

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

RSA-2935-2011 (O&M)

Date of decision: 20.12.2019

Satnam Singh

...Appellant

Versus

Uttam Singh (now deceased) thr. his LRs.

...Respondents

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

Present: Mr. Rakesh Gupta, Advocate for the appellant.

Mr. Sanjiv Gupta, Advocate for the respondents.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Satnam Singh had brought a suit against defendant Uttam Singh seeking a decree for possession of the suit land, situated at Village Kharkan, Tehsil Guhla, fully described in headnote of the plaint, by way of specific performance of agreement to sell dated 13.07.1998; in the alternative, seeking relief of recovery of Rs.2,53,000/- i.e. earnest money as well as consolidated damages with pendent-lite and future interest from the date of institution of the suit till realization of the amount. As per case of the plaintiff, defendant being owner of the suit land agreed to sell the same along with rights of passage, a tubewell, electric motor for a sum of Rs. 587500/- calculated @ Rs.2 lakh per acre on 13.07.1998 receiving a sum of Rs. 1,03,500/- in cash. The

stipulated date for execution and registration of sale deed was fixed as on or before 14.06.1999. It was agreed that in case the defendant failed to perform his part of the contract, the plaintiff could seek enforcement of agreement through process of law or could recover double the amount received by the defendant at the time of agreement. However, in case the plaintiff failed to perform his part of his contract, the earnest money could be forfeited by the defendant. The possession of the suit land was delivered to the plaintiff. On 16.12.1998 defendant further received Rs. 20,000/- in cash and thumb marked the endorsement on the back of the agreement dated 13.07.1998. The terms and conditions agreed upon between the parties in the original agreement remained intact. On 14.6.1999, the defendant again received Rs.3,000/- in cash and extended the date for completion of sale upto 13.12.1999 and endorsement in that regard was made on the back of the agreement, which was thumb marked by the parties and attested by the witness. According to the plaintiff, he has always been ready and willing to perform his part of the contract and is still ready and willing to do so but the defendant backed out of it on 14.12.1999 i.e. the date fixed for completion of the sale deed, since 13.12.1999 was a holiday. The plaintiff waited for the defendant in the office of Sub Registrar, Guhla with the sale money and expenses required for purchase of stamp and for registration but the defendant did not turn up. The plaintiff moved an application before Sub Registrar, Guhla showing his

readiness and willingness to perform his part of contract. The application was attested by Sub Registrar, Guhla by making an endorsement on the back of the application and thereafter, it was returned. The plaintiff further contended that the defendant had dispossessed the plaintiff after harvest at Assarhi, 2000. The possession of the suit land was with the plaintiff since he had taken the land on lease from the defendant and later on, the possession was with him as part performance of the contract but the defendant breached the contract and dispossessed the plaintiff by force. On final refusal of the defendant to perform his part of the contract, the plaintiff brought the suit in question.

On getting notice, the defendant appeared and filed written statement, raising preliminary objections, submitting that the suit was not maintainable; the plaintiff lacked locus standi to file the suit; the suit was not properly valued for the purpose of Court fee and jurisdiction; the plaintiffs had not approached the Court with clean hands and had suppressed material facts from the Court. According to the defendant, in the month of 1998, the defendant was in dire need of money as his tubewell had stopped working and it had become impossible to irrigate the standing crops. At the same time, a dispute had arisen in the family of the defendant about the land and sons of the defendant refused to cooperate with the defendant on the ground that since huge amount of money was to be spent on the tubewell and the land therefore, it should be ensured that the daughter and wife of the

defendant would not demand any share in the land. Since a loan had to be taken from a private person, the sons of the defendant demanded that the land should be transferred in their names. To solve the dispute, a panchayat was convened wherein it was decided that the defendant Uttam Singh would execute a Will in favour of his sons and would exclude his daughter and wife from inheriting his land. Pyara Singh, father of the plaintiff was authorized to get the Will executed, attested and registered, who further agreed to finance the defendant and his sons Partap Singh, Chanan Singh, Mohinder Singh, Mukhtiar Singh and Trilok Singh for repair and installation of the tubewell, treatment of the infected crops and for purchase of Gypsum to maintain the fertility of the land. The plaintiff gave Rs. 70,000/- to the defendant and his sons on interest at the rate of 3% per month and for that purpose, entries were made in the bahi of the plaintiff. Further, for the execution of the Will in favour of sons of the defendant, plaintiff along with Joginder Singh, Lamberdar, Piara Singh sons of Sham Singh, defendant and his sons went to Tehsil Guhla and got the Will scribed form Sher Singh, documents writer. At the time of execution of the Will, the plaintiff played a fraud with the defendant and his sons and taking undue advantage of good faith reposed in him, got an agreement to sell dated 13.07.1998 executed in his favour. The defendant and his sons were kept in the dark about the agreement to sell which was executed under the garb of the Will, which was also executed and

registered on the same day i.e. 13.07.1998. According to the defendant, he never intended to sell his agriculture land to the plaintiff and had not executed any agreement to sell. Since the defendant could not return the loan amount to the plaintiff, therefore, another panchayat was convened on 13.06.1999. The defendant pleaded before the panchayat that it was the duty of his sons to refund the amount and the Will had been registered in their favour but the panchayat decided that defendant would get a writing executed from the petition writer as security for the amount of loan. Therefore, on the next day the defendant accompanied by the plaintiff went to Guhla and got a writing executed from the petition writer. This time again he was not told about any agreement to sell and since he is an illiterate person his thumb impressions were obtained by Sher Singh deed writer and later on wrong deed dated 16.12.1998 was fabricated. The writing was never read over to the defendant and the defendant never executed writings on the agreement to sell dated 13.07.1998, 16.12.1998 and 14.06.1999. In April, 2000 the defendant paid Rs. 1,03,000/- as interest and principal amount to the plaintiff, but the plaintiff disputed the amount of interest and refused to give a receipt of the amount or to return the writing of the petition writer. The interest was calculated in the panchayat and it was decided that defendant would pay the remaining interest to the plaintiff in the month of September, 2000 and the plaintiff would return the documents and give a receipt, however, the

plaintiff became dishonest and refused to take the amount and lingered on the matter and then he filed the present suit; that after receiving the notice of the suit, the defendant came to know about the alleged agreement to sell for the first time. The agreement to sell dated 13.07.1998 and the writings dated 16.12.1998 and 14.06.1999 are illegal and do not confer any right in favour of the plaintiff. An application was given by the defendant against the plaintiff to the police about the fraud played by the plaintiff. On merits, the defendant contended that he is owner in possession of the suit land and had neither agreed to sell the same to the plaintiff nor received Rs.1,03,500/- from the plaintiff. The alleged agreement was result of fraud, misrepresentation. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

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

1. Whether the plaintiff is entitled to specific performance of agreement to sell dated 13.07.1998? OPP.
2. Whether the plaintiff is entitled to the possession of suit property? OPP.
3. Whether this Court has no jurisdiction to try the suit? OPD.
4. Whether the plaint is liable to be rejected? OPD
5. Whether the plaintiff has not come to the Court with clean hands and its effect? OPD
6. Relief.

In support of his case, plaintiff examined Dr. Atul K. Singla, Handwriting and Finger Expert as PW1, Sher Singh-Deed Writer as PW2, Anil Kumar, Registry Clerk as PW3 and he himself appeared as PW4 besides examining Harjinder Singh as PW5 and Joginder Singh, Lamberdar as PW6 and thereafter, closed his evidence.

In rebuttal, defendant examined Sadhu Singh as DW1, Darshan as DW2, Lamber Singh as DW3, Inder Singh as DW4 and thereafter closed the evidence.

After hearing arguments, the trial Court of Civil Judge (Sr. Divn.) Guhla, decided issues No.1 & 2 in favour of the plaintiff and against the defendant, issues No.3, 4 & 5 were decided against the defendant being not pressed. As a result of verdict on the issues, the suit of the plaintiff was decreed with costs and a decree for possession of the suit land by way of specific performance of agreement to sell Ex.P1 was passed in favour of the plaintiff and against the defendant. The defendant was directed to execute the sale deed with regard to the suit land in favour of the plaintiff within a period of one month from the date of passing of the decree, subject to payment of balance sale consideration and stamp and registration charges by the plaintiff, failing which the plaintiff would be entitled to get the sale deed executed through the assistance of the Court. It was so done, vide judgment and decree dated 24.12.2008.

The defendant felt aggrieved by the said judgment and

decree passed by the trial Court and had approached District Judge, Kaithal by way of filing an appeal. That appeal was accepted and the decree for possession of land in dispute by way of specific performance of agreement to sell Ex.P1 passed by the trial Court was set aside and alternative relief for recovery of Rs.1,26,500/- was granted in favour of the plaintiff against the defendant with costs throughout. In order to compensate the plaintiff, he was held entitled to recover the amount along with interest to be calculated @ 12% p.a. on amount of Rs.1,03,500/- from the date of execution of agreement to sell i.e. 13.07.1998 on amount of Rs.20,000/- w.e.f. 16.12.1998 and on amount of Rs.3000/- from 14.06.1999 till realization of whole of the amount. The defendant was burdened with special costs of Rs.50,000/- for dragging the litigation for a long period unnecessarily when during the course of litigation, ex parte decree was also passed and that was executed. Subsequently, the same was set aside at the instance of defendant, vide judgment and decree dated 03.02.2011.

Now, it was turn of the appellant/plaintiff to feel aggrieved and he has approached this Court, by way of filing the present Regular Second Appeal, notice of which was given to the defendant/respondent, who has put in appearance through counsel to offer a contest.

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

A perusal of the impugned judgment passed by District

Judge, Kaithal goes to show that it was in agreement with the lower Court, though, execution of agreement Ex.P1 and endorsements Ex.P2 and Ex.P3 stood proved beyond doubt. The first Appellate Court on analysis of the factual and legal position came to the conclusion that plaintiff had failed to make out the case for seeking performance of agreement Ex.P1. The reasons for arriving at such conclusion have also been given, which in short are enumerated as under:-

- Out of total sale consideration of Rs.5,87,500/-, the plaintiff is shown to have paid only a paltry amount of Rs.1,03,500/- as earnest money at the time of execution of agreement Ex.P1 and merely on receipt of this small portion of the total sale consideration, it is not believable that the defendant might have delivered the possession of the land agreed to be sold vide the agreement as shown in that agreement.
- The plaintiff failed to fortify his claim regarding delivery of possession to him in terms of the agreement.
- The plaintiff had failed to satisfy the Court that the suit land was ever leased out to him or its physical possession was ever delivered to him by the defendant prior to agreement to sell.
- That to explain that he was not in possession of the suit land, the plaintiff had alleged that he was dispossessed there from after harvesting of Rabi crop in the year 2000 but he did not mention the date and month when he was allegedly dispossessed and he is

not shown to have resisted his dispossession. Such facts and circumstances go to the root of the case and render the testimony of the plaintiff to be unbelievable that it was an agreement for sale of agricultural land.

- The total consideration amount as calculated and reflected by the plaintiff in his plaint was Rs.5,87,500/-. It is not believable that the defendant might have received an odd amount of Rs.5,87,500/- as earnest money out of this amount. It looks that this amount included some principal amount and the interest having been calculated thereon from the date of execution of agreement Ex.P1 till 14.06.1999, the date shown to be fixed for execution of sale deed. For that reason the figure of earnest money was shown as such and if it was a fair deal, the amount of earnest money must have been in round figure but not like that, which renders the agreement Ex.P1 to be dis-believable as an agreement of sale of the immovable property.
- The defendant is shown to have received a sum of Rs.20,000/- more out of balance sale consideration, vide endorsement Ex.P2 having been made on the agreement Ex.P1 on 16.12.1998. Thereafter, again the defendant is shown to have received a negligible amount of Rs.3000/- and that too, on the last date fixed for execution of sale deed i.e. 14.06.1999. On receipt of that amount of Rs.3000/-, he is shown to have agreed to extend

the date for execution of the sale deed upto 13.12.1999. However, it is not believable that when the possession of the land in dispute was already with the plaintiff, as claimed by the plaintiff as also reflected in agreement Ex.P1, the defendant might have agreed to extend the date for execution of sale for another six months and that too after receiving only a sum of Rs.3000-. That rather speaks volumes about the conduct of the plaintiff in manipulating those entries. In all probabilities, it looks that the amount of Rs.3000/- was interest calculated on already received amount of Rs.20,000/- for the period of six month @ 2.5% per month.

- The plaintiff having received this interest was satisfied with the conduct of the defendant and he was ready to await the remaining payment of the principal amount and the interest thereon upto 13.12.1999. By no stretch of imagination, law or facts, the agreement Ex.P1 could be construed to be an agreement executed between the parties with an intention to get the sale deed executed in terms of that agreement. It comes out that agreement Ex.P1 was purely a money transaction between the parties and a document executed for securing the loan advanced vide that document to the defendant and the plaintiff ensured the repayment of loan to the defendant by getting this agreement Ex.P1 signed by his three sons Mohinder Singh,

Mukhtiar Singh and Partap Singh. The defendant was an old man and he had executed the Will in favour of those sons on the same day as admitted by attesting witnesses and scribe himself. If the defendant had any intention to alienate the land detailed in agreement Ex.P1 in favour of the plaintiff, there would have been no occasion to execute such Will on that very day, particularly, when he is not shown to be a man owning huge property.

Learned counsel for the appellant had referred to various judgments i.e. **Iswar Bhai C. Patel @ Bachu Bhai Patel Vs. Harihar Behera & Anr. 1999 AIR (SC)1341, Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd. 2005 (1) RCR (Civil) 240, Silvey & Ors. Vs. Arun Vargese & Anr. 2008(2) RCR (Civil) 591, Gurdial Singh & Ors. Vs. Bachan Singh, 2017(1) PLR 760, Diwan Chand Vs. Kuldeep Kumar Mehta, 2008(2) RCR (Civil) 284, Abdul Sattar & Ors. Vs. Pitamber Singh, 2008(3) RCR (Civil) 424 and Ramjibhai Vishram Patel & Anr. Vs. Arjun Karsan Patel & Anr. 2000 (1) ALL MR 422.**

This judgment is quite detailed, well reasoned, based upon proper appraisal of evidence and correct interpretation of law. I do not find any illegality or infirmity therein, rather, the trial Court had not looked into the matter minutely and in a mechanical manner had decreed the suit for specific performance filed by the plaintiff against

the defendant, not giving due attention to various suspicious circumstances, surrounding the agreement. The judgment and decree passed by the trial Court were not sustainable and were rightly set aside by the Ist Appellate Court, granting the alternate relief of recovery to the plaintiff. The plaintiff is feeling unnecessarily aggrieved. His act and conduct did not make out his entitlement to the relief of specific performance, rather, as rightly observed by the Ist Appellate Court, the agreement to sell Ex.P1 was nothing but in fact a document got executed by the plaintiff from the defendant to ensure the repayment of loan amount advanced by him to the defendant. The judgments cited by learned counsel for the appellant are not helpful to him due to different facts and circumstances and the context in which such observations had been made. No substantial question of law arises in the appeal. Thus, finding no merit in the instant appeal, the same stands dismissed.

20.12.2019

sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No