

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

Date of decision: 27.5.2019

1. **RSA No.1589 of 2016(O&M)**

Bhupinder Singh and anotherAppellants

VERSUS

Vijay Kumar and othersRespondents

Present: Mr. Ranjit Singh, Advocate for the appellants.

Mr. Arun Jain, Senior Advocate with
Mr. Manvir S. Rana, Advocate for respondents No.1 and 2.

Mr. Ashok Goel, Advocate for respondent No.3.

Mr. Sushil Kumar Saini, Advocate for respondent No.5.

2. **RSA No.1590 of 2016(O&M)**

Bhupinder Singh and anotherAppellants

VERSUS

Vijay Kumar and othersRespondents

Present: Mr. Ranjit Singh, Advocate for the appellants.

Mr. Arun Jain, Senior Advocate with
Mr. Manvir S. Rana, Advocate for respondents No.1 and 2.

Mr. Ashok Goel, Advocate for respondent No.3.

3. **RSA No.5214 of 2016(O&M)**

Harnek SinghAppellant

VERSUS

Vijay Kumar and othersRespondents

Present: Mr. Ashok Goel, Advocate for the appellant.

Mr. Arun Jain, Senior Advocate with
Mr. Manvir S. Rana, Advocate for respondents No.1 and 2.

4. **RSA No.5274 of 2016(O&M)**

Harnek SinghAppellant

VERSUS

Vijay Kumar and othersRespondents

Present: Mr. Ashok Goel, Advocate for the appellant.

Mr. Arun Jain, Senior Advocate with
Mr. Manvir S. Rana, Advocate for respondents No.1 and 2.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

CM No.4396-C of 2016

Prayer in this application is for condoning delay of 61 days in
re-filing the appeal.

Heard.

In view of averments made in the application, the same is
allowed. Delay of 61 days in re-filing the appeal stands condoned.

Disposed of accordingly.

RSA Nos.1589, 1590, 5214 and 5274 of 2016

This order will dispose of RSA Nos.1589, 1590, 5214 and
5274 of 2016 as identical questions of law and fact are involved for
adjudication. For facility of reference, facts are taken from RSA No.5214
of 2016.

The present litigation pertains to agreement dated 26.09.2003 whereby the appellant along with his two sisters namely Amarjit Kaur and Jagjit Kaur agreed to sell land measuring 18 bigha 15 biswas in respect whereof the sale deed was to be executed on 15.11.2003 and 16 bigha 5 biswas and sale deed was to be executed on 15.04.2004. Indisputably, the agreement to sell is not signed by Jagjit Kaur (since deceased) represented by Harjinder Singh.

The trial Court decreed the suit for specific performance of agreement in question qua share of Harnek Singh – appellant/defendant No.1 and Amarjit Kaur (since deceased) represented by her daughter Kiranjit Kaur @ Guddo and they were directed to execute the sale deed within two months from the date of decree. Defendants No.5 and 6 of suit consolidated with civil suit titled Vijay Kumar and another Vs. Harnek Singh and others were directed to join defendants in execution of sale deed as their plea of bona fide purchaser was rejected.

The facts relevant for disposal of present appeal are that as per case set up by the respondents/plaintiffs, in Civil Suit No.RBT/105/T/09/2012 instituted on 07.01.2004 captioned Vijay Kumar and another Vs. Harnek Singh and others, Harnek Singh along with his sister Amarjit Kaur and Jagjit Kaur (since deceased) agreed to sell the land in dispute vide agreement dated 26.09.2003. The agreement was scribed in the Court Complex, Rajpura in the presence of Harnek Singh and Amarjit Kaur and they appended their signatures on the agreement. They received Rs.6 lakhs in advance from the plaintiffs/respondents. Harnek Singh and Amarjit Kaur told the respondents/plaintiffs that they will get signatures of Jagjit Kaur later. However, signatures of Jagjit Kaur were not taken as

intention of the defendant became mala fide. Sale deed in respect of land measuring 18 bigha 15 biswas was agreed to be executed upto 15.11.2003 and qua the remaining land of 16 bighas 5 biswas upto 15.04.2004. It is averred that the respondents/plaintiffs always remained ready and willing to perform their part of the agreement. Plaintiffs visited the office of Sub Registrar, Ghanaur on 13.11.2003 as days fixed for registration of sale deeds by Sub Registrar, Ghanaur were Mondays, Wednesdays and Thursday. The plaintiffs remained present in the office of Sub Registrar on 13.11.2003 under due intimation to Amarjit Kaur for herself as well as attorney of her brother Harnek Singh and also to Jagjit Kaur. The plaintiffs got their affidavit attested from the Executive Magistrate/ Sub Registrar, Ghanaur on 13.11.2003. They again went to the office of Sub Registrar, Ghanaur on 17.11.2003 along with remaining sale consideration and other expenses and got their presence marked by way of affidavit. Plaintiffs requested the defendants to perform their part of the agreement and execute the sale deed but to no effect.

The appellant/defendant No.1 filed the written statement and denied execution of agreement to sell with the averments that the same is false, fictitious and fabricated document prepared by the plaintiffs in collusion with witnesses by playing fraud upon him. He never came to the Court premises at Rajpura to put signatures on the alleged agreement to sell. He is NRI and permanently settled in Scotland since 1960. One Surjit Singh and Dilbagh Singh who are running a restaurant Glasgow Road Paislay, Scotland (UK) are his good friends and persuaded him to invest some money in India. His friends introduced him with plaintiff No.1 and one Mahesh Kumar who asked him to go to India for starting joint

business. He visited India and contacted plaintiff no.1 and Mahesh Kumar and asked him to meet at Patiala where they made a proposal for running joint business to which he gave his consent. Plaintiff and Mahesh Kumar asked him to sign papers to prepare partnership deed and complete other formalities regarding business. Since he was introduced by his close friends, he signed the blank papers in good faith and thereafter went back to Scotland. After some days, the plaintiffs asked him to make payment of some amount for completing formalities and Rs.2 lakhs were given to the plaintiffs and Mahesh Kumar. The plaintiffs misused the aforesaid blank papers and converted the same into agreement to sell. He also denied having received earnest money. It is pleaded that Amarjit Kaur and Jagjit Kaur also never entered into agreement to sell with the plaintiffs.

Jagjit Kaur – defendant No.2 filed her separate written statement and denied her liability to execute the sale deed in favour of the plaintiffs with the averments that the agreement does not bear her signatures and cannot be enforced against her.

Defendant No.4, successor in interest of Amarjit Kaur, denied execution of agreement to sell dated 26.09.2003. She has averred that Amarjit Kaur was suffering from Cancer and unable to understand her good or bad. Signature of Amarjit Kaur on the agreement is the result of fraud and forgery played by the plaintiffs in collusion with the witnesses.

The respondents/plaintiffs filed replications to the written statements filed by different sets of defendants and reiterated their stand taken in the plaint.

The trial Court framed the following issues:-

1. Whether defendant No.1 Harnek Singh, alongwith Amarjit Kaur and Jagjit Kaur defendant No.2 executed agreement to sell dated 26.9.2003 in favour of plaintiffs? OPP
2. Whether the plaintiff was ready and willing and is still ready and willing to perform his part of the contract dated 26.9.2003? OPP
3. Whether the plaintiffs are entitled for alternative relief as prayed for? OPP
4. Whether the plaintiffs are entitled for possession by way of specific performance of contract dated 26.9.2003? OPP
5. Whether the suit of the plaintiffs is premature? OPD
6. Whether the suit of the plaintiffs is based on false and frivolous documents which have been prepared by them in collusion with witnesses? OPD
7. Whether the plaintiff's suit is bad for misjoinder of the parties as defendant No.3 is neither necessary nor property party? OPD
8. Whether the suit of the plaintiffs is under value for the purpose of court fee and jurisdiction? OPD
9. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court decreed the suit in the terms indicated hereinbefore vide judgment and decree dated 26.04.2012. The

judgment and decree passed by the trial Court led to filing of CA No.745 (34T) of 15.05.2012 titled Bhupinder Singh and another (subsequent purchasers) Vs. Vijay Kumar and others; CA No.744 (36T) of 15.05.2012 titled Bhupinder Singh and another Vs. Vijay Kumar and others; CA No.758 (61T) of 23.05.2012 titled Harnek Singh Vs. Vijay Kumar and others and CA No.759 (62T) of 23.05.2012 again titled Harnek Singh Vs. Vijay Kumar and others. All the aforesaid appeals were decided vide common judgment and decree dated 29.04.2015 passed by the Additional District Judge, Patiala whereby the judgment and decree passed by the trial Court were affirmed without any variance.

Counsel for the appellant has assailed concurrent findings recorded by the Courts by reiterating plea of the appellant that agreement to sell is the result of fraud and the same has been prepared on blank signatures obtained on the pretext of starting a joint business as the appellant was interested to invest money in India. Plaintiff No.1 and Mahesh Kumar, attesting witnesses of the agreement and relative of plaintiff No.2 were introduced to the appellant by his friends Surjit Singh and another. To bring home his contention, it is argued that Vijay Kumar – plaintiff, in his cross examination, has stated that he did not know Harnek Singh – appellant prior to his meeting at Patiala on 26.09.2003, the date on which the agreement was purportedly executed at Rajpura. It is argued with vehemence that it is difficult to accept that the plaintiffs and appellant settled the terms and conditions of agreement in the first short interaction on the same very day on which the appellant reached India and travelled from Delhi to his house at Patiala. In addition, it is argued that suit land is situated in District Patiala and appellant also reached Patiala

from U.K. on 26.09.2003, therefore, there was no reason for the parties to execute the agreement of sale at Rajpura if there was actually any such deal for sale of the suit property.

Another submission made by counsel is that Vijay Kumar in his testimony had stated that he had paid a sum of Rs.3 lakhs towards earnest money in respect of his share but Dinesh Kumar – plaintiff No.2 did not appear in the witness box to prove payment of balance amount of Rs.3 lakhs and this fact creates a doubt in the version that respondents/plaintiffs paid the amount of Rs.6 lakhs towards earnest money at the time of alleged agreement having been executed by the appellant and his sisters. It is argued with vehemence that since the appellant wanted to invest money in India, he got trapped in the proposal given by his friends living abroad and introduction of plaintiffs and Mahesh Kumar through his friends Surjit Singh and another. It is further argued that as the agreement of sale is the result of fraud/forgery, the Courts have committed gross error rather perversity by relying upon such a document and allowing discretionary relief of specific performance in favour of the respondents/plaintiffs.

Counsel for the respondents/plaintiffs, on the contrary, has supported concurrent findings recorded by the Courts with the submission that story propounded by the appellant with regard to his blank signatures obtained by plaintiff No.1 and Mahesh Kumar has no legs to stand and gets falsified and belied in view of facts elicited in his cross examination more particularly in the background that the appellant is living abroad since 1960 and a highly educated person who retired from Civil Services of U.K. in the year 2000. It is further argued that as per plea raised by the

appellant, Vijay Kumar and Mahesh Kumar were introduced to him but admittedly he never met Vijay Kumar and Mahesh Kumar prior to appending his signatures on the stamp papers containing the agreement of sale. It is vehemently argued that it is highly improbable rather impossible to believe that a person would sign on blank stamp papers at the asking of a person to whom he had met for the first time. According to counsel, story of blank signatures gets demolished from correction made on the first page of the agreement in respect of father's name of the appellant which was wrongly typed as Hazura Singh in place of Hazara Singh and the said correction apparently is initialed by the appellant. It is further argued that the appellant has not specifically denied correction in his father's name in his handwriting and his initials on the said correction. The plea of the appellant that Vijay Kumar and Mahesh Kumar got his signatures on blank stamp papers and other papers when they visited him at Patiala further gets demolished from the fact that stamp papers for the agreement were purchased by the appellant himself, in view of entry made in the register of Sh. Harcharan Singh Sehgal, Stamp Vendor, District Court, Patiala, the record whereof was summoned by this Court and statement of the witness who produced the record was recorded. It is further argued that even a copy of power of attorney in favour of Smt. Amarjit Kaur, cousin sister of the appellant, admittedly executed by the appellant was also produced by the respondents/plaintiffs which was supplied to them by the appellant at the time of execution of agreement of sale and same is marked as Ex.P6. The agreement bears the photograph of Smt. Amarjit Kaur. No evidence has been adduced by the defendants that agreement to sell does not bear signatures of Smt. Amarjit Kaur one of the co-vendors of the

appellant/defendant No.1. It is argued that the Courts, on a detailed consideration of materials on record, had rightly concluded that agreement to sell was executed by the appellant and Amarjit Kaur and the story of blank signatures propounded by the appellant is patently false and has been manufactured to wriggle out of agreement of sale and for that reason the appellant sold the suit land during pendency of suit filed in January 2004 in respect of land measuring 18 bigha 15 biswas, as stipulated date for execution of sale deed in respect of land measuring 16 bigha 5 biswas was yet to arrive on 15.04.2004.

Counsel representing the subsequent purchasers have echoed the arguments advanced by counsel for the appellant.

I have heard counsel for the parties, perused the paper-book and records but find that the appeal preferred by Sh. Harnek Singh is devoid of merit and deserves to be dismissed.

Indisputably, the agreement of sale has been prepared on stamp papers purchased from a stamp vendor at Patiala. The parties did not examine the stamp vendor to prove the factum of purchase of stamp papers and by whom. In order to reach the truth and delve deep into the matter, this Court directed Sh. Harcharan Singh Sehgal, Stamp Vendor, Patiala, to appear in the Court along with his stamp vendor register containing entries with regard to sale of stamp papers on 26.09.2003. In pursuance thereof, an authorized representative of Sh. Harcharan Singh Sehgal along with original register containing entry with regard to sale of stamp papers of the agreement of sale appeared before the Court and the attested copy of the relevant entry was produced by the witness. Subsequent thereto, counsel for the appellant did not make any submissions to challenge correctness of

the entry with regard to purchase of stamp papers. I have compared admitted signatures of the appellant on agreement of sale Ex.P1 with the signatures on the original entry in the register of stamp vendor and the same exactly tally. Meaning thereby that stamp papers on which the agreement of sale has been prepared was purchased by the appellant himself. This fact alone is sufficient to demolish plea of the appellant that Vijay Kumar and Mahesh Kumar came to meet him at Patiala where he reached at about 2 PM and got his signatures on blank stamp papers and blank plain papers on the pretext of preparing a partnership deed and completing other formalities for running a joint business. Had it been true that the appellant reached Patiala at about 2 PM and thereafter Vijay Kumar and Mahesh Kumar met him at Patiala with proposal for running joint business, where was the occasion for the appellant to purchase the stamp papers on 26.09.2003. It has never been plea of the appellant that he had purchased the stamp papers before arrival of Mahesh Kumar and Vijay Kumar to Patiala.

A man may tell lie but the circumstances do not. The appellant has not raised any plea nor led any evidence as to what joint business was to be started, what was the investment to be made and what formalities were required to be completed for doing the business. On the contrary, the appellant had raised the plea that two days after getting his blank signatures, Vijay Kumar and Mahesh Kumar asked him to pay money for completing formalities and for preparation of documents regarding joint business and he paid Rs.2 lakhs in cash to them and at that very point of time Vijay Kumar and Mahesh Kumar assured him that they will very soon contact him after completing all the formalities regarding

joint business and asked him to collect his profits by coming to India. It is surprising rather shocking that the appellant could make investment in joint business by spending a paltry sum of Rs.2 lakhs in cash and thereafter he could come to India for collecting his profits. All these facts lead to an irresistible conclusion that the appellant being highly literate with long experience at coveted positions in USA and U.K. used his fertile brain to concoct a cock and bull story, to wriggle out of his liability under agreement of sale. I stand fortified in my observations from another false contention raised by the appellant in his affidavit dated 07.10.2011 filed by way of examination in chief to the following effect:-

"Even otherwise the question of selling the suit land by me to the plaintiffs does not arise in view of the fact that I was never in need of any sort of money rather I wanted to settle in India and it was in this regard that I had started renovating and constructing my house in 1100 square yards after getting the requisite permission from the Municipal Authorities, Patiala. I have spent lakhs of rupees for constructing/renovating my said house with the sole intention of living in India."

It appears that while raising the aforesaid plea, the appellant as well as his counsel did not realise that the appellant has already sold the suit land during pendency of the first suit filed in January 2004. Even otherwise, sale of suit land just within few months of agreement of sale totally demolishes the story propounded by the appellant that either he did not intend to sell the suit land or he actually wanted to settle in India and live in his house at Patiala. There is nothing on record suggestive of the fact that since 2003 or till date, the appellant had shifted from U.K to India

or has settled in his house at Patiala. A cumulative view of the aforesaid discussion leads to only one conclusion that the story propounded by the appellant has a weak foundation and crumbled like a pack of cards, as such, has rightly been rejected by the Courts.

The plea of the appellant that his signatures were obtained on blank stamp papers further gets falsified from the fact that he has not specifically denied that correction in the first line of agreement in respect of his father's name as Hazara in place of Hazura with his initials has been made by him. A relevant extract from his testimony reads as follows:-

"I have seen Ex.P1 which bears my signatures on first page at the bottom as well as on the second page but I do not think Ex.P1 bears my initial in the correction on the first page in the name of my father."

With regard to endorsement on the backside of first page qua purchase of stamp papers containing his signatures, he has stated to the following effect:-

"I am not sure on the backside of first page of Ex.P1 at point mark X bears my signatures or not."

Indisputably, the appellant went abroad in 1960 for doing MBA. He remained working in USA for large number of years. He shifted to U.K. and joined Civil Services in 1983 and retired in the year 2000. It is difficult to believe that such a literate and learned person would not be able to identify his writing, initials and signatures. The appellant with a mala fide intention refused to admit his initials on the first page of agreement qua correction of his father's name as well as his signatures on the endorsement with regard to purchase of stamp papers in respect

whereof discussion has already been made in the earlier part of the judgment.

Vijay Kumar and Mahesh Kumar, one of the plaintiffs and attesting witness of the agreement respectively appeared in the witness box. They were cross-examined at length by counsel for the defendants. No such fact was put to the witnesses that the appellant reached Delhi Airport at about 8/8.30 AM and arrived at Patiala at about 1.30 or 2.30 PM. No such plea was raised by the appellant in the written statement with regard to the time of his arrival at Delhi or at Patiala or the persons who received him at Delhi Airport or the vehicle used by him for the purpose of travel from Delhi to Patiala. In evidence adduced by the respondents/plaintiffs, it was brought in cross examination of the witnesses that agreement was executed at Rajpura at about 2/3 PM on 26.09.2003. In view of the stand taken by the plaintiffs and their witnesses, the appellant introduced an afterthought story that he reached Patiala at about 2 PM, therefore, there was no occasion for him to go to Rajpura on 26.09.2003 and execute the agreement of sale. To substantiate this plea, the appellant examined Baljit Singh DW-3, a Taxi Driver. He tendered into evidence his affidavit Ex.DW3/A by way of examination in chief and deposed about time of arrival of the appellant at Delhi and thereafter at Patiala. It is highly unbelievable that a Taxi Driver would be able to disclose after a long gap of 8 years that on a particular date, he brought a particular passenger from a particular place to a particular destination much less at a particular time. This fact also speaks volumes about conduct of the appellant who was hell-bent to escape his liability under the agreement of sale. In this view of the matter, story propounded by the appellant with

regard to time of his arrival at Patiala, sought to be corroborated by Baljit Singh DW-3 and Harminder Singh DW-4 is patently false and manufactured with a clear intent to get rid of the obligation created under the agreement. In view of the above, it can safely be held that plea of blank signatures raised by the appellant is bereft of merit rather a bundle of lies. The appellant has miserably failed to establish that he appended signatures on blank stamp papers. This apart, perusal of the agreement Ex.P1 does not give even a slightest inkling that the same has been prepared on blank signatures of the appellant and Amarjit Kaur.

No doubt, the respondents/plaintiffs could not establish identity of the person who typed the agreement of sale. This fact alone, in view of the discussion made hereinbefore, would be of no avail much less to interfere in consistent findings of fact recorded by the Courts. As a natural corollary, findings of the Courts that agreement of sale was executed by the appellant and his cousin sister Amarjit Kaur are liable to be affirmed and ordered accordingly. That being so, the contents of the agreement are binding against the appellant, thus, he cannot derive advantage of non-examination of Dipesh Kumar, plaintiff No.2, to prove payment of Rs.3 lakhs towards his share of earnest money. Analyzed from any angle, I have no hesitation to conclude that neither consistent findings of the Courts suffer from an error nor a question of law arises for determination.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed with costs.

MAY 27, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no