

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1266 of 1984 (O&M) &
Cross-objection No.1-C of 1985
Date of Decision: January 14, 2019

Ujjagar Singh (since deceased) through L.Rs

...Appellant

Versus

Jaswant Singh (since deceased) through L.Rs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Ramesh Chand Sharma, Advocate,
for the appellant in RSA No.1266 of 1984.

None for the cross-objectors.

AMIT RAWAL, J.

This order of mine shall dispose of Regular Second Appeal No.1266 of 1984 at the instance of the appellant-plaintiff and the Cross-objections No.1-C of 1985 on behalf of the respondent-defendants.

Appellant-plaintiff filed a suit for specific performance of the agreement to sell dated 24.04.1979 in respect of land measuring 25 kanals 14 marlas at the rate of ₹ 2,000/- against payment of ₹ 550/- as earnest money. It was stated that the sale deed was to be executed within one month of the attestation of mutation of inheritance in favour of defendant No.1 Jaswant Singh son of Sant Singh.

Defendant Nos.1 and 2 contested the suit, whereas defendant No.3 was proceeded ex-parte. It was alleged that defendant No.1 was the owner of the property and executed a power of attorney dated 24.04.1979 in favour of one Pritam Singh son of Nanak Singh to get the mutation attested.

Pritam Singh was closely related to Ujjagar Singh plaintiff. Pritam Singh in collusion with the plaintiff prepared a fictitious agreement which did not bear the signature of defendant No.1. The land in dispute was in cultivating possession of the plaintiff as a tenant under defendant No.1 and wanted to grab the land under the garb of the aforementioned agreement.

Since the parties were at variance, the trial court framed the following issues:-

- “1) Whether the defendant No.1 executed an agreement for sale of the land in suit to the plaintiff? OPP*
- 2) What is the effect of the judgment in the previous suit No.128 of 1979 'Ujjagar Singh Versus Jaswant Singh' on the present suit? OP Parties.*
- 3) Whether the plaintiff was ready and willing to perform his part of the contract? OPP*
- 4) Whether the plaintiff is entitled to the injunction prayed for? OPP*
- 5) Relief.”*

Plaintiff Ujjagar Singh, in support of the aforementioned pleadings, appeared himself as PW-1 and also examined PW-2 Bhajan Singh Deed Writer and PW-3 Gulzari Lal, attesting witness. He also examined two witnesses in rebuttal, whereas Jaswant Singh defendant No.1 appeared as DW-2 and brought on record power of attorney Ex.D1.

The trial court, on the preponderance of the evidence, decreed the suit. However, the Lower Appellate Court, as noticed above, reversed the findings confining alternative relief of refund along with interest.

Mr. Ramesh Chand Sharma, learned counsel appearing for the appellants in the appeal submitted that the Lower Appellate Court, being the last court of fact and law, was enjoined upon an obligation to examine each and every document, particularly the fact that not only the execution but

passing of the earnest money in favour of the defendants had been proved through the testimony of Gulzari Lal and Deed Writer despite the fact that the defendants had denied the agreement to sell.

Defendants failed to lead any ingredients of fraud and misrepresentation. It is a co-incidence that the power of attorney was of even date. Bhajan Singh, scribe of the agreement, brought on record the register bearing particulars and serial numbers. Even the issue of misrepresentation and fraud was not framed. The plea of hardship because of the increase in the prices cannot be a ground for defence of the defendants until and unless the same, in view of Explanation-II of sub-section 2(b) of Section 20 of the Specific Relief Act is attributed to the plaintiff.

There is no representation on behalf of the respondents. However, as per the cross-objections, it is asserted that the finding of Lower Appellate Court on the premise that agreement to sell was proved is neither here nor there once it was specifically pleaded that Pritam Singh had played a fraud upon the vendor in executing the agreement to sell as both the agreement and the power of attorney are of even date. Ujjagar Singh is none else but father-in-law of daughter of Pritam Singh attorney holder, therefore, the court should not have ordered for refund of the earnest money.

I have heard the learned counsel for the appellant, appraised the paper book, records of the courts below and of the view that there is no force and merit in the submissions of the learned counsel for the appellant nor there is substance in the cross-objections as the factum of Ujjagar Singh being father-in-law of daughter of Pritam Singh has not been denied.

Gulzar Singh is the attesting witness of the attorney and as well as the

agreement to sell. All these factors lead to an irresistible conclusion that the defendants were not entitled to sell the property as there was a fraud and misrepresentation, for which specific issue was also not required to be framed as the date of the agreement and the witnesses to both the documents are not in dispute. The suit was filed in 1980. Plaintiffs miserably failed to prove how the time was not the essence of the agreement. Plaintiffs admitted in cross-examination that the market value of the suit land was between ₹ 15,000/- to ₹ 20,000/- per killa, whereas land measuring 25 kanals 14 marlas had been sold for a paltry amount of ₹ 2000/-.

In view of what has been observed above, I do not subscribe to the argument of the learned counsel for the appellant to form a different opinion than the one arrived at. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal and the cross-objections are dismissed.

January 14, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No