

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

RSA No.5011 of 2015 (O&M)

Date of decision:27.07.2018

Gopal Singh (since deceased) through LRs Appellants

Vs.

Inderjit Singh (since deceased) through LRs and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Sharad Mehra, Advocate
for the appellants.

Mr. V.K.Sandhir, Advocate
for the respondents.

AMIT RAWAL J.

C.M.No.11959-C of 2015

The application is allowed, subject to all just exceptions. Legal representatives of appellant-Surjit Kaur as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

C.M.No.11960-C of 2015

The application is allowed, subject to all just exceptions. Legal representatives of appellants, namely, Balkar Singh and Jasbir Singh as mentioned in the application are ordered to be brought on record for the

purpose of prosecuting the present appeal.

RSA No.5011 of 2015 (O&M)

The appellants-successor-in-interest of Jarnail Singh assailed the findings of the Civil Court dated 02.07.2013, whereby, suit bearing No.472 of 2010 seeking specific performance of the agreement to sell dated 17.5.2003 in respect of suit land has been decreed by the trial Court and in appeal affirmed by the Lower Appellate Court.

The facts which emanate from the pleadings of the parties are that respondent-plaintiff/Inderjit Singh instituted the suit on the premise that Jarnail Singh son of Kesar Singh had executed an agreement to sell dated 17.05.2003 in respect of suit land, i.e., 10 kanals 11 marlas agreed to be sold @ ₹3.00 lacs per acre against the earnest money of ₹60,000/-. The stipulated date for execution and registration of the sale deed was 16.5.2004. Since 16.05.2004 was Sunday, the respondent-plaintiff had appeared before the office of Sub-Registrar with the balance sale consideration on 17.05.2004 and marked his presence. However, in the evening of the same date, the respondent-plaintiff acquired the knowledge that Jarnail Singh had expired and defendants no.1 to 3 got mutation of inheritance sanctioned in their favour. The legal notice dated 06.07.2004 was served upon the LRs of Jarnail Singh for execution of the sale deed on 26.7.2004. The legal notice was replied on behalf the appellants, vide reply dated 22.7.2004 (Ex.P15), wherein, execution of the agreement to sell was denied resulting into filing of suit on 14.09.2004.

The aforementioned suit was contested by the defendants by raising various preliminary objections with regard to maintainability. On merit, jurisdiction, the court fee etc and it was denied that Jarnail Singh ever entered into agreement to sell in question or received earnest money of ₹60,000/-. It was alleged that Jarnail Singh was in need of money and he requested Mohinder Singh and Sawinder Singh to advance loan of ₹30,000/-. The aforementioned persons took the benefit of illiteracy of Jarnail Singh and took him for execution of the pronote but in connivance with each other got the signature of Jarnail Singh on agreement in place of pronote, thus, agreement to sell was result of fraud created by the plaintiff with the help of Mohinder Singh and Sawinder Singh. In the enquiry conducted by the police, it was found that Sawinder Singh was not resident of village Khalehra where the land is situated or ever remained the Sarpanch of said village. Jarnail Singh was illiterate person and used to put his thumb impressions and could not sign in Punjabi language. The property under litigation was mortgaged with Sawinder Singh and Sawinder Singh in order to grab the property obtained the signatures/thumb impressions of Jarnail Singh on blank papers but converted into agreement to sell.

The trial Court on the basis of aforementioned pleadings framed the following issues:-

- “1. Whether deceased Jarnail Singh had entered into an agreement to sell of the suit land in favour of the plaintiff?OPP*
- 2. Whether plaintiff had always remained ready and willing*

and still ready and willing to perform his part of contract?

OPP

3. *If issue nos.1 and 2 are proved, whether plaintiff is entitled to specific performance of an agreement to sell dated 17.5.2003 or in the alternative for recovery of ₹1,20,000/- alongwith future interest @ 18% per annum?OPP*

4. *Whether plaintiff had no locus standi or has no cause of action to file the present suit? OPD*

5. *Whether suit is not properly valued for the purpose of court fee and jurisdiction?OPD*

6. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD*

7. *Relief.”*

The respondent-plaintiff in support of pleadings examined following witnesses:-

- i) PW1 - Baljit Singh
- ii) PW2 - Sawinder Singh
- iii) PW3 - Gurjit Singh
- iv) PW4 - Krishan Kumar

and brought on record umpteen number of documentary evidence, i.e., Ex.P1 to Ex.P15.

On the other hand, defendants examined following witnesses:-

- i) DW1 - Darshan Singh

- ii) DW2 - Jasbir Singh
- iii) DW3 – Jatinder Singh
- iv) DW4 – Malkiat Singh
- v) DW5 - Gurmej Singh.

and brought on record various documents, i.e., Ex.DW1/1 to Ex.DW1/15.

The trial Court on the basis of evidence brought on record decreed the suit and the Lower Appellate Court affirmed the findings of the trial Court by dismissing the appeal. In these circumstances, the present Regular Second Appeal has been filed.

Mr. Sunil Chadha, learned Senior counsel assisted by Mr. Sharad Mehra, Advocate appearing on behalf of the appellants in support of memorandum of appeal raised the following submissions:-

- “a) There was no agreement to sell in the eyes of law, for, it was not on stamp paper but revenue stamps were affixed on the papers and the source also remained mystery. The plaintiff remained silent as who had affixed the aforementioned stamps on the blank papers bearing the signatures of Jarnail Singh and alleged witnesses.
- b) PW4 -Krishan Kumar, deed writer in cross-examination admitted that name of Baljit Singh was not mentioned as witness in the register kept by him. He admitted that alleged agreement to sell (Ex.P1) was not written on stamp papers but it was on a paper bearing stamps for a sum of ₹.300/-. Even the

back side of the agreement to sell did not carry the name of stamp vendor nor there was any stamp of stamp vendor as well as the date of issuance of the stamp. The stamp vendor with a name Kimti Lal, though was present in Jandiala. It was his duty as deed writer to ascertain as to whether the stamp papers were proper for scribing the documents. He did not know whether he saw any document of Jarnail Singh before drafting the agreement to sell Ex.P1 nor did he know how old he was when Jarnail Singh visited him. On Ex.P1, the signatures of Jarnail Singh were admitted to be not in single go but broken one. Even it was not written in full word "agreement" except "EE". He admitted that he did not have any license pertaining to deed writing and in the register maintained by him, entry no.384 dated 16.05.2003 (entry with regard to some other property, i.e., land measuring 22 marlas and photographs of the seller and purchaser were affixed there but in the entry register against the present agreement, there was no photograph.

c) Even if Sawinder Singh incorrectly mentioned that he was resident of some other village and not of Khalehra, fact of the matter is that Jarnail Singh died on 9.9.2003 and he could have told to vendor Inderjit Singh about demise but Inderjit Singh did not take any steps to apprise the LRs and appeared before the office of Sub-Registrar on the stipulated date i.e. 17.5.2004 as 16.5.2004 was Sunday. It was only thereafter legal

notice as indicated above was sent which was duly replied wherein the execution of the agreement to sell, was emphatically denied. Ex.DX proved that collector rate at the relevant point of time, i.e., in the year 2004 was ₹6.00 lacs per acre and not ₹3.00 lacs per acre.

d) In the evidence it surfaced that Gurjit Singh son of Inderjit Singh was running the business of commission agent.

e) The alleged agreement contravened the provisions of Punjab Stamp Rules 1934 and by interpreting the aforementioned provisions, this Court in the judgment rendered in **Mangat Singh Vs. Rakesh Kumar Gupta and another 2014(4) RCR (Civil) 387** noticed that agreement without any stamp papers or having adhesive stamps cannot be treated to be an agreement as per the aforementioned provisions and on similar lines, **Subhash Chander and others Vs. M/s Active Promoters Pvt. Ltd. 2015(1) RCR (Civil) 62**. It was for the plaintiff to prove that party had actually agreed to enter into agreement to sell.

f) Jarnail Singh had submitted a complaint dated 25.09.2003, Ex.DW6/1 before the SDM, Amritsar with regard to fraud committed with him by Mohinder Singh and Sawinder Singh but no logic reasoning was assigned to discard the aforementioned complaint.

g) DW3 deposed that record with regard to the complaint was lying in the office of Tehsildar, Amritsar as the complaint was forwarded to him for taking necessary action, therefore, there is an abdication and illegality in the findings rendered by the Courts below.

h) The property was mortgaged with Sawinder Singh for a period of 15 years and redemption was to take place on 21.7.2014 as per the admission of PW2-Sawinder Singh, therefore, there was no occasion for Jarnail Singh to execute the agreement to sell before expiry of the mortgage.

i) Gurjit Singh, witness of the agreement to sell in cross-examination admitted that no document was executed by defendant no.1 in his presence and he also admitted that he was doing the business of “aahar” of the crops and Baljit Singh was Nambardar of the village in which he used to reside.

j) The cross-examination of DW5 has not been read in correct perspective and thus, there has been mis-direction. DW5 emphatically stated that they were not ready to execute the sale deed in favour of the plaintiff and thus, urged this Court for setting aside the findings under challenge.

Per contra, Mr. V.K.Sandhir, learned counsel appearing on behalf of the respondents submitted that the concurrent findings of facts and law cannot be interfered until and unless there is gross illegality and perversity. Mohinder Singh had not been produced if some fraud had

actually been played upon the plaintiff, for, they were afraid truth may not surface. It has not been proved on record that plaintiff -Inderjit Singh was a commission agent. His son only started the business of commission agent in the year 2008-09, whereas, agreement to sell was of May 2003. No evidence has come on record that Inderjit Singh was running a business of commission agent. In fact, it has been proved on record that the firm under the name and style M/s Baljinder Singh & Sons was being run by partners Bakshish Singh son of Baljinder Singh and Baljinder Singh son of Harnam Singh. Inderjit Singh had not been shown as a partner of the said firm. Inquiry report Ex.DW4/1 produced by the defendants through the testimony of DW4-Head Constable Malkiat Singh, it was found, that Sawinder Singh never remained Sarpanch of village Khela but that did not mean that Sawinder Singh represented himself as Ex.Sarpanch of village Khela and got prepared the agreement to sell by playing fraud in connivance with Inderjit Singh and others. In fact, Sawinder Singh was resident of village Khalehra and he never remained the Sarpanch of same village. There was typographical mistake by writing village Khela instead of Khalehra. DW4 – Jasmer Singh, Sarpanch of village Khalehra nowhere stated about passing of resolution by Gram Panchayat, rather in cross-examination admitted that Jarnail Singh had executed an agreement to sell in favour of the plaintiff, though in next sentence, he uttered that he did not know if any agreement to sell was executed by deceased Jarnail Singh but in fact, did not deny execution of the agreement to sell Ex.P1 in favour of Inderjit Singh. The plaintiff had proved the readiness and willingness throughout, at the time of

agreement, during its subsistence and till the filing of suit as the suit was filed on 14.09.2004. By noticing the fact that the ingredients of Section 16 (c) of Specific Relief Act, 1963 (for short “1963 Act”) had been proved, the Courts below decreed the suit and urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and case law cited at bar and of the view that there is force and merit in the submissions of Mr. Chadha and judgments and decrees of the Courts below are liable to be set aside and the reason is not one but many:-

Rule 28 (xiii) of Punjab Stamp Rules 1934 provides as under:-

(xiii). The vendor shall, with his own hand, write in indelible ink in English or Urdu at the time of sale, on the back of every non-judicial or court-fee impressed stamp which he sells-

- (a) serial number,
- (b) the date of the sale,
- (c) the name and residence of the purchaser, and also if the purchaser is an Indian, his or her father's name and caste,
- (d) if the purchaser is purchasing on behalf of another person, then also the name and residence of the person for whom the purchase is being made; and if the person for whom

the purchase is being made, is an Indian, his or her father's name and caste,

(e) the value of the stamp in full words, and shall affix his signature to the endorsement.

He shall at the same time make corresponding entries in his vend register, and shall also invite the purchaser to attest them by his signature or thumb impression, or both, and in the event of the purchaser refusing so to attest the entry of sale, the vendor shall refuse to sell the stamp required and shall cancel any entries made regarding it in his register.”

Concededly, agreement to sell was not on stamp paper and source of its purchase had not been proved on record. Deed writer – Krishan Kumar feigned ignorance about the source of stamp vendor. He admitted that he did not ask source. For the sake of brevity, relevant lines of his cross examination read thus:-

“.....Ex.P1 was not written on the stamp paper, however, it was written on the paper bearing the stamps for a sum of ₹300/-. I have seen the back of the agreement to sell Ex.P1. It does not carry the name of stamp vendor nor there is any stamp of stamp vendor as well as the date of issuance of the stamps. Ex.P1 does not carry the name of Stamp Vendor from whom the stamps were purchased, the same will be known to me.....”

“.....It is my duty as deed writer to ascertain as to whether the stamps papers are proper for scribing the document....”

“....I do not know whether I saw any document of Jarnail Singh before drafting Ex.P1. I do not know how old he was when Jarnail Singh came to me. I do not know if on Ex.P1, there are signatures of Jarnail Singh from Mark A to A1. Such kind of signatures are appended by an illiterate person or a person who is not much educated. On Ex.P1, the signatures of Jarnail Singh are not in a single go but are broken one. Same is my reply to page number 2 of the agreement on signatures of Jarnail Singh from Mark B to B1. It is correct that on the backside of Ex.P1, it is mentioned as Jarnail Singh, son of Kesar Singh, Khalehra and village Tehsil and District are not mentioned. On the left of this, at point 'A', only agreement is written.

At this stage, counsel for the defendant says that it is not so written below Jarnail Singh, son of Kesar Singh. This question will be seen at the time of arguments.

It is correct that full word 'agreement' is not written. It is mentioned as “EE” which means agreement. Two stamps of Rs.20/- each are affixed on the agreement Ex.P1 upon which lines were drawn by the party before coming to me. We also drew lines upon the agreement after drafting. It is correct that whenever any stamp is sold, the stamp vendor enters the name

of purchaser, his parentage and address in his register. It is also correct that in the said register, the purpose of said purchase is also mentioned.....”

“.....It is incorrect that I do not have any license pertaining to deed writing. It is correct that in my register, on entry no.384 dated 16.5.2003, agreement of property measuring 22 marlas i.e. khasra no.297 – 11 marla and khasra no.298-11 marla, village, Tehsil and District Amritsar is entered. Thumb impressed as well as photograph of seller is affixed there and signatures along with photograph of purchaser is also there. It is correct that according to my register, Ajit Singh (seller) whose photograph is affixed here is an illiterate person and upon his photograph, his thumb impression is put with black ink. After that, thumb impression of Ajit Singh is also there where I have mentioned with my handwriting as LTI Ajit Singh. It is correct that entry No.383 dated 16.5.2003 which is entered in my register according to which property is mortgaged, against that also, name of mortgagor Surta Singh and mortgagee Rajinder Singh is also mentioned. Photographs of both the parties are also affixed and they have appended their signatures on their photographs. Similarly, in entries no.381 and 382 dated 16.5.2003 photographs of the parties are affixed and their signatures are also appended there. Signatures of Jarnail singh and thumb impression are there but against the

thumb impression 'LTI or RTI Jarnail Singh' is not mentioned.

It is incorrect that in my register where above said entry is made, it is not one thumb impression but it is a thumb impression upon a thumb impression.

Witness is directed to produce deed writing register at the time of arguments.....”

The cumulative fact leads to irresistible conclusion that Jarnail Singh (since deceased) had never intended to execute the agreement to sell. The aforementioned witness was directed to produce the deed writer register at that time but the same was not brought, therefore, the Courts below ought to have drawn the adverse inference. Ex.DX proved on record gone unrebutted whereby the value of the land at the relevant point of time was ₹6.00 lacs per acre instead of ₹3.00 lacs per acre as agreed to be sold.

Concededly, the land in dispute was mortgaged with Sawinder Singh which was to expire much later than the date of agreement to sell. This fact has been proved on record in view of the admission of Sawinder Singh. Non-examination of Mohinder Singh cannot be said to be fatal as per the submission of Mr. Sandhir, for, it was the duty of plaintiff to examine Mohinder Singh, who was none-else but brother of Inderjit Singh, he would have bold enough to deny the allegation of alleged conspiracy or collusion. In the absence of scribe of the agreement to sell on the stamp paper, the Courts below ought not to have granted the discretionary relief under Section 20 of 1963 Act. The discretion has to be exercised sparingly in case

the plaintiff proves the ingredients of Section 16(c) of 1963 Act, i.e., continuous readiness and willingness from the date of execution of the agreement to sell, during the pendency of the suit and till passing of the decree.

Admittedly, Jarnail Singh died on 09.09.2003. No explanation has come forth on behalf of the plaintiff in marking the presence before the Sub-Registrar on 17.05.2004, the stipulated date for execution and registration of the sale deed, i.e., spanning over a period of one year from the date of execution of the sale deed as it has been proved on record that Sawinder Singh was resident of village Khalehra. It cannot be believed that Sawinder Singh had not passed the information of death of Jarnail Singh to the plaintiff-Inderjit Singh. The Courts below have remained oblivious of the aforementioned fact, therefore, there is gross misreading and misdirection of the oral and documentary evidence produced on record. The defendants had discharged the onus that the agreement to sell was not scribed on the stamp paper, onus shifted upon the plaintiff but he failed to discharge the same by producing any stamp vendor.

Non-advertance to the cross-examination of the witness is itself a perversity. Having extracted the cross-examination of deed writer in extenso, I am of the view that had the same been noticed by the Courts below, the suit could not have been decreed, thus, there is fallacy and abdication. Witness may tell lie but the documents cannot. The source of acquisition of death of Jarnail Singh on the same date when the presence was marked is also conspicuously wanting.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to

Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

The judgments and decrees of the Courts below are set aside.
The suit is dismissed and the appeal is allowed.

(AMIT RAWAL)
JUDGE

July 27, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No