

RSA No.4772 of 2014 (O&M)

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

RSA No.4772 of 2014 (O&M)
Date of decision: 23.01.2018

Avtar Singh

.....Appellant

versus

Jagtar Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. J.S. Brar, Advocate, for the appellant.
Mr. S.S. Rangi, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

Unsuccessful defendant has filed the instant Regular Second Appeal, challenging the judgment and decree dated 09.07.2014 of the First Appellate Court, affirming the judgment and decree of the trial Court dated 31.05.2012 whereby suit of the respondent-plaintiff for permanent injunction and possession by way of specific performance of contract was decreed.

Put pithily, respondent-plaintiff claiming that vide agreement dated 17.05.2001 appellant-defendant agreed to sell his land measuring 15 bighas situated at Village Khanaura, Tehsil Nabha along with all rights and interests appurtenant thereto at the rate of ₹ 40,000/- per bigha totalling ₹ 6,00,000/- and received ₹ 4,00,000/- as earnest money in the presence of witnesses, agreeing to execute the sale deed on or before 15.06.2003 on receipt of balance sale consideration of ₹ 2,00,000/-. Appellant-defendant has also agreed to get the suit property redeemed before execution and

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registration of sale deed in favour of the respondent-plaintiff. According to the terms and conditions of the aforesaid agreement, the respondent-plaintiff went to the office of the Sub-Registrar, Nabha on 15.06.2003 with the balance sale consideration for execution and registration of the sale deed, but the appellant-defendant did not come present there to perform his part of the contract. Consequently, the respondent-plaintiff got marked his presence submitting an affidavit before the Sub-Registrar/Executive Magistrate, Nabha.

Upon notice, appellant-defendant in his written statement, pleading that alleged agreement to sell dated 17.05.2001 was the result of fraud and mis-representation as he never executed the same or ever received any earnest money of ₹ 4,00,00/-, prayed for dismissal of the suit on the ground that appellant-defendant being a farmer used to sell his crops through the commission agency of respondent-plaintiff in between the years 1998 to 2003. In turn respondent-plaintiff used to issue J. Forms for some crops and *katcha* slips for the remaining, sold by the appellant-defendant through him.

Simultaneously, respondent-plaintiff used to obtain signatures of the appellant-defendant on ledger books, printed forms, blank papers and stamp papers as a security of the advance amount which, the appellant-defendant was signing in good faith. In the year 2003, some dispute arose amongst them. Resultantly, appellant-defendant stopped selling his crops through the commission agency of the respondent-plaintiff, which annoyed him. Accordingly, the respondent-plaintiff in connivance with his brother and alleged marginal witnesses forged and fabricated the alleged agreement

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appellant-defendant in due course of business. Even otherwise, the suit property was joint between the co-sharers being a coparcenary property. That apart, the appellant-defendant had obtained loan over the suit property, therefore, he could not sell the same to the respondent-plaintiff.

The trial Court after holding trial, decreed the suit vide judgment and decree dated 31.05.2012 for possession by way of specific performance of agreement to sell dated 17.05.2001 along with all rights and interests appurtenant thereto in favour of respondent-plaintiff.

Being aggrieved, appellant-defendant approached the First Appellate Court, but remained unsuccessful as his appeal too was dismissed vide judgment and decree dated 09.07.2014.

Learned counsel for the appellant contended that the suit was liable to be dismissed being filed after a considerable delay of two years and eight months inasmuch as according to the alleged agreement to sell dated 17.05.2001 relied upon by the respondent-plaintiff, stipulated date for registration of sale deed was 15.06.2003, whereas the suit was filed on 16.02.2006. Therefore, the trial Court considering the said delay instead of decreeing the suit for specific performance ought to have ordered for refund of the earnest money. Both the Courts below failed to appreciate that the agreement to sell in question was surrounded with suspicious circumstances. Both the Courts below also misread the evidence led by the parties and illegally decreed the suit without appreciating that relief sought under the Specific Reliefs Act is discretionary in nature.

Even the readiness and willingness of the respondent-plaintiff was not proved on record, because production of an affidavit by him marking his

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deed i.e. 15.06.2003 by in itself was not sufficient to show the readiness and willingness of the respondent-plaintiff for execution of the sale deed without examination of Sub-Registrar or the attesting authority of the alleged affidavit of the respondent-plaintiff or any supporting witness to the same.

The respondent-plaintiff did not examine any of the attesting witness to the agreement to sell in question. Therefore, both the Courts below have wrongly held the same to be a genuine document on the basis of statement of the deed writer, whose testimony was not trustworthy in view of his admission that entry qua agreement to sell was in lesser space than the space provided for the entry of other documents.

The possession of the suit land is still with the appellant-defendant, which falsifies the entire case of the respondent-plaintiff that the possession of the suit land was delivered to him by the appellant. Respondent-plaintiff while entering into witness box could not tell the khasra numbers of the suit property nor its dimensions. Even the deposition of the respondent-plaintiff was contrary to the revenue record that there was no loan on the suit property, whereas there was a specific entry to this effect in the jamabandi.

Both the Courts below failed to appreciate that the respondent-plaintiff had no capacity to pay such a huge amount to the appellant-defendant and that there was variance in the pleadings and evidence led by the respondent-plaintiff for which he ought to have been non-suited by both the Courts below. In support of his arguments, learned counsel for the appellant placed reliance upon the judgments of the Hon'ble Supreme Court

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Gupta v. Mumtaz Hasan, 2002(3) R.C.R.(Civil) 205, ***Zorawar Singh and another v. Sarwan Singh (Dead) by L.Rs. and another***, AIR 2002 Supreme Court 1711 and ***Thiruvengada Pillai v. Navaneethammal and another***, 2008(2) R.C.R.(Civil) 262.

On the other hand, learned counsel for the respondent-plaintiff strongly refuting the said submissions of the learned counsel for the appellant-defendant pleaded the legality and validity of the impugned judgments and decree of both the Courts below.

Having given thoughtful consideration to the submissions made by both the sides, I find the instant appeal completely devoid of any merit for the reasons to follow.

In civil proceedings, the allegations of fraud, forgery and misrepresentation have to be proved like a criminal charge. Except the bald statement of the appellant-defendant to the above stated fact, there is no iota of evidence, what to talk of any cogent and convincing that any undue influence or fraud was ever exercised upon him at the time of execution of impugned agreement to sell (Ex.P1) by the respondent-plaintiff.

Contention of the learned counsel for the appellant-defendant that mere production of affidavit (Ex.P5) by the respondent-plaintiff qua his presence before the Sub-Registrar, Nabha, on the alleged date of execution of sale deed i.e. 15.06.2003 does not *ipso facto* prove his readiness and willingness to perform his part of the contract in the absence of examination of Sub-Registrar/Executive Magistrate or the scribe of the same, has no legs to stand inasmuch on discharging his burden by the respondent-plaintiff about his readiness and willingness to perform his part of the contract by

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due date of execution of the sale deed, it was incumbent for the appellant-defendant to rebut the same, but he did not make any such effort. Therefore, both the Courts below have rightly relied upon the affidavit (Ex.P5) of the respondent-plaintiff for marking his presence before the Sub-Registrar, Nabha. More-so, as soon as the respondent-plaintiff produced affidavit (Ex.P5) qua his presence before the Sub-Registrar, Nabha, onus shifted upon the appellant-defendant to rebut the same by examining the Sub-Registrar, Executive Magistrate, who attested it or the scribe/typist, who typed the aforesaid affidavit, but he did not adopt any such exercise, which requires to draw adverse inference against the appellant-defendant that he did not do so, deliberately knowing well, that the respondent-defendant had genuinely marked his presence before the Sub Registrar, Nabha, along with balance sale consideration and was always ready and willing to perform his part of contract.

There is no requirement of law that any agreement to sell qua immovable property should be attested by any witness. The same can be oral also. Therefore, examination of the attesting witnesses of the impugned agreement to sell dated 17.05.2001 by the respondent-plaintiff was not legally required. Accordingly argument raised by learned counsel for the appellant in this respect having no legal force is liable to be ignored.

It is needless to mention here that for seeking the relief of specific performance by way of agreement to sell, period under the Limitation Act is three years. Admittedly, in the instant case, the suit was filed by the respondent-plaintiff within three years and, therefore, it does not lie in the mouth of the appellant-defendant that both the Courts below instead of

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of earnest money to the respondent-plaintiff by the appellant-defendant. More-so, in ordinary course it cannot be expected or a person cannot be legally bind to file a suit immediately on the preceding date of expiry of the date of execution or registration of the sale deed, when he has a period of three years under the law of limitation to his credit to file such suit. In the instant case, if the suit was filed by the respondent-plaintiff after two years and few months, but before the expiry of limitation period that does not by in itself gave a permit to the appellant-defendant to dictate to the trial Court to order for refund of money by rejecting the claim of the respondent-plaintiff for specific performance of contract.

It is pertinent to mention here that the appellant-defendant also did not reply to the legal notice served upon him by the respondent-plaintiff, which amounts to his admission qua the impugned agreement to sell dated 17.05.2001, thereby agreeing to sell 15 bighas of land to the respondent-plaintiff and receipt of ₹ 4,00,000/- as part consideration and execution and registration of sale deed by 15.06.2003 on receipt of balance sale consideration.

Variance in the pleadings and evidence pointed out by learned counsel for the appellant do not relate to the material aspect of the case rather are insignificant in nature on account of which the respondent-plaintiff cannot be non-suited.

PW2 Narinder Singh Mann deed writer has categorically testified that after typing the impugned agreement to sell (Ex.P1), he had read over the contents of the same to the parties, including the appellant-defendant and its attesting witnesses, who had put their signatures/thumb impressions

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he had made an entry in this regard in his register. The appellant-defendant could not discharge onus as to how his signatures appeared in the register of the deed writer sitting at a Court/Tehsil premises. Therefore, his bald statement that the impugned agreement was the result of fraud and misrepresentation in the absence of any corroborative evidence has rightly been ignored by both the Courts below.

There is no hard and fast rule as to what should be the margin for obtaining/affixation of signatures/thumb impressions of the parties in a register maintained by the deed writer. That may be at variance every time. Therefore, urging that there was lesser space than the space provided for the entry of other documents creates suspicion above the execution of the impugned agreement to sell has no force.

The facts and circumstances in the case of *K.S. Vidyadnam* (supra) relied upon by learned counsel for the appellant are not identical to the facts and circumstances of the present case inasmuch as in that case no specific date was fixed for registration of the sale deed and in that circumstance time was not the essence of the contract, whereas in the instant case, particular date i.e. 15.06.2003 was fixed for execution and registration of the sale deed. Therefore, no benefit of the same can be given to the appellant-defendant.

I have gone through the impugned judgments of both the Courts below recording concurrent findings against the appellant and find no illegality or perversity in the same. Rather this Court is of the considered opinion that the appellant-defendant is totally a dis-honest man and by denying due execution of the impugned agreement to sell, he has tried to

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Court.

No question of law muchless substantial arises for consideration in this appeal.

Resultantly, this appeal being devoid of any merit, is hereby dismissed.

January 23, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.