

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

RSA No.3436 of 2019 (O&M)

Date of decision: 18.07.2019

Partap Singh and another

.....Appellants

Versus

Amrik Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Tribhawan Singla, Advocate,
for the appellants.

Ritu Bahri, J.

CM No.9275-9276-C of 2019

In view of the averments mentioned in the applications, same are allowed and delay of 79 days in filing and 16 days in re-filing of the appeal is condoned.

RSA No.3436 of 2019

This appeal has been filed against the judgment dated 15.11.2018 passed by the Additional District Judge, Barnala, dismissing an appeal filed by plaintiffs-appellants (hereinafter referred to as 'the defendant') against the judgment and decree dated 05.11.2015 passed by the Additional Civil Judge (Senior Division), Barnala whereby suit filed by them for possession of the suit property by way of specific performance of agreement to sell, has been dismissed.

Partap Singh etc.-plaintiffs (appellants herein) (hereinafter referred to as 'the plaintiffs') filed the above said suit by alleging that Amrik Singh-defendant No.1 and Saroop Singh (since deceased) executed an agreement to sell dated 10.06.2008 for sale of the property measuring 08

Kanals 18½ Marlas (out of which, there was a *pahi* measuring 18 Marlas) for a sale consideration of Rs.2,00,000/- per kila. Rate of the *pahi* was settled as Rs.5,00,000/- per kila. On the date of execution of agreement to sell, defendants (Amrik Singh and Saroop Singh) received Rs.2,00,000/- as earnest money and remaining amount was to be paid upto 15.11.2008. Later on, date of registration of the sale deed was extended vide writing on the backside of the agreement to sell and stipulated date was fixed as 15.03.2009. On this writing, both the parties affixed their thumb impressions. Thereafter, again, vide writing dated 12.08.2009, time was extended for registration of the sale deed up to 12.02.2010. However, Saroop Singh had died and his property was inherited by defendant Nos.2 to 4. As per plaintiffs, they had requested the defendants to execute the sale deed, but they postponed the matter. Hence, the suit.

Upon notice, defendants (respondents) filed written statement taking preliminary objections with regard to maintainability of the suit, locus standi, concealment of facts etc. On merits, execution of the alleged agreement to sell and the writings were specifically denied. Receipt of earnest money was also denied. It was stated that the alleged agreement dated 10.06.2008 and writings dated 13.11.2008, 13.03.2009 and 12.08.2009 were forged and fabricated document(s). 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 preliminary issues were framed by the trial Court:-

1. Whether the plaintiffs are entitled to the relief of specific performance of agreement dated 10.06.2008? OPP
2. Whether the plaintiffs always remained ready and willing to

perform their part of contract, as prayed for? OPP

3. Whether defendants failed to perform their part of contract, as prayed for? OPP
4. Whether the suit is not maintainable? OPD
5. Whether agreement to sell dated 10.06.2008 is forged and fabricated? OPD
6. Relief.

Trial Court, after hearing learned counsel for the parties, dismissed the suit. Appeal against the said judgment also met the same fate.

Both the Courts have given a concurrent finding of fact that the plaintiffs have not been able to prove the execution of the agreement to sell on the following grounds:-

- (i) In the written statement, defendants had denied execution of the agreement to sell, but the plaintiffs did not examine any handwriting and fingerprints expert to prove that the thumb impression/signatures on the said agreement were marked/appended by defendants Amrik Singh and Saroop Singh.
- (ii) Witness to the agreement to sell namely Gurcharan Singh, while appearing as PW-1, could not depose about the date, month and year regarding extension of time.
- (iii) Plaintiffs never led any evidence to show that in order to execute the sale deed on 15.11.2008, they had appeared before the Sub Registrar. Even on the extended date i.e. 15.03.2009, they did not appear before the office of Sub Registrar for execution of the sale. Thereafter, when the date was extended, they made no effort to approach the Office of Sub Registrar. After 12.02.2010, a legal notice Ex.P4 was served upon the defendants on 06.05.2011 i.e. after 15 months of the stipulated

date. It has been further observed that all the evidence goes to show that the plaintiffs were never ready and willing to execute the above said sale deed.

(iv) Even, the presence of Sukhdev Kaur (PW-2) at the time of execution of the agreement to sell Ex.P1 was held to be doubtful. Neither the agreement Ex.P1 is thumb marked nor signed by Sukhdev Kaur. The said documents bears only three thumb impressions Amrik Singh, Saroop Singh and Gurcharan Singh. Agreement Ex.P1 was not even signed or thumb marked by Partap Singh. While appearing as PW-2, Sukhdev Kaur was unable to tell the dates, when time for registration of the sale deed was extended. She stated that endorsements regarding extension of time regarding execution of sale deed were signed by her, but Ex.PW3/2 bears her thumb impressions. Endorsement dated 13.11.2008 also bears the thumb impressions of Sukhdev Kaur, whereas endorsement dated 13.11.2008 was not proved. She failed to prove that payment of Rs.2,00,000/- was given to the defendants, which was received after making sale of land by them. No sale deed was placed on record by the plaintiffs to show that they had got this amount of Rs.2,00,000/- after selling their land.

(v) Malkiat Singh, Advocate (PW-4), who was scribe of the agreement to sell Ex.P1, did not produce any register or entry in that respect.

With the above observations, suit of the plaintiffs-appellants was dismissed by both the Courts below.

Learned counsel for the appellants has argued that Sukhdev Kaur

was not able to give correct facts while appearing as PW-2 as there was a gap between execution of the agreement to sell and recording of her statement before the Court.

However, on a specific query, learned counsel for the appellants was not able to give reason as to why plaintiffs-Partap Singh and Sukhdev Kaur did not put their signatures on the agreement to sell. Moreover, the lower appellate Court has further observed that the attesting witness of agreement to sell Ex.P1, namely Gurcharan Singh (PW-1), was unable to tell the date, month and year of execution of the said agreement. He was also not able to state, whether the plaintiffs had come for registration of the sale deed or not. He was also not aware about the name of the deed writer. Furthermore, no khasra number of the land was mentioned in the agreement to sell Ex.P1, whereas in notice Ex.P4, khasra number of the land was mentioned, but jamabandi of the year was not mentioned.

After going through the impugned judgments, this Court is of the view that plaintiffs have miserably failed to prove that the agreement to sell Ex.P1 was executed by the defendants. Accordingly, suit filed by the plaintiffs (respondents) has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

18.07.2019
ajp

(RITU BAHRI)
JUDGE

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