

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

**RSA No.977 of 2019
Date of decision: 15.11.2019**

Surinder Mohan

.....Appellant

Versus

Sukhjinder Singh

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arvind Kashyap, Advocate,
for the appellant.

Ritu Bahri, J.

This appeal has been filed against the judgment of reversal dated 17.09.2018 passed by the Additional District Judge, Fatehgarh Sahib, whereby appeal filed by defendant-respondent (hereinafter referred to as 'the defendant') against the judgment and decree dated 30.01.2017 passed by the Additional Civil Judge (Senior Division), Amloh, has been accepted and the suit of plaintiff-appellant (hereinafter referred to as 'the plaintiff') has been dismissed.

Surinder Mohan-plaintiff (appellant herein) filed a suit for recovery of Rs.2,98,000/- (Rs.2,00,000/- being the principal amount plus Rs.98,000/- as the amount of interest at the rate of 18% per annum) with the averments that vide agreement to sell dated 14.07.2008, defendant had agreed to sell a house (detailed and described in the head note of the plaint) to the plaintiff for a total consideration of Rs.7,50,000/- and received a sum of Rs.1,00,000/- from him in the presence of marginal witnesses. Remaining consideration was to be paid on the date of execution of the sale deed. Stipulated date for registration of sale deed was fixed as 27.10.2008. On 06.10.2008, defendant received additional amount of Rs.1,00,000/- from the

plaintiff out of the remaining sale consideration and a writing, in this regard, was executed and signed by the defendant on the back of the original agreement dated 14.07.2008. In this way, plaintiff had paid total amount of Rs.2,00,000/- as earnest money to the defendant. On the request of defendant, the date for execution and registration of the sale deed was extended from 27.10.2008 to 27.11.2008 and a writing, in this regard, was executed by the defendant on the back of the agreement to sell. On 27.11.2008, plaintiff remained present in the office of Joint Sub Registrar, Mandi Gobindgarh to get the sale deed executed in his favour, but the defendant failed to come present for executing the sale deed. Thereafter, plaintiff came to know that the defendant was not owner of the house property, which was agreed to be sold in favour of the plaintiff. Hence, the present suit.

Upon notice, defendant filed written statement taking preliminary objections with regarding to maintainability, concealment of true facts, estoppel, locus standi, court fee etc. On merits, it was stated that the alleged agreement to sell dated 14.07.2008 was false, forged, fabricated and the same did not bear the signatures of the defendant. Execution of the agreement to sell in question as well as receiving of earnest money of Rs.2,00,000/- from the plaintiff was denied. It was submitted that neither the defendant was owner of the house property nor he ever executed the alleged agreement to sell dated 14.07.2008. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether plaintiff is entitled to recover Rs.2,98,000/- from the

defendant along with interest @ 18% per annum? OPP

2. Whether suit is not maintainable? OPD
3. Whether plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the court? OPD
4. Whether plaintiff has no cause of action and locus standi to file the present suit? OPD
5. Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD
6. Whether suit under valued? OPD
7. Whether the alleged agreement to sell dated 14.07.2008 is false and forged document? OPD
8. Relief.

Trial Court, after hearing learned counsel for the parties, decreed the suit for recovery of Rs.2,00,000/- along with interest at the rate of 9% per annum from 14.07.2008 till dated of decree and future interest at the rate of 6% per annum from the date of decree till its realization. However, the first appellate Court set aside the findings returned by the trial Court and accepted the appeal of the defendant.

Heard.

Before the trial Court, plaintiff-Surinder Mohan stepped into the witness box as PW-1 and tendered certain documents. Baldev Kumar, one of the attesting witnesses, was examined as PW-2, who corroborated the version of the plaintiff. On the other hand, Sukhjinder Singh-defendant appeared as DW-1 and examined Gurmeet Kaur, Handwriting and Fingerprint Expert as DW-2. Trial Court had observed that the plaintiff had duly proved execution of the agreement to sell Ex.P1 and writings Ex.P2 to Ex.P4. The defendant had denied execution of the agreement to sell Ex.P1 and writings Ex.P2 and Ex.P2. He also denied receiving of earnest money of

Rs.2,00,000/-. Defendant, in order to prove that the agreement to sell was bearing his signatures, had examined Gurmeet Kaur, Handwriting and Fingerprint Expert (DW-2), who proved that there is no signatures of the defendant on the agreement to sell, writings and they were copied signatures. Trial Court further observed that it is general tendency that the document expert deposes in favour of such party, who engages him. The science of handwriting examination is not a perfect science and the testimony of handwriting expert could not be given more weightage as in the instant case, execution of the agreement to sell Ex.P1 has been duly proved on record. The defendant has failed to prove that the agreement to sell dated 14.07.2008 was forged and fabricated document. With these observations, the suit was decreed.

However, on appeal, the first appellate Court observed that as per agreement to sell, the respondent had alleged that he was owner in possession of the suit property. But, there was complete denial by the defendant regarding execution of the agreement to sell. The plaintiff had failed to lead any evidence to show that ownership rights vested with the defendant. Since the plaintiff failed to prove ownership of the defendant, the very basis of the claim was eroded. It was incumbent upon the plaintiff to get the signatures of the executant compared by some handwriting expert, but he had failed to do so. It was further observed that Baldev Kumar (PW-2), during his cross-examination, had admitted that Sukhjinder Singh did not sign on Ex.P1 in his presence. Since, the attesting witness himself admitted that the signatures were not made in his presence, he had failed to prove the identity of the executant and had failed to prove the signatures. Further, the plaintiff did not examine the scribe and stamp vendor to prove the execution

of agreement to sell Ex.P1. Finally, the first appellate Court observed that the plaintiff had failed to adduce any evidence in the shape of revenue record, from which, it could be inferred that the defendant was owner in possession of the suit property and he had verified the records before entering into the agreement to sell. Plaintiff has also failed to prove the execution of document. Marginal witness examined by the plaintiff could not prove the identity of the executant (defendant), therefore, his testimony did not exude credibility. On the other hand, the defendant has successfully proved that the agreement in question was shrouded with suspicious circumstances and was a forged document. With these observations, the first appellate Court accepted the appeal of defendant-respondent and set aside the findings returned by the trial Court.

After hearing learned counsel for the appellant and having examined the impugned judgment as well as documents relied upon by the parties, this Court is of the view that plaintiff-appellant has failed to lead any cogent and convincing evidence to prove execution of the agreement to sell Ex.P1. In the absence of any such evidence, suit of the plaintiff-appellant has been rightly dismissed by the first appellate Court. No illegality, much less perversity, has been found in the impugned judgment, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

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

Dismissed.

15.11.2019
ajp

(RITU BAHRI)
JUDGE

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