amar Nath got an agreement executed from Bhajan Singh regarding the land measuring 16 kanals bearing Khasra No. 14//9, 10 @ Rs. 1,05,000/- per killa. In the said agreement Rs. 2,75,000/- was shown as earnest money. The agreement was executed on 2.9.1994. On 12.6.2001, Bhajan Singh and Amar Nath rendered their accounts and Amar Nath calculated the amount of Rs. 2,75,000/- with interest @ 18% per annum. Bhajan Singh paid Rs. 98,000/- to said Amar Nath and a balance was got calculated to be Rs. 3,75,000/-. Then the said Amar Nath got typed an agreement from a document writer for the said amount of Rs. 3,75,000/- as security and got the signatures of Bhajan Singh and thumb impression of the defendant No. 1-Inder Singh. At that time, name of Amar Nath was not

mentioned in the agreement. Now, Amar Nath in collusion with the said document writer, name of the plaintiff had been got typed in the blank space which was left in the agreement. Therefore, the agreement is forged and fabricated.

Defendants No. 2 to 7 took the plea in their joint written statement that they had purchased the suit land from Tirath Singh son of Kahan Singh and that Tirath Singh son of Kahan Singh purchased the suit land measuring 24 kanals from defendant No. 1-Inder Singh vide registered sale deed dated 22.10.2002. He had no knowledge about the alleged agreement to be forged and fabricated and that Tirath Singh was the bona fide purchaser. Tirath Singh has now passed away and is succeeded by defendant No.2. From the pleadings following issues were framed: -

1. Whether the plaintiff is entitled to specific performance of the agreement to sell dated 12.6.2001? OPP.
2. Whether plaintiff is entitled to the recovery of Rs. 7,50,000/- in the alternative?
3. Whether plaintiff is entitled to permanent injunction as prayed for? OPP.
4. Whether plaintiff remained ready and willing and is still ready and willing to perform his part of the agreement? OPP.
5. Whether defendant No. 1 never executed the impugned agreement for any consideration? OPD.
6. Whether there are material alterations in the alleged agreement and the same is forged and fabricated one? OPD.
7. Whether suit is bad for non joinder and mis joinder of necessary parties? OPD.
8. Whether the plaintiff has not come to the court with clean hands? OPD.

9. Whether defendant No. 1 is entitled to special costs of Rs. 25,000/- from the plaintiff? OPD.
10. Whether suit is not maintainable in the present form? OPD.
11. Whether Tirath Singh son of Kahan Singh was the bona fide purchaser of land measuring 24 kanals vide sale deed dated 22.10.2002 without knowledge of the alleged agreement? OPD
12. Whether the plaintiff has got no right to file the instant suit? OPD.
13. Relief.

The trial Court took issue Nos 1 to 6 together and held that a valid agreement was executed. It was held that defendants No. 2 to 7 are not bona fide purchasers and suit was decreed on 22.3.2012 by learned Civil Judge (Senior Division), Moga. The said judgment and decree dated 22.3.2012 was upheld in appeal vide judgment dated 26.11.2013, by learned Additional District Judge, Moga.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the appellants have vehemently argued that in this case both the Courts below have failed to critically appreciate the evidence. The trial Court simply recorded that in order to prove the agreement, scribe, namely Suraj Parkash, the attesting witness, Rakesh Kumar, have been examined, who have proved the agreement. Plaintiff further examined Narinder Kaur, registration clerk who proved the application so as to show that plaintiff has appeared on the date fixed for execution of the sale deed. Defendant No. 1-Inder Singh also proved the previous agreements Ex.D-2 and Ex.D-3 and further proved the receipts

Exs. D-13 to D-23 showing that he had sold the agriculture produce to the firm of the Amar Nath Yogesh Kumar Commission Agent. He also produced the copy of the judgment dated 22.08.1974 Ex.D-24 so as to show that father of Tarlochan Singh, plaintiff was murdered by one Jagdev Singh and that Inder Singh-defendant No. 1 had been helping the said Jagdev Singh. Therefore, there is no question of his entering into an agreement to sell in favour of Tarlochan Singh.

I am of the view that normally on the findings of facts, this Court does not interfere. In the cases, where there is perversity in the findings and consequent failure of justice, therein this Court has to step in to critically examine the evidence. The previous agreement Ex. D-2 dated 23.6.1997 regarding another parcel of land measuring 16 kanals shows that Bhajan Singh son of defendant No. 1-Inder Singh had agreed to sell the land measuring 16 kanals to Amar Nath for Rs. 2,75,000/-. The date of sale was after two months i.e. 30.8.1997. Further the *Yaaddastanama* is also placed on file and then another agreement Ex. D-3, dated 11.6.1996 was placed on file which shows that Inder Singh-defendant No. 1 had agreed to sell another parcel of 16 kanals to said Amar Nath for Rs. 87,000/-. Both the agreements have been settled with the said Amar Nath by paying the sale consideration. Apparently on account of the fact that Bhajan Singh and Inder Singh borrowed money from him that after the payment of the said amount agreement were returned. These were produced by the defendants in evidence and have been torn to denote that these have been canceled. The receipts discussed by the trial court shows that defendant No. 1 and his son Bhajan Singh had dealing with said Amar Nath Yogesh Kumar, Commission Agent.

Now coming to the agreement in question, it has to be noticed that it is apparently executed as a security for the loan. The land is 16 kanals bearing different khasra numbers. The sale consideration is Rs. 4.00 lacs out of which Rs. 3,75,000/- are paid and only Rs. 25,000/- were left. For the payment of Rs. 25,000/-, a period of little less than one year was given from the agreement to sell dated 12.6.2001. The date of sale was 30.5.2002 i.e. little less than one year. No possession is recorded to have been delivered. In normal circumstances, such period of little less than one year is not given for a payment of Rs. 25,000/- and in cases where major amount is paid, usually the possession is also delivered, which was not done in this case.

Therefore, from the agreement, this Court concludes that basically it was for the security of the loan. Now this Court is to see as to whether defendant No. 1 owed any money to Tarlochan Singh or not? The reply is in negative. Tarlochan Singh never claimed that defendant No. 1-Inder Singh owed any money to him. Secondly, both the Courts below failed to take note of the contention of defendant No. 1-Inder Singh that there is an alteration in the agreement regarding mentioning the name of the vendee.

It comes out that when the name of the vendee is mentioned after the sale consideration in the 6th line of the agreement, name of Tarlochan Singh is mentioned. However, in next line words, '*son of Ajit Singh son of Sohan Singh, Ghal Kalan*' is mentioned in Gurmukhi script. Said lines from 'son of Ajit Singh to Ghal Kalan' are little above the subsequent typed wording, showing that said words were not typed at the same time when the agreement was typed. Further, it comes out that normally when a name of person is mentioned, the words 'resident of' is also

mentioned which is missing in the said line and only 'Ghal Kalan' is mentioned whereas on all the other documents words 'resident of' is also mentioned. This may be due to paucity of space before the already typed subsequent wording of the 7th line. Therefore, this Court comes to the conclusion that the name of the vendee was inserted later on after the typing of the agreement. Copy of the register of the scribe shows that thumb impression of Inder Singh-defendant No.1 and the signatures of the witnesses. The scribe-Suraj Parkash is the same document writer, who had earlier scribed agreements of defendant No. 1 and his son Bhajan Singh with Amar Nath. The agreement is on a plain paper on which special adhesive stamps have been affixed of the value of Rs. 300/-. The name of the vendee is typed at the bottom below the alignment in which the name of witnesses; seller and name of Bhajan Singh as consenting parties are mentioned. Usually, the name of the purchaser and seller is mentioned in one line and in any case, the name of the vendee is not mentioned at the bottom. All these facts goes to show that name of vendee-Tarlochan Singh was added later on. Since, it is held that agreement was for security of the loan and Tarlochan Singh does not claim that he has advanced any loan to Inder Singh, therefore, it has to be held that the agreement Ex P-1 executed between plaintiff and defendant No. 1-Inder Singh is forged and fabricated and is not executable document. It is to be further noted that scribe though in examination in chief has stated that money was paid in presence but in cross-examination he stated that money was not paid in his presence, though he hastened, to add that Inder Singh had admitted that he has received the money. This is contrary to the recital in the agreement.

Once it is held that agreement Ex. P-1 is forged and fabricated, it is to be held that plaintiff is not entitled to specific performance of the agreement nor is entitled to recovery of the suit amount nor is entitled to permanent injunction. Consequently, findings of the trial Court on issue Nos. 1 to 6 are reversed. Since there was no agreement between the parties, therefore, Tirath Singh now deceased is held to be bona fide purchaser. Therefore, findings on issue No. 11 are also reversed. As a result of forgoing findings of the trial Court on issues No. 1 to 6, 11 and 12 are reversed. Issues No. 7, 8 and 10 are legal in nature. Since it was a contested case and suit was decreed by two Courts below, therefore, defendant No. 1 is not entitled to any special costs. As a result of foregoing discussions, both the appeals i.e., **RSA-1703-2014** titled as **Sukhjinder Kaur and others versus Tarlochan Singh and ors** and **RSA-2053-2014** titled as **Jagdev Singh versus Tarlochan Singh and ors** are allowed and the impugned judgment dated 26.11.2013 passed by learned Additional District Judge, Moga affirming the judgment and decree dated 22.3.2012, passed by learned Civil Judge, (Senior Division), Moga are hereby set aside and suit of the plaintiff is dismissed with costs through out.

A photocopy of this order be placed on the connected case.

Since the main appeals have been allowed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

7.5.2018
preeti

Whether speaking / reasoned
Whether Reportable:

Yes
Yes