

RSA No.3324 of 2018 (O&M)

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

**CM No.8820-C of 2018 in/and
RSA No.3324 of 2018 (O&M)
Date of Decision : 16.11.2018**

Harnek Singh.

....Appellant

V/S

Amritpal Singh and others.

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Abhinav Gupta, Advocate for the appellant.

B.S. WALIA, JUDGE,

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For the reasons as are mentioned in the application, the same is allowed. Delay of 37 days in late filing of the appeal is condoned, subject to all just exceptions.

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[1] Appeal has been filed by the defendant against the judgment and decree dated 18.03.2016, passed by the learned Civil Judge (Junior Division), Bathinda, as upheld by the learned Additional District Judge, Bathinda vide judgment and decree dated 10.01.2018.

[2] Brief facts of the case, leading to the filing of the instant appeal are that the respondents/plaintiffs filed a suit for specific performance of agreement to sell dated 17.12.2012 scribed by Naresh Kumar Sharma whereby the defendant had agreed to sell 7 kanals and 7 ½ marlas of land, situated in

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village Nathana to the extent of $\frac{1}{2}$ share in favour of respondent-plaintiff Nos.1 & 2 and the other $\frac{1}{2}$ share in favour of respondent-plaintiff No.3 @ Rs.28,85,000/ per acre against receipt of earnest money of Rs.10,00,000/ in cash from the respondents-plaintiffs on 17.12.2012 in the presence of marginal witnesses Harbans Singh and Nirbhai Singh, as also Amarjit Singh, nephew of the defendant who also put his signatures on the agreement as consenting party. Date for registration of the sale deed was fixed on or before 03.05.2013. Balance sale consideration was to be paid on the date of execution. After understanding the contents of the agreement, the defendant put his thumb impression on the same in the presence of witnesses, as well as the plaintiffs. The plaintiffs remained ready and willing to perform their part of the agreement and to get the sale deed executed and registered in their favour but the defendant kept on putting of the matter on one pretext or the other. In the circumstances, as per the terms and conditions of the agreement, the respondents-plaintiffs reached the office of the Sub Registrar, Nathana along with balance sale consideration and waited for the defendant to execute and register the sale deed in their favour qua the suit land, but the defendant did not turn up. Consequentially, the respondents-plaintiffs got their presence marked on an affidavit and thereafter filed a civil suit, claiming relief of specific performance and in the alternative, recovery of Rs.20,00,000/ i.e. Rs.10,00,000/ as earnest money and Rs.10,00,000/ as consolidated damages besides praying for permanent injunction for restraining the defendant from alienating the suit property to any other person.

[3] Appellant-defendant on the other hand denied has denied the averments of the respondents-plaintiffs and stated that agreement is a forged

plaintiffs, witnesses and scribe Naresh Kumar. Appellant-defendant never executed the alleged agreement nor he ever received the alleged amount. The agreement in question is result of fraud, mis-representation and false.

[4] That on the basis of pleading of the parties, the following issues were framed:

1. Whether the plaintiffs are entitled to specific performance of agreement to sell dated 17.12.2012? OPP
2. Whether the plaintiffs are entitled to recovery of Rs.20,00,000/ alongwith interest in alternative as prayed for? OPP
3. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP
4. Whether the suit is not maintainable? OPD
5. Whether the plaintiffs have no locus standi and cause of action to file this suit? OPD
6. Whether the plaintiff has concealed material facts? OPD
7. Whether the plaintiffs are estopped from filing the suit by their own act and conduct? OPD
8. Relief.

[5] That on the basis of evidence led by the parties, the learned Civil Judge (Junior Division), Bathinda while deciding issue Nos.1 and 3 in favour of the respondents-plaintiffs, issue No.2 against the respondents-plaintiffs and issue Nos.4 & 5 against the defendant, partly decreed the suit in favour of the respondents-plaintiffs vide judgment and decree dated 18.03.2016 and directed the defendant to get executed the sale deed in favour of the respondents-

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sale consideration failing which the respondents-plaintiffs could get the same executed through a court of law. The defendant was also restrained from alienating the suit land in favour of any person other than the respondents-plaintiffs.

[6] Appeal filed by the defendant was dismissed by the learned Additional District Judge, Bathinda vide judgment and decree dated 10.01.2018.

[7] Learned Counsel contended that the courts below failed to take into account that the defendants nephew had obtained his signatures on a blank paper on which the agreement to sell was subsequently printed, therefore, the judgment and decree of the learned trial Court as upheld by the learned lower appellate Court was legally unsustainable. No other point has been argued.

[8] I have considered the submission of learned counsel for the defendant. PW-5 Naresh Kumar, Advocate deposed on oath that he had scribed the agreement to sell (Ex.P3). PW-2, i.e. Harbans Singh, attesting witness proved the agreement and stated that he knew the parties to the agreement as also that the defendant was owner in possession of land measuring 7 kanals 7 ½ marlas and had agreed to sell the same to the respondents-plaintiffs @ Rs.28,85,000/ per acre in his presence as also in the presence of Nirbhai Singh s/o Dalip Singh and Amrit Singh s/o Bura Singh by receiving Rs.10,00,000/ in cash from the respondents-plaintiffs as earnest money and further agreeing to get the sale deed executed on or before 03.05.2013 failing which the respondents-plaintiffs could get the same executed through a Court and in case the respondents-plaintiffs failed to execute the sale deed, then the earnest money would stand forfeited. PW-2 further stated that all the terms and conditions of the agreement to sell were

plaintiff Amritpal Singh and other witnesses and after admitting the contents of the same as correct, the defendant thumb marked the agreement to sell where after he along with Nirbhai Singh besides plaintiff Amritpal Singh (who signed the agreement on behalf of the plaintiffs) put signatures on the agreement to sell apart from Amarjit Singh s/o Bura Singh, nephew of the defendant as a consenting party. The version of PW-2 Harbans Singh was fully supported and corroborated by PW-3 Nirbhai Singh s/o Dalip Singh another marginal witness of the agreement to sell, PW-4 Amarjit Singh s/o Bura Singh and PW-6 Amritpal Singh. Aforementioned witnesses were cross examined at length by counsel for the defendant but their credibility could not be shattered. Thus, there is nothing on the record to doubt the credibility of the aforementioned witnesses so as to discard their evidence.

[9] Admittedly, the defendant did not deny his thumb impression on the agreement to sell (Ex.P3). It's a different matter that he took up the plea that the respondents-plaintiffs along with his nephew Amarjit Singh obtained his thumb impression on blank papers on the pretext of getting him pension. However, in order to substantiate the aforementioned plea, the defendant did not examine any expert to prove that his thumb impressions were taken earlier on blank papers and later on the said blank signed papers were converted into an agreement to sell. Besides the learned trial Court held that from a perusal of the Agreement (Ex.P3), it could be observed with the naked eye that there was no adjustment of line spacing or borders of the entire documents and the same clearly proved that the defendant had thumb marked the agreement (Ex.P3) after it was duly scribed by Naresh Kumar, Deed writer. It was further found by the Courts below that there was nothing on the record to prove that the

plaintiffs and scribe were having any ill-will or enmity with the defendant.

Therefore, the question of their deposing falsely did not arise at all. In the circumstances, it is beyond comprehension as to how the agreement Ex.P3 is a forged and fabricated document. Mere assertion on the part of the defendant is not enough to substantiate the plea of fraud. Fraud had to be proved by leading cogent and convincing evidence in accordance with the provisions of Order 6 Rule 2 CPC read with Order 6 Rule 4 CPC. Plea of fraud having been raised, the defendant was required to set forth particulars of the fraud and the onus to prove that the agreement to sell was got executed by fraud, was on the defendant in view of his impliedly admitting his thumb impressions on the agreement to sell (Ex. P3) to be his. Reference in this context can be made to the decision of this Court in 1991 CCC 693 (P&H) '**Durlabh Singh versus Nahar Singh and others**' as also 1997 (1) CCC 127 (AP) in case titled as '**Pusapati Krishna Murthy Raju versus The AP State Electricity Board**'.

[10] Thus in view of the evidence of the respondents-plaintiffs and marginal witnesses, execution of agreement to sell (Ex.P3) stands duly proved. Besides the stamp papers for execution of the agreement to sell were purchased by the appellant-defendant himself. Therefore, it does not lie in the mouth of the appellant-defendant to allege that the agreement to sell is a forged and fabricated document. Similar view was taken by this Court in '**Jeet Singh versus Bahadur Singh**', 2009(4) RCR (Civil) 1996.

[11] Agreement to sell (Ex.P3) is in Punjabi script and it is not the case of the defendant that he does not know Punjabi script. Denial on the part of the defendant regarding execution of the agreement to sell clearly reflects the growing trend of litigants to deny each and every document during trial. A person who has thumb marked a document containing contractual terms is

even though he is ignorant of its precise legal effect. In case titled as '**Hodil Singh (deceased) represented by Legal Heirs versus Bhagwant Singh (deceased) represented by Legal Heirs**' 2010(2) Civil Court Cases 608 (Allahabad), it was held:-

“Court is regularly noticing that a vendor after executing the agreement takes dishonest pleas that either he has not executed the agreement or that he has no knowledge of the contents or terms and conditions of the agreement just to frustrate performance of the contract thereby showing extreme dishonesty and cheating to the sanctity of the agreement or contract of the sale deed. It is not possible that a person executing the agreement is unaware of the contents or terms and conditions of the document on which he put his signatures or thumb impressions. The sanctity of the agreement must be respected and preserved”.

(12) No specific instance had been given nor the particulars set out as to how fraud was played. The onus of proving that the agreement to sell (Ex.P3) was got executed by deception or fraud was specifically on the appellant-defendant. However, the appellant-defendant has failed to prove the fraud.

[13] No substantial questions of law arise for determination in the appeal. In the circumstances, no case is made out warranting interference with the well reasoned judgment of the Courts below. Accordingly, the appeal being bereft of merits is **dismissed** in limine.

(B.S. WALIA)
JUDGE

November 16, 2018
'rajneesh'

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