

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 6704 of 2016
Date of Decision : 07.02.2018

Hans Raj Tuteja

....Appellant

Versus

Parwati and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Shailendra Jain, Sr. Advocate with
Mr. Nitin Jain, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal against concurrent judgments of Courts below whereby suit filed by plaintiff-appellant for specific performance of agreement to sell dated 28.04.2000 pertaining to land measuring 12 *kanals* situated at Hansi and challenging the sale deed bearing no. 3639 dated 31.10.2007 executed by defendant no. 1 in favour of defendants no. 2 and 3, was dismissed.

2. Case of plaintiff, in brief, is that vide agreement dated 28.04.2000, executed by defendant no. 1-Smt. Parwati in favour of plaintiff, she agreed to sell land measuring 12 *kanals* for a sale consideration of ₹3,25,000/-. The agreement was drafted by Sh. Brij Lal Tanwar, Advocate, Bhiwani and the entire sale consideration was paid on the date of execution of agreement in the presence of witnesses. Possession of the suit land was delivered to plaintiff. No date for execution and registration of sale deed was fixed and it was left to the will of plaintiff to get the sale deed executed according to his convenience. On 16.01.2009, plaintiff served a notice on defendant no. 1 through his counsel and on receiving reply to that notice, he came to know that defendant no. 1 has already alienated the suit property to

defendants no. 2 and 3 vide sale deed dated 31.10.2000.

3. Learned Additional Civil Judge (Sr. Division), Hansi dismissed the suit of plaintiff with the observation that agreement propounded by plaintiff (Ex. P-1) is forged and fabricated document. Some of the reasons given by learned Additional Civil Judge (Sr. Division) in support of his observation are enumerated as follows:-

- (i) Entry on the reverse of stamp-paper, on which agreement was scribed, shows that this stamp-paper was purchased by Ramdhan, husband of defendant no. 1, but it does not bear his signatures. In case Ramdhan had purchased this stamp-paper, the stamp vendor must have obtained his signatures over it.
- (ii) The stamp-paper was not purchased for execution of the agreement to sell but it was purchased for swearing an affidavit.
- (iii) Plaintiff has deliberately avoided to examine the stamp-vendor as witness. He has not even disclosed his name and all these facts cumulatively establish that it is a forged and fabricated document.
- (iv) PW-1 Brij Pal Tanwar, Advocate, who scribed the agreement has stated that Ramdhan was present at the time of preparation of agreement. His version appears to be highly improbable as signatures of Ramdhan were not obtained on any of the document, which were prepared at the spot. Neither Ramdhan signed on stamp-paper nor on the agreement or receipt. Defendant no. 1-Parwati, who is supporting the version of plaintiff and is stated to

be living with him has also not been examined to state that she had executed the agreement in favour of plaintiff and the sale deed in favour of defendants no. 2 and 3 is forged and fabricated document.

- (v) Defendant no. 1-Smt.Parwati had not taken any action (civil or criminal) against defendants no. 2 and 3 for fabricating the sale deed of her property in their favour.
- (vi) In order to conclude agreement on two papers, entire written substance was adjusted according to available space on both the papers as spacing between the typing material of both the papers is different and besides it the spacing of the typed material on page no. 2 of the said agreement for sale is *inter-se* different as in the initial lines gap was much more than the last lines and this fact establishes that the spacing on page two of the agreement for sale was reduced in order to complete the typing material according to available space. Besides it, the proper space for obtaining the signatures of Shri Brij Pal Tanwar, Advocate and attesting witnesses was not available on the stamp paper and on account of this reason their signatures were narrowly squeezed on the stamp paper and due to paucity of place on the stamp paper names of witnesses were also not typographically written on it, rather the names of witnesses were hand written in a small space with pen. Just a glance over the signatures of Shri Brij Pal Tanwar, Advocate and the

signatures of attesting witnesses clearly establish that proper space was not available for appending the signatures of all these persons on the stamp paper and this fact makes the said agreement for sale Ex. P-1 to be highly suspicious document.

- (vii) The receipt allegedly executed by Smt. Parwati after accepting the sale consideration of ₹3,25,000/- (Ex. P-2) was prepared on the same stamp paper but signatures of witnesses were not obtained below the receipt because proper space was not left on the stamp-paper to squeeze the signatures of witnesses.
- (viii) If the agreement for sale Ex. P-1 was not prepared on a blank stamp paper and there was no requirement for the plaintiff to adjust the entire writing on the one stamp paper then the receipt could be easily prepared on a separate paper and signatures of witnesses could also be obtained below the said receipt but absence of signatures of the witnesses below the receipt clearly establishes that the plaintiff intended to adjust the entire writing on one stamp paper because he was neither having more old stamp papers nor the agreement was being prepared genuinely.
- (ix) The motive of plaintiff to fabricate the agreement on the date prior to date of execution of the sale deed was to get the sale deed set aside and in his design he took assistance of person who are signatories of said

document or have appended thumb impressions on it.

- (x) Smt. Parwati Devi is resident of Hansi and the suit property is also situated at Hansi and despite that the said agreement was got drafted from Shri Brij Pal Tanwar, Advocate, Bhiwani and both the attesting witnesses are also not residents of Hansi and this fact also raises doubts with regard to genuineness of agreement for sale Ex. P1. Although legally an advocate is competent to draft an agreement for sale but when professional deed writers are available at a particular place then the document should be got drafted from a regular deed writer because under the rules, he is required to maintain a register to make entry of all documents scribed by him in his register. Since the document was anti-dated, hence a deed writer could not afford on back date and that was the only reason that it was got drafted from Brij Pal Tanwar, Advocate from Bhiwani. If the plaintiff was to get it executed from an advocate even then he could get it drafted from local advocate from Hansi but instead of getting it drafted from local advocate he preferred Shri Brij Pal Tanwar, Advocate, Bhiwani because the plaintiff is resident of Bawani Khera which is situated near Bhiwani and this is also a material circumstances, which raises doubt with regard to genuineness of the plaintiff's version.

4. First Appellate Court also upheld the above observations of

learned Additional Civil Judge (Sr. Division), Hansi while dismissing the appeal filed by plaintiff-appellant.

5. Learned counsel for the appellant has argued that reasons given by Courts below are not based on evidence on record. Plaintiff is son-in-law of defendant no. 1-Parwati. She had admitted execution of agreement in favour of plaintiff. Her non-examination is not material as plaintiff has examined scribe and marginal witnesses, whose statements have been wrongly discarded by Courts below. The agreement was not written in a squeezed manner over the stamp paper. Scribe was an advocate, whose testimony cannot be discarded. The mere fact that agreement was got executed at Bhiwani is no reason to believe that it is a fabricated document.

6. Plaintiff is son-in-law of defendant no. 1-Parwati, who is stated to have adopted son of plaintiff. Defendants no. 2 and 3 are none else than daughters of defendant no. 1. The question, which arise for consideration is as to whether agreement alleged to have been executed by defendant no. 1 in favour of plaintiff is genuine document and the sale deed in favour of defendants no. 2 and 3 is forged and fabricated document? Plaintiff has not been able to lead any evidence on record to prove that sale deed in favour of defendants no. 2 and 3 is a forged and fabricated document. So far as agreement is concerned, learned Additional Civil Judge (Sr. Division), Hansi as well as First Appellate Court have given reasons based on facts while terming the same as forged and fabricated document. Finding of fact recorded by Courts below is based on evidence on record. Stamp paper on which agreement was scribed is shown to have been purchased by husband of defendant no. 1-Parwati. The stamp vendor was not examined. Agreement was not scribed by a regular deed writer. It has been scribed on

stamp paper purchased for execution of an affidavit. The land is situated at Hansi. Marginal witnesses are not of Hansi and there is no explanation that despite availability of deed writers and advocates at Hansi why agreement was prepared at Bhiwani. Facts and circumstances as enumerated above speak in volume about fabrication of agreement by plaintiff. It appears that same stamp paper lying with husband of defendant no.1 was used to create this document. On going through facts and circumstances as discussed in detail by Courts below, I find no infirmity in findings recorded by both the Courts below terming the agreement as forged and fabricated document.

7. This appeal has no merit and the same is dismissed.

February 07, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No