

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

RSA-3402-2000(O&M)

Date of decision:-25.11.2019

Bhajan Singh and others

...Appellants

Versus

Jatinder Singh through his legal heirs

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.M.L. Saini, Advocate
for the appellants.

Mr.Naveen Batra, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Jatinder Singh son of Sh.Sital Singh, resident of Mohalla Kesgarh, Anandpur Sahib had brought a suit against defendants Bhajan Singh, Fateh Singh, Sohan Singh – sons and Smt.Ajit Kaur alias Jeeto – daughter of Santa Singh, seeking possession as owner by way of specific

performance of agreement to sell dated 26.4.1993 regarding the land measuring 4 kanals 10 marlas being 90/260 share out of land measuring 13 kanals bearing khewat No.171, khatauni No.200, khasra numbers 26/R/16 (6-10), 25/1(3-4), 30(0-4), 27R/20/3(2-4), 21/1(0-18) as per jamabandi for the year 1991-92 with consequential relief of permanent injunction restraining the defendants from alienating the suit land and from creating the charge of any kind over it.

As per the version of the plaintiff, the deceased mother of the defendants, namely, Smt.Har Kaur being owner of the suit land had entered into an agreement to sell the same with him on 26.4.1993 for a sum of Rs.27,000/-, receiving the said amount at the time of agreement; the stipulated date for execution and registration of sale deed was fixed as 30.11.1994; Smt.Har Kaur had expired on 20.8.1994 and her estate was inherited by the defendants, who are her class first heirs; the plaintiff has always been ready and willing to perform his part of contract; the defendants did not come forward to execute the sale deed in favour of the plaintiff and to get it registered, rather they threatened to alienate the suit land and create charge over it . According to the plaintiff, he had served a notice dated 1.9.1994 upon the defendants but defendants did not reply to the same. Finally, the plaintiff brought the suit in question.

On getting notice, the defendants appeared and filed a

joint written statement contesting the suit denying the averments in the plaint, rather contending that Smt.Har Kaur remained the joint owner in possession of the suit land along with her other land and on her death her entire property including the suit land has been inherited by the defendants in equal shares on the basis of natural succession and mutation No.1024 in that regard has since been sanctioned in their favour; the suit property is *Chahi* and is located in village Mazari, which is presently within the limits of Municipal Committee, Anandpur Sahib; the suit land adjoins the ancestral abadi land bearing khasra No.29(1-5) and is in the vicinity of S.D. High School; the bus stand of Anandpur Sahib and Civil Hospital are also located nearby, therefore the market value of the property is Rs.3,000/- per marla; that Smt.Har Kaur was not in need of money and as such there was no necessity for her to sell the suit property and the agreement to sell set up by the plaintiff is not genuine; as a matter of fact the plaintiff was acquainted with the Smt.Har Kaur having his land just near the suit land, so Smt.Har Kaur being an illiterate rural and old aged lady reposed confidence in the plaintiff; apart from that Smt.Har Kaur was a *Parda Nashin* lady and she had no independent advice at the time of alleged execution of the agreement and the plaintiff might have obtained her thumb impressions on blank papers and then converted the same into agreement; the agreement is invalid, unnatural and without any

consideration and the same was not result of free mind of Smt.Har Kaur; as a matter of fact Smt.Har Kaur had grown mentally and physically weak and she was not having good eye-sight; she was hard of hearing also; she had not disclosed to the defendants that she had entered into an agreement with the plaintiff; she could not have sold the property in the suit at a nominal value of Rs.27,000/- to the plaintiff when the market value of the land is Rs.3,000/- per marla; the recital in the agreement regarding delivery of possession were wrong, false and baseless; the defendants had got every right to deal with the suit property. In the end, the defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether deceased Har Kaur signed and executed an agreement to sell dated 26.4.1993 in favour of the plaintiff on receipt of an amount of Rs.27,000/- the sale price? OPP.
2. If issue No.1 is proved, whether agreement dated 26.4.1993 is binding against the present defendants? OPP.
3. Whether the plaintiff has always been ready and he is still ready and willing to perform his part of the contract? OPP.

4. Whether the agreement in question is without consideration and is unconscionable and the result of undue influence and fraudulent mis-representation, as alleged, if so, to what effect?OPD.

5. Relief.

In order to prove his case, the plaintiff had got recorded his statement as PW1 besides examining Sh.Balwant Singh as PW2 and Sh.Brij Nath, Deed-Writer as PW3. The plaintiff had also tendered in evidence certain documents.

On the other hand, the defendants had examined Sh.Bhajan Singh as DW1 and Sh.Kishan Chand as DW2.

In rebuttal evidence, the plaintiff had also examined Sh.Sucha Singh, Registration Clerk as PW4.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 to 3 against the plaintiff and in favour of the defendants, issue No.4 in favour of the defendants and against the plaintiff. Resultantly vide judgment and decree dated 8.11.1996 the suit of the plaintiff was dismissed by the trial Court.

Feeling aggrieved by the said judgment and decree, the plaintiff filed an appeal in the Court of District Judge, Rupnagar, which was assigned to learned Additional District Judge, Rupnagar, who, vide judgment and decree dated 9.6.2000 accepted the same, set aside the judgment and decree passed by the trial Court and decreed

the suit filed by the plaintiff for possession by way of specific performance of agreement to sell dated 26.4.1993 directing the defendants to execute the sale deed in favour of the plaintiff within a period of three months, failing which, the plaintiff/appellant would get the same executed through the Court. In addition to that, a decree for permanent injunction was also granted to the plaintiff restraining the defendants from alienating the suit land to third person or creating any charge thereon.

Being dissatisfied with the judgment and decree passed by Additional District Judge, Rupnagar, the defendants have filed the present regular second appeal before this Court, notice of which was issued and the respondent-plaintiff (since dead, through his legal heirs) appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The trial Court on analysis of the evidence adduced before it, had arrived at the conclusion that plaintiff had miserably failed to prove that agreement Ex.P1 was executed by Smt.Har Kaur with free consent and having knowledge as to what was good or bad for her and was without consideration. Therefore, it was not a legal document and could not be given effect to. Consequently suit filed by the plaintiff was dismissed.

However, the First Appellate Court was of the different

view finding that the agreement in question Ex.P1 was scribed by Sh.Brij Nath, Petition Writer; that as per recital of the agreement, total consideration of Rs.27,000/- had been paid; the land was under mortgage with Milkhi Ram son of Shiama Ram; in the recital of the agreement, the possession was recorded to have been delivered to plaintiff/appellant. It was further observed that the plaintiff appearing as PW1 had by making a statement supported his case on material aspects contending that the sale deed could not be executed on the stipulated date since the land was mortgaged with Milkhi Ram and he had paid a sum of Rs.12,000/- to Milkhi Ram on the same date, thereafter Milkhi Ram had executed a power of attorney in favour of Harbhajan Singh defendant for the purpose of attestation of mutation regarding redemption. PW2 Balwant Singh, attesting witness of the agreement had also proved its due execution deposing that a sum of Rs.27,000/- had been paid by the plaintiff to Smt.Har Kaur in his presence; Brij Nath, Petition Writer had also proved the due execution of agreement and entry made regarding it in his register at serial No.245 dated 26.4.1993, copy of entry being Ex.P2 and further power of attorney regarding payment of mortgage money to Milkhi Ram was there, which was signed by witnesses and Milkhi Ram. Considering all those circumstances, the First Appellate Court rejected the plea raised by defendants that Har Kaur was *Parda Nashin* lady and used to trust the plaintiff/appellant and that she

having weak eye sight and her thumb impressions might have been obtained on the blank papers, which were later on converted into the agreement to sell. It was observed that agreement was duly executed and in the thumb impressions of Smt.Har Kaur, there was cutting on the first line as well as at the bottom and endorsement on the back side of the first page of the agreement pointing out that the stamp paper had been purchased by Smt.Har Kaur; the entry regarding payment of mortgage money by Smt.Har Kaur to Milkhi Ram showed that transaction had taken place and it was not a case of forgery and merely because of the fact that plaintiff/appellant is an Advocate, it cannot be inferred that he would have used undue influence and committed the forgery as alleged by the defendants. The fact that as per entry in the register of scribe mortgage money of Rs.12,000/- was paid to Milkhi Ram on the same day and agreement to sell was of that very date, which pointed out that Smt.Har Kaur had every knowledge of the things and she had redeemed the mortgage; Bhajan Singh defendant/appellant son of Smt.Har Kaur appearing as DW1 had stated during his cross examination that he does not know that land was redeemed on 26.4.1993.

The First Appellate Court concluded that it transpired that Bhajan Singh son of Har Kaur was present at the time of writing of redemption of the suit land on 26.4.1993 and the agreement to sell is also on the same date. Both the documents were scribed by the

same Petition Writer showing presence of Bhajan Singh at the time when it was executed, therefore the trial Court had committed an error in holding that Smt.Har Kaur was not having any independent advice. It was further observed that there was no evidence that Smt.Har Kaur was having weak eye sight and she was not mentally sound and the allegations in that regard are quite vague.

By giving proper reasoning, the First Appellate Court has concluded that consideration amount was not inadequate and the agreement was not without consideration. Each and every point raised by the trial Court while dismissing the suit of the plaintiff has been properly dealt with and rejected by the First Appellate Court. The judgment passed by the First Appellate Court is well reasoned, based on proper appraisal of evidence and correct interpretation of law. There is no illegality and infirmity therein, which might have called for interference by this Court. Rather the judgment passed by the trial Court showed non application of judicious mind and a faulty and improper analysis of evidence and wrong interpretation of law, which has resulted in miscarriage of justice. The judgment passed by the trial Court was rightly set aside by the First Appellate Court as it comes out that the plaintiff had successfully proved that Smt.Har Kaur mother and predecessor-in-interest of defendants had entered into a legal and valid agreement to sell Ex.P1 with him, which was for consideration and that he had been ready and willing to perform

his part of contract but the transaction could not mature on account of defendants not coming forward to perform their part of the contract and to execute the sale deed in favour of the plaintiff and get it registered. The plaintiff was able to make out a case for grant of specific performance of the agreement to sell and for issuance of permanent injunction in his favour against the defendants.

No substantial question of law arises in this appeal.

The appeal stands dismissed accordingly.

25.11.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No