

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

Regular Second Appeal No. 1702 of 2019(O&M)

Date of Decision: December 02 , 2019.

Karamjit Singh APPELLANT (s)

Versus

Nirmal Kaur RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. C.M.Munjial, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgments and decrees dated 30.03.2018 and 10.01.2019 passed by the learned Civil Judge(Junior Division), Ferozepur and the learned Additional District Judge, Ferozepur, respectively, whereby suit for a decree of specific performance of agreement to sell dated 27.08.2010, filed by the plaintiff has been dismissed.

Appellant-plaintiff filed a suit seeking a decree of specific performance of agreement to sell dated 27.08.2010 by the husband of the respondent-defendant in respect to the land as detailed in the plaint. In the alternate, he prayed for recovery of ₹30,00,000/- i.e., ₹23,00,000/- paid as earnest

money and ₹70,000/- as damages and interest. It is pleaded that Sardar Singh son of Kashmir Singh was the owner-in-possession of the property in question. Respondent-defendant is the wife of Sardar Singh, who passed away on 26.04.2011. It is pleaded that an agreement to sell dated 27.08.2010 was entered into between the appellant-plaintiff and Sardar Singh in respect to the suit property for a total sale consideration of ₹30,00,000/-. ₹23,00,000/- was received by Sardar Singh as earnest money and it was agreed that the sale-deed of the suit property would be executed and registered on 07.05.2012. However, Sardar Singh passed away on 26.04.2011. After his death, mutation of inheritance was sanctioned in favour of his wife, defendant-Nirmal Kaur. Defendant, however, did not come forward for execution of the sale-deed on 07.05.2012, despite being intimated by the plaintiff. Plaintiff waited till 5.00 p.m. and, thereafter marked his presence by filing an application before the Sub Registrar. Plaintiff was always ready and willing to perform his part of the agreement. Possession of the suit property, it is pleaded, was delivered to the plaintiff at the time of execution of the agreement to sell. Accordingly, present suit was filed.

Defendant resisted the suit. Various preliminary objections were raised, averments on merits were controverted. It is stated that the defendant married Sardar Singh in the year 2009, who died on 26.04.2011. Mutation of his inheritance was sanctioned in favour of the defendant alone as she was the only legal heir of Sardar Singh. Marriage of the defendant was however solemnized by way of Chadar ceremony with Raju Singh on 03.02.2012. Anand Karaj was also performed and the entry regarding marriage was made in the register of Gurudwara Sahib on 03.02.2012. Marriage certificate was issued by the Head

Granthi of the said Gurudwara. Defendant alongwith Raju Singh and his brothers started cultivating the land falling to the share of Sardar Singh. However, Raju Singh and his family members started pressurizing the defendant to transfer the whole land as well as the connection of electric motor in favour of Raju Singh. When the defendant refused to do so, a dispute arose. She was turned out of the matrimonial home and she started residing with her parents.

It is further pleaded that at the instance of Jagtar Singh, Raju Singh, Paramjit Singh and others, the plaintiff forged and fabricated the alleged ante-dated agreement in connivance with the marginal witnesses, scribe and stamp vendor, only with a view to grab the land of the defendant. Signatures of Sardar Singh are stated to be forged. Suit was filed impleading the defendant by intentionally mentioning her wrong address and the plaintiff procured an *ex parte* decree dated 07.08.2013. Thereafter, the said decree was set aside at the instance of the defendant. FIR No.6 dated 12.01.2016 under Sections 420/465/467/468/471/506/120B IPC was registered against the plaintiff and others at Police Station Mamdot. When the police party raided the plaintiff's house, they assaulted the police officials. Thereafter, another FIR No.7 dated 13.01.2016 under Sections 353/186/148/149 IPC, Police Station Mamdot was registered. Another case i.e., FIR No.55 dated 08.05.2015 under Sections 457/34 IPC was also registered against the plaintiff, Paramjit Singh, Raju Singh and others. It is further pleaded that falsity of the claim is also apparent from the fact that the suit land is alleged to have been sold for a total sale-consideration of ₹30,00,000/- i.e., at the rate of ₹4,30,000/- per acre approximately, whereas the market rate of the suit land, at the time of execution of the alleged agreement to sell was more than ₹20,00,000/-

per acre. Suit land was stated to be joint with the other co-sharers and was never subjected to partition. Dismissal of the suit was prayed for.

Replication was filed. On the basis of the pleadings of the parties, following issues were framed:-

1. Whether Sardara Singh, since deceased husband of defendant executed agreement to sell dated 27.08.2010 with regard to the suit property in favour of the plaintiff after receipt of ₹23,00,000/- as earnest money? OPP
2. If issue No.1 is proved, whether the plaintiff was always and is still ready and willing to perform his part of the contract? OPP
3. If issues No.1 & 2 are proved, whether the plaintiff is entitled to relief of possession by way of specific performance of agreement to sell dated 27.08.2010? OPP
4. If issue No.1 is proved but issues No.2 and 3 are not proved, whether the plaintiff is entitled to alternative relief of recovery of ₹30,00,000/- alongwith interest? OPP
5. Whether the suit of the plaintiff is not maintainable? OPP
6. Whether agreement alleged by the plaintiff is forged and fabricated document? OPD
7. Whether the plaintiff has not come to the Court with clean hands? OPD
8. Relief.

Evidence was led by both the parties to prove their respective claims/stands.

Learned trial court on considering the evidence on record, facts and circumstances, concluded that the plaintiff failed to prove his case. In fact, the plaintiff was found to have concealed material facts and not come to the court with clean hands. Agreement to sell dated 27.08.2010 (Ex.P1) was found to be a forged and fabricated document.

Appeal filed by the appellant was dismissed by the learned Additional District Judge, Ferozepur vide judgment and decree dated 10.01.2019. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in law and on facts in dismissing the suit filed by the appellant-plaintiff. The evidence on record has been completely misread. It is contended that execution of the document (Ex.P1) is fully proved from the statements of the plaintiff, PW1 and the attesting witness Jagtar Singh, PW2. Moreover, the expert witness PW5 Sukhjinder Singh has clearly opined in favour of the plaintiff. It is further submitted that mere registration of an FIR does not prove that the agreement to sell, in question, has been forged. The receipt of ₹23,00,000/- by Sardar Singh, it is submitted, is proved on record. Moreover, it is not necessary for the plaintiff to have proved the source of ₹23,00,000/- by leading evidence, neither was examination of the stamp vendor or deed writer required. Possession of the suit property was also proved to have been given to the plaintiff. It is thus prayed that both the impugned judgments and decrees dated 30.03.2018 and 10.01.2019 passed by the learned Civil Judge (Junior Division), Ferozepur and the learned Additional District Judge, Ferozepur, respectively, be set aside. Consequently, suit filed by the plaintiff/appellant be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

There is no dispute that the owner of the suit property was originally Sardar Singh. After his death, the property devolved upon his wife, the

defendant-Nirmal Kaur. The claim set up by the plaintiff is that the agreement to sell dated 27.08.2010 (Ex.P1) was arrived at between the plaintiff and Sardar Singh in respect to the suit property for a total sale consideration of ₹30,00,000/- with ₹23,00,000/- i.e., a substantial part of the consideration amount being paid on 27.08.2010 itself. However, the date specified for execution of the sale-deed was after about one year and eight months. Possession of the suit property is stated to have been handed over to the plaintiff on 27.08.2010. Both the learned courts below have concurrently held that there is no evidence on record to indicate the handing over of possession of the suit property to plaintiff. The revenue records did not indicate his possession. Naib Tehsildar, Mamdot visited the spot to take possession of the suit land pursuant to the order passed in the proceedings under Section 145 Cr.P.C. However, he did not find the plaintiff to be in possession of the suit property.

Registration of FIR No.6 dated 12.01.2016 under Sections 420/465/467/468/471/506/120B IPC, in respect to the forgery of agreement (Ex.P1) is a matter of record. Though mere registration of an FIR itself, may not *per se*, be sufficient to hold that the said document is a fraudulent one, it is to be noticed that the same is only one of the attending circumstances which are evident from the record to prove the fraudulent nature of the said document. The said agreement (Ex.P1) was never entered in the register by the Deed Writer. It is further a matter of record that before registration of FIR No.6 dated 12.01.2016, the police officials got examined the disputed signatures on Ex.P1 with the standard signatures of Sardar Singh from the Forensic Science Laboratory, Chandigarh. DW7 Kulbhushan Kumar, Ahlmad produced the file of the criminal

case and proved a copy of the report as Ex.D15. It is evident that the alleged signatures on the agreement (Ex.P1) were not found to be that of Sardar Singh. Learned courts below have rightly ignored the opinions given by the respective Handwriting Experts examined by both the parties i.e., PW5 Sukhjinder Singh and DW6 Sanjiv Sharma. Both the said experts have given reports in favour of the parties examining them. Reliance has been rightly placed on the report of the Government Forensic Laboratory, Ex.D15, by the learned courts below. The stamp vendor who sold the stamp papers, on which the agreement (Ex.P1) was drawn, was not examined. Entries in his register could very well have thrown light on the matter. In fact, the agreement (Ex.P1) does not bear the name or signature of the Deed Writer or his stamp. Plaintiff while testifying as PW1 and PW2 Jagtar Singh, stated that Deed Writer had appended his signature and seal on the agreement, which is in contradiction to the evidence on record. It is in this view of the matter that non-examination of the scribe and stamp vendor becomes relevant.

Furthermore, the plaintiff is claimed to be in possession of ₹23,00,000/- in cash, having borrowed the said amount from his Commission Agents, Pawan Kumar Duggal and one Avtar Singh. None of the said persons were examined. It is rightly observed by the learned first appellate court that in case Pawan Kumar Duggal is a commission agent, he would necessarily have been maintaining accounts while lending money. Therefore, it is rightly concluded by both the learned courts below that there is nothing on record to show that the plaintiff was in possession of a huge amount of ₹23,00,000/- in cash for making payment to Sardar Singh on 27.08.2010. It is relevant to note, at

this stage, that necessity for examining the source of ₹23,00,000/- may again not be relevant by itself, but in the given factual matrix, the same is one of the material aspects which lends credence to the plea of the agreement (Ex.P1) being a fraudulent document. It is indeed a case of respondent/defendant being sought to be duped of her property after the death of Sardar Singh in a devious manner.

Both the learned courts below have rightly dismissed the suit filed by the plaintiff and have rendered concurrent findings of fact on the basis of proper appreciation of the evidence on record which do not call for any interference by this Court. Learned counsel for the appellant is unable to point out any question of law, much less a substantial question of law which may be involved for consideration or any ground for interference in terms of Section 41 of the Punjab Courts Act.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 30.03.2018 and 10.01.2019 passed by the learned Civil Judge (Junior Division), Ferozepur and the learned Additional District Judge, Ferozepur, respectively, which calls for interference by this Court.

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

(LISA GILL)
JUDGE

December 02 , 2019.
'om'

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No