

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

RSA No.5626 of 2017 (O&M)

Reserved on 22.05.2018

Date of Decision.29.05.2018

Angrej Singh

...Appellant

Vs

Karnail Singh and others

...Respondents

2. RSA No.5678 of 2017 (O&M)

Harinder Kaur

...Appellant

Vs

Karnail Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Rang, Advocate
for the appellant in RSA No.5626 of 2017.

Mr. Y.P. Singla, Advocate
for the appellant in RSA No.5678 of 2017.

Mr. R.L. Batta, Senior Advocate with
Mr. Nikhil Batta, Advocate
for the respondent No.1.

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AMIT RAWAL J.

This order of mine shall dispose of two regular second appeals bearing Nos.5626 and 5678 of 2017 preferred by the Angrej Singh, defendant No.3-subsequent vendee and Harinder Kaur defendant No.2, vendor respectively against the judgment and decree rendered by the lower Appellate Court whereby the suit filed by the plaintiff for possession by way of specific performance, declaration, alternative suit for recovery and permanent injunction in respect of agreement to sell dated 28.08.2006 has been decreed by setting the judgment and decree of the trial Court, which had partly decreed the

suit. The facts are being taken from RSA No.5626 of 2017.

The respondent-plaintiff, Karnail Singh, instituted the suit dated 01.12.2006 for possession by way of specific performance, declaration, alternative suit for recovery and permanent injunction in respect of agreement to sell dated 28.08.2006 regarding the land measuring 21 bighas (hereinafter called as the “suit property”) agreed to be sold for a total sale consideration of ₹29,40,000/- against the payment of earnest money of ₹15 lacs and the sale deed dated 30.08.2006 executed by defendant No.2-Harminder Kaur in favour of defendant No.3 and for declaration that the sale deed dated 30.08.2006 executed by defendant No.2 in favour of defendant No.3-Angrej Singh to be illegal, erroneous and null & void qua the rights of plaintiff. It was averred that defendant No.3 had full knowledge regarding the agreement to sell, therefore, could not have purchased the suit property vide sale deed dated 30.08.2006 and sought permanent injunction restraining the defendants, their agents or representatives from further alienating, transferring or otherwise encumbering the suit property.

The aforementioned suit was contested by the defendants. Defendant No.1 did not file the written statement as her defence was struck off whereas defendant No.2 and 3 filed joint written statement. The factum of relationship of defendant Nos.1 and 2 being daughter and widow of Sardara Singh was not denied but the execution of the agreement to sell and receipt of earnest money were emphatically denied. It was averred that plaintiff and defendant No.1 in collusion with each other wanted to grab the property and

fabricated the alleged agreement to sell, for, defendant No.2 had already sold the land measuring 18 bighas 13 biswas through registered sale deed dated 30.08.2006 to defendant No.3 after receiving full and final consideration. A civil litigation was pending in respect of the house owned and possessed by defendant No.2 on the basis of the agreement to sell, which was dismissed as withdrawn on 9.12.2006 and therefore, the present suit was barred under Order 2 Rule 2 CPC as no permission was sought for filing fresh suit.

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

“1. Whether the plaintiff is entitled to specific performance of contract of sale dated 28.8.2006 as prayed for? OPP

1-A. Whether plaintiff is entitled for possession as prayed for? OPP

2. Whether the sale deed dated 30.8.2006 executed by defendant No.2 in favor of defendant No.3 is wrong, illegal and null qua the rights of the plaintiff as prayed for.

2-A. Whether defendant No.3 is bona fide purchaser for valuable consideration? OPP

3. Whether the plaintiff is entitled to alternative relief of recovery of ₹29,40,000/- as prayed for? OPP

4. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

5. Whether the suit is barred by principle of estoppel?

OPD

6. Whether suit is barred u/o 2 Rule 2 CPC? OPD

7. Whether the suit is liable to be rejected u/o 7 Rule 11 CPC? OPD

8. Whether the suit is not maintainable in the present form? OPD

9. Relief.”

The respondent-plaintiff examined five witnesses namely Mukhtiar Singh as PW1, Balvir Singh PW2, Navdeep Gupta, Handwriting and Fingerprint Expert as PW3, Plaintiff Karnail Singh examined himself as PW4 and Vinod Sehgal Branch Manager, SBOP as PW5 and tendered into evidence Ex.P1 to P5 whereas the defendant No.3 Angrej Singh appeared as DW1, Satpal Singh, attesting witness as DW2, Mandeep Singh, other witness as DW3, defendant No.2 Harminder Kaur stepped into witness box as DW4 and tendered documents Ex.D1 to D14 and Mark-A to Mark-G.

The trial Court on the preponderance of evidence found that the respondent-plaintiff had proved the agreement to sell but since the property had been sold, ordered for alternative relief of recovery of money to the tune of ₹15 lacs with interest @6% per annum from the date of execution of agreement to sell till realization. However, in the appeal preferred against the aforementioned judgment and decree by the plaintiff, the lower Appellate Court set aside the aforementioned judgment and decree and granted the discretionary relief by directing defendant No.1 and 2 to execute the

sale deed after deposit of balance sale consideration by the plaintiff. Defendant No.3 was also directed to join defendant No.1 and 2 to execute the sale deed in favour of the plaintiff and further restrained the defendants from alienating the suit property.

Mr. S.S. Rangi, learned counsel appearing for the appellant-subsequent vendee in RSA No.5626 of 2017 and Mr. Y.P. Singla, learned counsel appearing for the appellant-vendor in RSA No.5678 of 2017 in support of their respective memorandum of appeals raised the following submissions:-

- (i) The lower Appellate Court ought not to have granted the discretionary relief, for, it has been proved on record that defendant No.3 was a bona fide purchaser for valuable consideration.
- (ii) The respondent-plaintiff has failed to prove ingredients of Section 16(c) of the Specific Relief Act. In fact, defendant No.1 Charanjit Kaur and respondent-plaintiff Karnail Singh colluded with each other in order to grab the property. Even criminal complaint at the instance of the plaintiff was registered against Angrej Singh, Harminder Kaur and also against the witnesses of sale deed dated 30.8.2006 under Section 420 IPC.
- (iii) Mukhtiar Singh, PW1 alleged to be marginal witness of the agreement to sell admitted that he was approached by the plaintiff to put his signatures as witness, thus, was interested

witness, for, he admitted that respondent No.2 was married to his cousin brother. All these vital evidence clearly establish collusion between respondent No.1 and 2.

(iv) Respondent No.3, Harminder Kaur was an old widow and rustic villager. She did not know the intricacies of law as to whether her thumb impressions were obtained on the agreement to sell or on some other document. The respondent-plaintiff has failed to prove execution of the agreement to sell, much less, consideration. None of the witnesses of the plaintiff stated that earnest money was ever paid to Harminder Kaur rather they stated that it was paid to respondent No.2 Charanjit Kaur, particularly, when the land was joint between respondent No.2 and 3, there was no occasion for paying earnest money to respondent No.2.

(v) The lower Appellate Court brushed aside the deposition of DW5 and report Ex.DW-5/A that the thumb impression of Harminder Kaur were sufficiently ink smeared and were not fit for comparison whereas Navdeep Gupta, PW3 has given a specific opinion that the disputed thumb impressions of respondent No.3 were fit for comparison and the same has been tallied with the

standard thumb impression of respondent No.3 affixed on the summons and vakalatnama. In the absence of clarity of thumb impressions, the trial Court rightly granted the alternative relief.

- (vi) The Courts below ought to have invoked the provisions of Section 73 of the Indian Evidence Act by calling upon Harminder Kaur, respondent No.3 to give her fresh thumb impression for comparing the admitted thumb impression with the disputed thumb impressions. But having not taken care of such provisions, the discretionary relief ought not to have been granted.
- (vii) PW1, Mukhtiar Singh deposed that Charanjit Kaur had appended her signatures on agreement only at one place whereas PW2 Balbir Singh deposed that she had put her signatures at two places but the perusal of the agreement shows that signatures of Charanjit Kaur were at three places. There was a cutting and over-writing in the second page of the agreement. All these factors were not examined in entirety, much less, correct perspective, therefore, there is abdication.

On the other hand, Mr. R.L. Batta, Ld. Senior Counsel assisted by Mr. Nikhil Batta appearing for the respondent No.1-plaintiff submitted that judgment and decree rendered by the lower Appellate Court is perfectly legal and justified, for, Angrej Singh is

the resident of Gharama Kalan village where Harminder Kaur was residing, therefore, cannot take the plea of bona fide purchaser as envisaged under Section 41 of the Transfer of Property Act, 1882. The agreement to sell was for an amount of ₹29,40,000/-, however, Angrej Singh, appellant-defendant No.3 had taken the advantage and purchased the property at ₹13,21,500/- far less than agreed price or market price. Harminder Kaur has not been able to belie her thumb impressions on the agreement to sell, much less, statement of attesting witness has gone unshattered, thus, urges this Court for upholding the finding under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Rangi and Mr. Singla. No explanation has come forth on behalf of Harminder Kaur on execution of sale deed of 30.08.2006 which is two days after the agreement to sell dated 28.8.2006. It was not the duty of the Courts below to invoke the provisions of Section 73 of the Indian Evidence Act as the onus was on Harminder Kaur to belie the statement of attesting witness vis-a-vis appendation of her thumb impression on the agreement to sell, much less, passing of the sale consideration. If at all, she had not appended her thumb impression, she should have been candid enough to come forward and offer her specimen signatures. In the absence of such offer, in my view, adverse inference had rightly been drawn against her, for, she was afraid that the truth may not surface. The factum of Angrej Singh and Harminder Kaur being resident of same village had not been denied during the course of hearing, particularly,

also the fact of having purchased the property at lesser rate than the price agreed to. All these things leads to irresistible conclusion that it was a distress sale. Defendant No.3 grabbed the opportunity of purchasing the property at a throw away price.

There is no force and merit in the submissions of Mr. Ranghi with regard to non-compliance of provisions of Section 16(c) of the Specific Relief Act, for, the suit was filed immediately on 01.12.2006 i.e. three months from the date of registration of the sale deed dated 30.08.2006, which is subject matter of challenge in the suit. In my view, the lower Appellate Court has rightly exercised the power vested in it being last court of fact and law and cannot be said to be without jurisdiction, for, the trial Court failed to notice the residence of Angrej Singh, appellant/defendant No.3 in close proximity with respondent No.3/vendor, Harminder Kaur. Harminder Kaur appeared in the witness box as DW4. She attempted to prove the sale deed dated 30.08.2006 but did not deny that Charanjit Kaur was not her daughter. In cross-examination, she also admitted that Sardara Singh was her husband, who died 20 years ago and on receipt of sale consideration of ₹13,21,500/- from Angrej Singh, had spent money on construction of house and remaining money was used for settling some previous credits. It is a matter of record that plaintiff had initially filed the suit for permanent injunction on 5.9.2006 as he had apprehension that Harminder Kaur may attempt to alienate the property. However the said suit was withdrawn, for, by that time the defendant No.2, Harminder Kaur had already executed the sale deed in favour of defendant No.3 Angrej Singh, therefore, the provisions

of Order 2 Rule 2 CPC would not apply. Even Mukhtiar Singh, PW1 and Balvir Singh PW2, attesting witnesses proved the execution of the agreement to sell, much less, passing of the consideration. Despite extensive cross-examination, they had been consistent and coherent.

All these factors weighed in the mind of the lower Appellate Court, for, the plaintiff had complied with the provisions of Section 16(c) of the Specific Relief Act and therefore, was entitled to discretionary relief.

As an upshot of my finding, the arguments of learned counsel appearing for the appellants have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one already arrived at, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Both the appeals are dismissed.

(AMIT RAWAL)
JUDGE

May 29, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No