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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No. 3549 of 2017 (O/M)  
Date of decision : 30.5.2018

Sucha Singh and others

..... Appellants

Versus

Ram Sarup

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Kanwaljit Singh, Senior Advocate, with,  
Mr. Sarthak Gupta, Advocate,  
for appellants.

Mr. Rakesh Gupta, Advocate,  
for respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

Impugned in present regular second appeal is judgment dated 21.3.2017, passed by learned Additional District Judge, Patiala, affirming judgment and decree dated 14.3.2014, passed by learned Civil Judge (Junior Division), Rajpura, vide which a suit filed by plaintiff-respondent for specific performance of agreement to sell dated 15.4.2005 was decreed. Plaintiff was held entitled to possession of suit land by way of specific performance of agreement to sell dated 15.4.2005 (Ex.P1). Defendants were

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permanently restrained from further alienating, transferring or in any other manner encumbering suit land by way of sale, gift or mortgage or in any other manner. Declaration was also granted that sale deed/tabdil malkiat nama bearing wasika No. 2427 dated 8.3.2006, got executed by defendant No. 1 Sucha Singh in favour of his sons defendants No. 2 to 4 is wrong, illegal, null and void and is a sham transaction and same was set aside. Defendants were directed to execute and register the sale deed of suit property as mentioned in agreement to sell (Ex.P1) and fully detailed in headnote of plaint as per agreement to sell dated 15.4.2005, in favour of plaintiff within two months after receiving balance sale consideration alongwith other costs from plaintiff, failing which plaintiff will be at liberty to get sale deed executed through process of Court.

Case of plaintiff before trial Court was that defendant No. 1 Sucha Singh entered into agreement to sell dated 15.4.2005, in favour of plaintiff regarding land measuring 12 bighas 1 biswa, fully detailed in headnote of plaint, at the rate of Rs. 13 lacs per acre. Defendant No. 1 received Rs. 3 lacs as earnest money in presence of marginal witnesses, namely, Surjit Singh, Numberdar and Darshan Singh. Defendant No. 2 Bahadur Singh, son of defendant No. 1 also signed the agreement in token of his approval. As per agreement, defendant No. 1 agreed to get half share of land, equivalent to 6 bighas 1/2 biswa, transferred in his own name, which was in name of his real brother, and further agreed to get the sale deed executed and registered regarding 2 bighas of land out of total land measuring 12 bighas 1 biswa on 20.7.2005 and remaining land on 10.4.2006. Plaintiff claims that he was ready and willing to perform his part of contract. He purchased stamp papers and got scribed sale deed regarding

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2 bighas of land from Kuldeep Kumar, deed writer at the instance of defendant No. 1. After scribing same, defendant No. 1 on pretext of showing same to his legal adviser took away said document and slipped away and was not traceable. Said sale deed is still in custody of defendant No. 1. Thereafter, defendant No. 1 in collusion with his sons, defendants No. 2 to 4 got executed sale deed/tabdil malkiat nama regarding 12 bighas 1 biswa of land in favour of his sons i.e. defendants No. 2 to 4, vide wasika No. 2427 dated 8.3.2006, which is a sham transaction. Plaintiff is an illiterate and handicapped person. For breach of agreement, he lodged FIR No. 60, dated 23.9.2006, under Sections 420 read with Section 120-B IPC at Police Station Ghanaur, against defendants. It is further stated that on 10.4.2006, plaintiff also remained present in office of Sub Registrar, Ghanaur, alongwith balance sale consideration and necessary expenses, but defendant No. 1 did not turn up. Plaintiff also got attested his affidavit from Executive Magistrate/Sub Registrar, Ghanaur, regarding his presence.

In written statement, defendants took plea that agreement to sell dated 15.4.2005 is a false and fake document, prepared by plaintiff in connivance with stamp vendor Naresh Batta, Sukhdev Ram as well as witnesses of agreement to sell dated 15.4.2005. Defendants denied to have entered into said agreement. Defendants put up their own case stating that document was created by plaintiff in connivance with his brother, stamp vendor Naresh Batta, and witnesses. Receipt of Rs. 3 lacs was also denied. Defendant No. 2 also denied his signatures on agreement. It was stated that infact defendant No. 1 had come to Rajpura, on 15.4.2005 at 11:00 AM to execute sale deed of land measuring 11 bighas 4 biswas in favour of Sukhdev Ram son of Datta Ram, who is real brother of plaintiff

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Ram Sarup. Sale deed was scribed by Kuldeep Kumar, deed writer who asked him to purchase stamp paper of Rs. 47,610/- from Naresh Batta, stamp vendor for sale deed. After two hours, deed writer asked him and vendee Sukhdev Ram to purchase one more stamp paper of Rs. 500/- as Court fee is short and one more stamp paper is required. Plaintiff again purchased stamp paper of Rs. 500/- from Naresh Batta against a new entry as Naresh Batta stated that after issuing stamp papers of Rs. 47,610/-, it is difficult to issue more stamp paper of Rs. 500/- against same entry. Stamp vender asked Kuldeep Kumar, deed writer that he will send stamp paper on his seat after 15 minutes and obtained thumb impression of defendant on his seal. Later on, after taking said stamp paper, deed writer asking defendant to come present on 20.4.2005 as Sub Registrar was not available and kept stamp paper of Rs. 500/- with him at the instance of vendee Sukhdev Ram. On 16.3.2006, plaintiff, Sukhdev Ram, real brother of plaintiff, Naranjan Singh, Lambardar, Naresh Batta, stamp vendor and Kuldeep Kumar, deed writer, reached house of defendant No. 1 and forcibly entered into his house and stressed upon defendant No. 1 to thumb mark some typed stamp papers and some documents as sale deed of 2 bighas of land is to be transferred in favour of plaintiff and his brother Sukhdev Ram. However, defendant No. 1 refused to do so. Then said persons tried to forcibly obtain signatures of defendant No. 1 on said stamp papers, on which he raised hue and cry and sent a message to his sons Bahadur Singh and Jasbir Singh on phone, who came from fields and caught hold of said persons and snatched original sale deed dated 18.7.2005, signed by plaintiff alongwith photograph affixed on same, one attested affidavit without signatures of defendant and one typed stamp paper. Defendant has doubt that said persons might have got his

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thumb impression on agreement to sell dated 15.4.2005 on stamp paper of Rs. 500/-, which was scribed by Kuldeep Kumar, deed writer. Defendant No. 1 is 80 years of age. He appeared before SSP, Patiala on 26.4.2006 and moved an application against said persons which was marked to DSP, Rajpura, on which no action was taken.

Defendants No. 2 to 4 in separate written statement took same stand. Replication was not filed.

From pleadings, following issues were framed :-

1. Whether plaintiff is entitled to possession by way of specific performance of agreement to sell dated 15.4.2005 as prayed for ? OPP
2. Whether plaintiff is entitled to permanent injunction as prayed for ? OPP
3. Whether plaintiff is entitled to the declaration that Tabdil Malkiatnamas/transfer deed bearing Wasika No. 2427, dated 8.3.2006 is illegal, null and void and is a sham transaction ? OPD
4. Whether the plaintiff is entitled to alternative recovery of Rs. 36,16,250/- alongwith interest as prayed for ? OPD
5. Whether plaintiff has no locus standi ? OPD
6. Whether the plaintiff is estopped by his own act and conduct for filing present suit ? OPD
7. Whether plaintiff has not come to the Court with clean hands ? OPD
8. Relief.

Trial Court took up issues no. 1 to 3 together and held that execution of agreement to sell was proved. Accordingly, plaintiff was held entitled to possession by way of specific performance of agreement to sell dated 15.4.2005, permanent injunction and declaration. Issue No. 4 was left as redundant. Issues No. 5, 6 and 7 were also decided against defendants as onus to prove was upon defendants. Consequently, suit was decreed.

The learned senior counsel for appellants has vehemently argued that in this case, agreement to sell is not proved. It has been contended that expert was not examined to prove signatures of defendant on agreement to sell dated 6.4.2005. Therefore, statements of Darshan Singh (PW1) and Surjit Singh, Numberdar, attesting witness (PW2) are not sufficient to prove said agreement. It is further stated that Surjit Singh, Numberdar, was only examined in chief and not produced for cross examination.

I am of the view that when plaintiff examined himself and examined deed writer Kuldeep Kumar as PW5 and attesting witness Darshan Singh (PW1), the due execution of sale deed is proved. Then burden shifted on defendants to disprove same and prove the story of thumb impression of defendant No. 1 being taken by fraud and force. Defendant No. 1 himself appeared as DW2 and produced his son Bahadur Singh as DW1. Naresh Batta merely proved sale of stamp papers. Even if, thumb impression on stamp papers were not obtained, but stamp papers were purchased from said Naresh Batta against entry which is duly recorded in his register.

The learned senior counsel for appellants has argued that in

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agreement to sell dated 15.4.2005 (Ex.P1), 12 bighas 1 biswa land was agreed to be sold for Rs. 13 lacs, whereas in agreement dated 6.4.2005 with brother of plaintiff, 54 bighas 10 ½ biswas of land was agreed to be sold at Rs. 13.80 lacs per acre. It is further contended that it is case of undue hardship.

I am of the view that story put forth by defendants was rightly discarded by both the Courts below. The sale deed dated 15.4.2005, executed by defendant in favour of Sukhdev Ram, brother of plaintiff shows that he sold land measuring 11 bighas 4 biswas, for Rs. 7,93,500/- on 15.4.2005 (Ex.P4) i.e. on the date when present agreement was executed. Execution of sale deed in favour of brother of plaintiff shows that defendant No. 1 had come to Court on 15.4.2005 and on that day, said sale deed was also scribed by same document writer Kuldeep Kumar. Said sale deed is not challenged. It supports the case of plaintiff that defendant No. 1 come present on said date and had scribed sale deed as well as agreement. Not only this, vide another sale deed dated 10.8.2005 (Ex.P5), i.e. little less than four months after agreement, defendant executed sale deed in favour of Sukhdev Ram, brother of plaintiff, for Rs. 7,65,000/- for land measuring 9 bighas 2 biswas. It goes to show that relations between defendant No. 1, plaintiff and Sukhdev Ram (brother of plaintiff) were not so bitter as sought to be projected by defendants by putting forth a story. Since on day of agreement, defendant No. 1 sold some of his land in favour of brother of plaintiff, therefore, it cannot be called case of undue hardship. On day of agreement i.e. 15.4.2005, defendant No. 1 had sold 11 bighas 4 biswas to brother of plaintiff and on 10.8.2005 i.e. little less than four months of agreement, he sold more land measuring 9 bighas 2 biswas in favour of

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brother of plaintiff. It goes to show that defendant No. 1 was selling his land to brother of plaintiff. Findings of facts have been recorded by both the Courts below. The alleged fraud and fabrication of agreement is not proved. The story put forth in written statement was rightly disbelieved. Except self serving statements of defendants No. 1 and his sons, no witness has come forward to prove the occurrence regarding visit of plaintiff and deed writer alongwith brother of plaintiff to house of defendant No. 1 and forcibly trying to take thumb impression on some stamp papers. There are concurrent findings of facts recorded by two Courts below. No law point arises. Even on merits, there is no illegality, infirmity or perversity in findings recorded by both Courts below. Hence, regular second appeal is dismissed with costs. Since main case has been dismissed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)  
JUDGE

30.5.2018  
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No