

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

**RSA-5564-2018 (O&M)
Date of Decision:10.10.2018**

Inder Kaur (deceased) through her L.R.

... Appellant

Versus

Swaran Kaur

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. S.D. Sharma, Senior Advocate with
Mr. Ved Priya Malik, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Defendant is in second appeal before this Court.

2. A suit filed by plaintiff/Swaran Kaur for possession by way of specific performance in relation to an agreement to sell dated 16.03.2006 for the suit property was decreed by the trial Court on 17.10.2014. Civil appeal preferred by the defendant stands dismissed vide judgment dated 27.04.2018 passed by the learned Additional District Judge, Fatehgarh Sahib and thereby affirming the judgment and decree of the trial Court.

3. Brief facts that would require notice are that the suit had been instituted by the plaintiff/respondent on the strength of an agreement to sell dated 16.03.2006 pertaining to the suit property. It was averred that the total sale consideration as per agreement was Rs.7,25,000/- and out of which Rs.5 lakhs was received by the defendant/appellant towards earnest money on 16.03.2006 itself. The target date for execution of the sale deed was fixed as on or before 15.03.2007. Case of the plaintiff was that she had remained

ready and willing to perform her part of the contract and had also remained present in the Tehsil premises, Amloh on 15.03.2007 along with remaining sale consideration amount as also other expenses required by the execution and registration of the sale deed but the defendant failed to come present. Plaintiff is stated to have got her presence recorded on 15.03.2007 by way of affidavit. Defendant contested the suit by taking a stand that the agreement to sell has been prepared under mysterious circumstances and is not a document of agreement to sell. Defendant stated herself to be 76 years old rustic and illiterate lady and who does not know how to read and write english language. In the written statement, it was mentioned that the suit property is the only residential house that she possesses in India and as such, there was no occasion for her to have entered into the alleged agreement to sell. Further stand was that the plaintiff has taken advantage of the close proximity/relationship inter se the parties inasmuch as plaintiff is the wife of the nephew of the defendant. It was further stated that the actual value of the suit property is more than Rs.20 lakhs and as such, the agreement to sell mentioning a sale consideration of Rs.7,25,000/- could not have been entered into.

4. Trial Court decreed the suit of the plaintiff for relief of specific performance of the contract/agreement dated 16.03.2006 by returning findings that the agreement in question had been duly entered into by the parties and that the plaintiff had been ready and willing to perform her part of the contract. Findings of the trial Court stand affirmed by virtue of dismissal of the appeal preferred by the defendant before the lower Appellate Court.

5. Learned senior counsel representing the defendant/appellant has vehemently argued that the alleged agreement dated 16.03.2006 is the result of fraud and misrepresentation and as such, is a fabricated document. In furtherance of such contention, it is submitted that the agreement dated 16.03.2006 was typed after obtaining signatures of the defendant/appellant on blank papers. Further argued that there was a fiduciary relationship between the parties on account of close relationship and under such circumstances, the burden of proving the good faith of the transaction would shift upon the dominant party i.e. the party which is in a position of active confidence. Learned senior counsel contends that such aspect has been completely overlooked by the Courts below.

6. Having heard learned senior counsel at length and having perused the case paper book, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

7. The agreement to sell set up by the plaintiff/respondent was dated 16.03.2006. Plaintiff/respondent apart from having stepped into the witness box herself, examined the marginal witness/PW Randhir Singh to prove on record the agreement at Ex.P1. Defendant/appellant did not actually dispute her signatures on the agreement. It was a case of the appellant/ defendant in the written statement that earlier in point of time a General Power of Attorney had been given in favour of husband of the plaintiff and which had subsequently been cancelled on 06.07.2007. Defendant/ appellant's own witness, namely, Sunil Kumar Arora, Handwriting and Finger Print Expert tender an opinion after examining the disputed agreement to sell dated 16.03.2006 (Ex.P1) as also a copy of the

cancellation of the General Power of Attorney dated 06.07.2007 and did not opine that the disputed signatures on the agreement to sell (Ex.P1) did not match with the signatures affixed on the cancellation of the General Power of Attorney dated 06.07.2007. Under such circumstances, the onus certainly shifted upon the defendant/appellant to prove that the signatures had been obtained on blank papers on account of undue influence, pressure and misrepresentation. It is strange that the defendant's witness, namely, Sumit Kumar Arora i.e. the Handwriting and Finger Print Expert chose not to examine the signatures of the defendant/appellant on the register of the deed writer as also the stamp vendor.

8. The contention raised by counsel with regard to a fiduciary relationship i.e. a relationship of trust and confidence between the parties inter se is without substance. It was the case set up by the defendant/appellant herself that previously a Power of Attorney had been given in favour of husband of the plaintiff, namely, Kailash Singh but faith having been lost, such Power of Attorney had been cancelled. It is also not in dispute that the defendant/appellant had got a case registered against the plaintiff/respondent in Police Station Amloh on the allegations of having obtained her signatures on the agreement to sell and in the trial that ensued, vide judgment dated 13.12.2013, the plaintiff/respondent and other co-accused were acquitted by the Judicial Magistrate 1st Class, Amloh and findings were recorded that the agreement to sell cannot be held to be forged and fabricated. Under such factual premises, once a plea of fraud and misrepresentation has been taken by the defendant/appellant as regards execution of the agreement to sell dated 16.03.2006, the onus was upon her

to adduce cogent and credible evidence to substantiate such plea. Such onus has not been discharged.

9. It would also be apposite to take note that the lower Appellate Court has adversely commented even on the conduct of the appellant. In her examination-in-chief by way of filing affidavit Ex.DW1/A, appellant stated that the alleged agreement to sell dated 16.03.2006 was prepared in mysterious circumstances, is not a document towards an agreement to sell and is a result of fraud. However, in her cross-examination, appellant conceded that even though, she is illiterate, yet she used to affix her signatures in english language. Appellant had taken a stand that she normally resides abroad. Agreement to sell in question was stated to have been executed on 16.03.2006. In her deposition, defendant/appellant stated that she did not remember having visited India in March, 2006. She produced before the Court her latest passport which had been issued to her in January, 2011. Lower Appellate Court has observed that the defendant/appellant deliberately kept away from the Court her previous passport which was valid for the year 2006 and which would otherwise have revealed the entries reflecting her visit to India in March, 2006.

10. A concurrent finding has been recorded by the Courts below with regard to due entering into of the agreement to sell dated 16.03.2006 Ex.P1. PW2, Amar Singh, official of Tehsil Amloh was also examined by the plaintiff/respondent to prove her presence in the Tehsil premises on the target date for execution of the sale deed i.e. 15.03.2007. The suit had been instituted in the month of August, 2007. If all such circumstances are collated and viewed together, no error is found in the concurrent finding

recorded by the Courts below as regards readiness and willingness of the plaintiff to perform her part of the contract.

11. No patent infirmity or perversity is found in the judgments passed by the Courts below, whereby suit for possession of the suit property by way of specific performance stands decreed.

12. No merit.

13. Appeal is dismissed.

10.10.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No