

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

**CM-4867-C of 2019 in
RA-RS-38 of 2019 in
RSA No.454 of 2019
Date of Decision:09.04.2019**

Mangal Singh

.....Applicant-Appellant

Versus

Raj Kumar Jagota and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Abhilaksh Grover, Advocate
with Mr. Kirpal Singh Thakur, Advocate
for the applicant-appellant.

LISA GILL, J.

CM-4867-C of 2019 and RA-RS-38 of 2019.

Prayer in the application is for condonation of 20 days delay in filing of the review application and review of order dated 13.02.2019 passed by this Court in RSA No. 454 of 2019.

Appeal in question was dismissed as withdrawn vide order dated 13.02.2019 on a specific statement of learned counsel representing the applicant-appellant. Order dated 13.02.2019 reads as under:-

“It is submitted that the appellant seeks to withdraw this appeal. Appeal is accordingly dismissed as withdrawn.”

Learned counsel for the applicant-appellant argues that the applicant-appellant was not present in Court and neither were any such instructions given to his counsel on 13.02.2019. It is further argued that the applicant-appellant has been agitating his case right from the very

beginning and is in-fact a victim of a fraud committed by the plaintiffs. The applicant-appellant, it is submitted should not be put to hardship due to the inadvertence or callousness of the counsel engaged. It is urged that while not granting the relief of specific performance, learned Courts below had directed recovery of the earnest money from the present applicant-appellant. No compromise whatsoever has taken place between the parties. Therefore, there was no question or occasion for the present applicant-appellant to withdraw this appeal. Applicant-appellants seeks to pursue the matter on merits.

The applicant-appellant, it is submitted came to know about the withdrawal of his appeal during execution proceedings. The present application has been filed immediately thereafter. As the applicant-appellant was earlier not aware of order dated 13.02.2019, delay of 20 days in filing the review application has occurred, which may be condoned in the interest of justice.

Heard learned counsel for the applicant-appellant.

It is informed by learned counsel for the applicant-appellant on a pointed query of the Court that no complaint etc., has been filed by the applicant-appellant against the previous counsel. While not delving into the allegations as raised by the applicant-appellant, I consider it just and expedient in the facts and circumstances of the case to allow this application and hear the matter on merits.

In view of the above, delay of 20 days in filing of the review application is condoned. Order dated 13.02.2019 is recalled. Appeal is restored at its original number.

At request of learned counsel for the appellant, main appeal is taken up for hearing today itself.

Applications are disposed of.

R.S.A No. 454 of 2019(O&M).

Appellant-defendant is aggrieved of judgment and decree dated 06.02.2018, passed by the learned Addl. Civil Judge (Sr. Division), Nakodar, as well as judgment and decree dated 31.10.2018, passed by the learned Additional District Judge, Jalandhar, whereby relief of specific performance of the agreement to sell dated 20.06.2003 was declined, but the suit filed by the plaintiffs-respondents was decreed with regard to alternate relief of recovery of ₹3,00,000/- along with interest @6% per annum from the date of filing the suit till its realization.

Brief facts necessary for the adjudication of the case are that the plaintiffs-respondents filed a suit for possession by way of specific performance of agreement to sell dated 20.06.2003 in respect of the land as described in the plaint and for alternate relief of recovery of ₹6,00,000/-. It is pleaded that the appellant-defendant is the owner of land measuring 21 Kanal 2 Marlas as described in the plaint. Defendant on 20.06.2003, entered into an agreement to sell the abovesaid land in dispute at the rate of ₹3,00,000/- per acre in favour of the plaintiffs-respondents and defendant received a sum of ₹3,00,000/- as earnest money from them in cash. Defendant agreed to execute and register the sale deed in their favour on or before 04.01.2006, after receipt of the balance sale consideration from them. It is further pleaded that in case, plaintiffs resale from the terms and conditions of the agreement, then the earnest money will stand forfeited and

in case defendant resiles from the same, he will be liable to pay double the amount of earnest money i.e. ₹3,00,000/- as earnest money and ₹3,00,000/- as damages to them and plaintiffs will also be entitled to get the sale deed executed and registered in their favour through the Civil Court by filing a suit for specific performance the defendants. It is stated that plaintiffs remained present on 04.01.2006 in the office of Sub-Registrar, Nakodar, to perform their part of agreement, but the defendant did not come present in the office of Sub-Registrar, Nakodar to perform his part of agreement. Plaintiffs got their presence marked in the office of Sub-Registrar, Nakodar in order to show their readiness and willingness to perform their part of agreement by executing an affidavit. Plaintiffs further pleaded that they always remained ready and willing to perform their part of agreement, but defendant committed breach of agreement. Plaintiffs requested the defendant many times to admit their claim, but to no avail. Therefore, the suit was filed.

Upon notice, defendant did not appear before the learned trial Court and was proceeded against *ex parte*. Suit of the plaintiff was decreed *ex parte* vide judgement and decree dated 03.11.2006. Subsequently, defendant filed an application under Order 9 Rule 13 CPC, which was allowed vide order dated 16.10.2015 and *ex parte* judgement and decree was set aside and the suit restored at its original number.

Defendant resisted the suit. Various preliminary objections were raised in the written statement. Averments on merits were denied, though it was admitted that the defendant was owner of 23 Kanals 10 Marlas of land. It was denied that defendant ever entered into an agreement to sell with the

plaintiffs. It was pleaded that the alleged agreement to sell is a forged and fabricated document. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiffs are entitled to seek possession of the suit property by way of specific performance of such agreement to sell?OPP
2. Whether in the alternative, plaintiff is entitled to recover any amount from the defendant and if yes, what amount? OPP
3. Whether suit of the plaintiff is not maintainable in the present form?OPD
4. Whether plaintiffs are estopped from filing the present suit by their own act and conduct?OPD
5. Whether plaintiffs have not come to the Court with clean hands and have suppressed material facts of the case? OPD
6. Whether plaintiffs have got no locus standi and cause of action to file the present suit?OPD
7. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances, as well as the evidence on record concluded that the plaintiffs had successfully proved the execution of agreement to sell dated 20.06.2003 (Ex.P-2). Plaintiff no.1-Raj Kumar Jagota, himself stepped in the witness box as PW-1. Rajvarinder Singh, one of the attesting witness was examined as PW-2. Inderjit Singh, stamp vendor was examined as PW-3. However, relief of specific performance was denied to the plaintiff, with alternative relief of recovery of ₹3,00,000/- (earnest money) being ordered.

Appeal preferred by the present appellant-defendant was dismissed by the learned Additional District Judge, Jalandhar, vide impugned judgement and decree dated 31.10.2018.

Learned counsel for the appellant vehemently argues that agreement to sell dated 20.06.2003(Annexure P-2) is a forged and fabricated document. It was never executed by the defendant-appellant. Appellant never appended his signatures on the said document. It is vehemently argued that it was for the plaintiff to prove the execution of the agreement. In case, foundational facts are not proved by the plaintiffs, the onus cannot shift to the defendant. It is submitted that the plaintiff has to stand on his own legs and not to depend upon the weakness of the defendant's case. Learned counsel for the appellant relies upon the judgement of this Court in **Dhani Ram and others Vs. Siri Niwas and another 2009(33) RCR (Civil) 189** and judgement of Telangana and Andhra Pradesh High Court in **Dhanraj (died) per L.Rs and Vijender Kumar Kedia Vs. Satesh 2016(2) ALT 417**.

Execution of the agreement to sell in this case, it is urged has not been proved. Learned counsel for the appellant submits that merely because the appellant did not get his signatures on the agreement to sell examined from an expert witness, cannot be held against him. The scribe in this case was not examined, though, he is mentioned to have died. His death certificate is not on record to substantiate the same. Furthermore, the second attesting witness-Des Raj has not stepped in the witness box. Moreover, in the agreement to sell dated 20.06.2003, name and address of the witness is not mentioned. PW-2-Rajvarinder Singh, the other attesting witness could not identify the signatures of Des Raj. Furthermore, there is no receipt of earnest money, neither has the source of this money been proved by the plaintiff. There is nothing on record to show from where the plaintiff got this money. Moreover, readiness and willingness of the plaintiffs to execute this

agreement to sell is not proved on record. Presence of the plaintiffs before the Sub-Registrar, Nakodar on 04.01.2006 is not proved. Reference is made to the statement of plaintiff no.1-Raj Kumar Jagota.

Learned counsel for the appellant further submits that no legal notice was ever issued by the plaintiffs after the defendant allegedly failed to turn up for execution of the said agreement to sell on 04.01.2006 and a suit was straightway filed on 28.03.2006. The present appellant was proceeded against *ex parte*. Suit was decreed on 03.11.2006. Present appellant on coming to know of the same, filed an application under Order 9 Rule 13 CPC, which was allowed on 16.10.2015 and *ex parte* judgement and decree dated 03.11.2006 was set aside and suit was restored at its original number. This in itself shows lack of *bona fides* on the part of the plaintiffs. Land in question was very valuable and could not have been sold for the amount as mentioned in the agreement to sell. It is further contended that plaintiff no.2 and his father are involved in a number of other fraudulent deals. FIR No. 155 dated 28.06.2012, Police Station Nakodar, has been registered against them and is pending adjudication. In this respect, an application under Order 41 Rule 27 CPC has now been moved by the appellant seeking to place on record a copy of FIR No. 155 dated 28.06.2012, challan/final report therein dated 24.07.2013, copy of order dated 20.02.2014 framing charge and copy of order dated 02.02.2015. It is further pointed out that before the learned trial Court, it was the father of the plaintiff no.2, who was defending the plaintiffs. It is thus prayed that present appeal be allowed and the suit filed by the plaintiffs-respondents be dismissed.

I have heard learned counsel for the appellant at length and

have gone through the photocopy of part of the record produced in Court today with his assistance.

In order to prove execution of the agreement to sell dated 20.06.2003, PW-1-Raj Kumar Jagota (plaintiff no.1) himself stepped in witness box and pleaded his case as per the plaint. There is no dispute regarding the present appellant being the owner of the property in question. Perusal of the statement of PW-2-Rajvarinder Singh, one of the attesting witness of the said agreement to sell, reveals that on 20.06.2003, defendant-appellant-Mangal Singh entered into an agreement to sell his land measuring 21 Kanals 2 Marlas, as described in the plaint, with the plaintiffs at the rate of ₹3,00,000/- per acre and received a sum of ₹3,00,000/- from the plaintiffs in his presence and the other witness-Des Raj Verma. PW-2 specifically deposed that the agreement was scribed in his presence by Balwant Singh in the old Courts and Balwant Singh was a regular deed writer. Though, PW-2 in his cross-examination has mentioned that the name and address of Des Raj is not mentioned, but he has specifically stated in his examination-in-chief that Des Raj appended his signatures on the said document in his presence after receipt of earnest money by the defendant. PW-1 and PW-2, have specifically explained that the scribe of the agreement to sell, Balwant Singh has died. Merely because death certificate of Balwant Singh has not been placed on record, cannot be a ground to doubt the veracity of the agreement to sell in the absence of any evidence to the contrary.

PW-3-Inderjit Singh, stamp vendor, brought his register for the period 18.06.2003 to 24.10.2003 and he specifically deposed that as per record, the present appellant purchased stamp paper for an amount of

Rs.500/- on 20.06.2003 and an entry in this respect was made at Sr. No. 3599 on 20.06.2003 in his register. Copy of the register containing the said entry was proved by PW-3 as Ex.PW3/1. Merely because PW-3 could not identify the appellant in Court is again not a ground to doubt the veracity of the agreement to sell. It is a matter of record that PW-3 is a stamp vendor. Stamp paper was purchased by the appellant in the year 2003. Inderjit Singh was examined in the year 2016 i.e. after 13 years and a stamp vendor is not expected to recall each and every person who has purchased stamp papers from him. It is to be noted that PW-3 specifically stated that the appellant is not known to him personally.

Another argument vehemently raised by learned counsel for the appellant is that passing of the consideration amount is not proved and neither has the plaintiff proved the source of the amount in question. PW-1- Raj Kumar Jagota, in his cross-examination has clearly stated that he has a brick-kiln and he had given the cash amount to the defendant. PW-2 is categorical in his assertion about handing over of the earnest money in his presence. There is no evidence on record to refute the same.

At this juncture, it is relevant to note that the defendant-appellant has categorically denied execution of the agreement to sell. Stand of the defendant is that agreement to sell dated 20.06.2003 is a forged and fabricated document, never executed by him and that he had never, ever appended his signatures on the same. Both the learned Courts below have rightly observed that the defendant took no steps to substantiate his plea of the said documents being forged and fabricated. No handwriting expert was examined by the appellant to buttress his case.

Plaintiff has indeed succeeded to prove the execution of the agreement to sell, whereas the present appellant has failed to prove that the document in question is a forged and fabricated document. As noted above, plaintiff no.1 himself stepped in the witness box. PW-2, Rajvarinder Singh, one of the attesting witness proved the said agreement to sell as well as passing of the consideration amount. PW-3-Inderjit Singh, the stamp vendor, has also proved the due execution of the agreement to sell. Catagoric statement of PW-3 regarding purchase of stamp paper by the appellant and presence of appellant's signatures at the relevant entry (Ex.PW3/1) in PW-3's register is not rebutted by any evidence on record.

It is relevant to refer to the testimony of the defendant, at this stage. Defendant-appellant has taken a categoric stand that the agreement to sell dated 20.06.2003 is a forged and fabricated document and that he never executed the said agreement to sell. There is no averment to the effect that his signatures were obtained fraudulently. It is the defendant's stand that he never appended his signatures on the said agreement to sell and that the signatures in different languages are not his signatures. Defendant-appellant in his cross-examination went to the extent of even denying his signatures on the power of attorney. He has also denied his signatures on certain other documents, though learned counsel for the appellant submits that the appellant has admitted his signatures on the written statement and his affidavit and it has been wrongly observed by both the learned Courts below that the appellant denied his signatures on the same. However, it is a matter of record that the defendant while deposing as DW-1 has specifically denied his signatures on the power of attorney dated 03.12.2015 in the suit. A

perusal of his testimony reveals that after denying his signatures on the power of attorney dated 03.12.2015, DW-1 stated that he can never identify his signatures on the documents because his eye sight is weak. DW-1, Mangal Singh (defendant) went to the extent of saying that he does not even know what is written in his affidavit submitted before the learned trial Court. Appellant-defendant has further stated that he has no grievance or enmity with the attesting witnesses-Rajvarinder Singh and Desh Raj. I have perused testimony of DW-1 and I find no reason whatsoever to disagree with the finding of both the learned Courts below.

Learned counsel for the appellant has tried to point out that there is a variation in the purported signatures of the appellant even as they appear on the agreement to sell dated 20.06.2003 and the same is apparent to the naked eye itself. Therefore, falsity of the document is apparent on record and a handwriting expert was not required to be examined. This argument is clearly devoid of any merit and not borne out by the record. I have perused attested photocopy of the statements of the appellant recorded on 04.11.2016 and thereafter on 07.03.2017, produced in Court today by learned counsel for the appellant. There appears to be a variation even in these signatures. Be that as it may, it is relevant to note that defendant-appellant has taken a categorical stand that the agreement to sell dated 20.06.2003 is a forged and fraudulent document and signatures on the said document are not his signatures, however he has taken no steps whatsoever to have the signatures compared with his own specimen signatures, but has taken a belligerent stand that it was incumbent upon the plaintiff to have proved his case and the present appellant was under no duty to examine an expert in this respect.

Such a stand cannot be countenanced in the given facts and circumstances of the case wherein the plaintiff has led positive evidence on record to prove execution of the agreement to sell dated 20.06.2003. Appellant has not led any evidence to rebut the same. Furthermore, merely because the defendant-appellant is a resident of Delhi also cannot be a ground to doubt the genuineness of the agreement to sell dated 20.06.2003, which has been duly proved by the plaintiffs. It is rightly held by both the learned Courts below that the defendant-appellant has failed to prove that the document in question is a forged and fabricated document. Judgements relied upon by learned counsel for the appellant are of no avail to the appellant in the given factual matrix.

Learned counsel for the appellant-defendant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below returned concurrent findings vide impugned judgements, after proper appreciation and consideration of the evidence on record, which calls for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 06.02.2018 and 31.10.2018 passed by the learned Addl. Civil Judge (Sr. Division) Nakodar and learned Additional District Judge, Jalandhar, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

09.04.2019
s.khan

[LISA GILL]
Judge

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