

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

RSA No.4912 of 2013(O&M)

Date of decision: 27.09.2019

Darshan Lal through LRs

.....Appellant

VERSUS

Naresh Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Amit Jain, Advocate for the appellant.

Mr. Sherry K. Singla, Advocate for the respondents.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for possession by way of specific performance of agreement to sell dated 02.11.2001 was decreed by the trial Court vide judgment and decree dated 09.05.2011. The appeal preferred by unsuccessful appellant/defendant did not find favour with the Additional District Judge, Kurukshetra as the Appellate Court affirmed findings of the trial Court without variance.

The respondent/plaintiff propounded agreement to sell dated 02.11.2001 in respect of land measuring 9 kanal 15 marlas for sale consideration of Rs.4 lakh out of which Rs.3,25,000/- was paid towards earnest money. The sale deed was agreed to be executed and registered on 15.11.2002. The respondent/plaintiff always remained ready and willing to perform his part of the contract. He served legal notice upon the

appellant but he failed to get the sale deed executed and registered. Hence the suit.

The appellant/defendant filed the written statement and, in turn, controverted the allegations with regard to execution of agreement of sale or receipt of earnest money. He has raised the plea that he was a customer at the commission agency of M/s Roshan Lal Naresh Kumar, Ladwa for the last many years. He had also been taking loan occasionally for betterment of agriculture. The respondent had been obtaining his signatures on bahi entries and blank papers as security for the loan. In the year 2000, after kharif season, accounts were settled and some amount was due against the appellant as is clear from the slips of account dated 25.11.2000 and 07.06.2002 issued by the respondent. The respondent obtained certain signatures of the appellant on some blank papers as security for the amount and later fraudulently got typed agreement to sell. It is general practice of commission agents and money lenders to procure such type of document. The earnest money of Rs.3,25,000/- was neither paid by the plaintiff nor received by him. The agreement is nothing but a fraudulent and forged affair. The value of land was not less than Rs.15 lakhs at the time of alleged agreement which shows the document to be a forged one.

The defendant raised preliminary objections regarding locus standi; maintainability; cause of action; estoppel; concealment of true and material facts; limitation and valuation etc.

The trial Court framed issues, reproduced in para 3 of the judgment of said Court. To prove his case with regard to execution and correctness of agreement to sell and readiness and willingness to perform

his part of the agreement by Sh. Roshan Lal (since deceased) represented by his LRs, the respondent/plaintiff examined Subhash Chand, Deed Writer PW-1, Rakesh Kumar attesting witness PW-2, Anand Kumar second attesting witness PW-3, Ishwar Chand, Notary Public PW-4, Lal Chand Namberdar PW-6 in addition to examination of Naresh Kumar son of Late Sh. Roshan Lal.

To rebut evidence of the respondent/plaintiff, Darshan Lal – defendant/appellant appeared in the witness box and examined Karam Pal DW-1, Rajesh Kumar DW-3 and Ragbir Singh DW-4.

The trial Court answered issues No.1 to 3, onus whereof was placed upon the plaintiff, in favour of the respondent/plaintiff whereas issues No.4 to 9 of which the burden to prove was cast upon the appellant/defendant were decided against him. Eventually, suit of the respondent/plaintiff was decreed for principal relief of specific performance of agreement to sell dated 02.11.2001 Ex.P1 on payment of balance sale consideration within a period of two months. The respondent was left at liberty to get the sale deed executed through process of the Court, in case the appellant fails to do so. The respondent was also held entitle to possession of suit land subsequent to execution of sale deed in his favour.

As has been noticed hereinbefore, findings of the trial Court on all the issues were affirmed by the Court in appeal.

Counsel for the appellant, in line, with the averments raised in para 8 of the preliminary objections would contend that agreement to sell has been prepared on the blank signatures of appellant obtained as a security for repayment of amount found outstanding at the time of

settlement of accounts after kharif season in the year 2000. To bring home his contention, counsel has made few submissions to the following effect:-

- i. The agreement Ex.P1 bears five thumb impressions of the appellant without any justification.
- ii. The signature and thumb impressions of the appellant at the bottom of agreement were obtained beneath typing his name as first party whereas the signatures of all other persons namely Sh. Roshan Lal second party/purchaser, Anand Kumar and Rakesh Kumar, attesting witnesses and Subhash Chand, Deed Writer have been appended above their names.
- iii. The spacing in between the lines of body writing is quite narrow, an indicator of agreement being drafted on blank signature and thumb impressions of appellant.
- iv. The witnesses to the agreement namely Anand Kumar and Rakesh Kumar are also commission agents of Ladwa, therefore, cannot be termed as independent witnesses.
- v. Deed writer Subhash Chand and Ishwar Chand Notary Public did not produce the registers containing the relevant entry in respect of the agreement to sell.
- vi. The agreement is not prepared on a stamp paper but adhesive stamps have been used.
- vii. As per the agreement, the vendee had paid Rs.3,25,000/- out of total sale consideration of Rs.4,00,000/- and as such there was no reason for the

vendee to fix the target date after more than one year particularly in the circumstances that possession of land in question was not delivered to the vendee at the time of agreement.

- viii. There are discrepancies in the statements of Subhash Chand, deed writer PW-1 and Rakesh Kumar PW-2 with regard to who brought the stamp paper for preparing the agreement. Rakesh Kumar PW-2 failed to explain as to why so many thumb impressions of the appellant were obtained on the document.

In support of his contentions, he had relied upon judgments of this Court **Mangat Singh Vs. Rakesh Kumar Gupta and another, 2014(4) RCR (Civil) 387** and **Subhash Chander and others Vs. M/s Active Promoters Pvt. Ltd., 2015(1) RCR (Civil) 62.**

Another submission made by counsel is that land in dispute is the only source of livelihood of the appellant and his family, therefore, allowing specific performance of agreement would be of great hardship for the appellant. Counsel would submit that though the appellant had not obtained the sum of Rs.3,25,000/- under the alleged agreement but he is prepared to refund the amount with interest, if any, determined by the Court. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Shamsher Singh and others Vs. Rajinder Kumar and others, 2014(2) RCR (Civil) 865.**

Counsel for the respondent/plaintiff, on the other hand, has supported consistent findings of the Courts with the submission that the same are based upon materials on record coupled with correct appreciation

of evidence adduced by the respondent. It is argued that the appellant is guilty of concealing true facts from the Court and propounded cock and bull story of blank signatures having been obtained and later used for preparing agreement to sell. In written statement, he denied receipt of legal notice but admitted the same in his cross examination. Knowing fully well that the agreement Ex.P1 bears an endorsement in his handwriting with regard to receipt of Rs.3,25,000/- under his signature and thumb impression with date 2nd November 2001, he changed his stance in his testimony on oath and stated that on settlement of accounts, a sum of Rs.3,25,000/- was found to be outstanding which is in complete contradiction to his plea raised in the written statement.

To refute contention of the appellant that the Court should not have allowed discretionary relief of specific performance on the ground of hardship, it is argued that no such plea of hardship in so many words has actually been raised. It is further submitted that as per the latest revenue record i.e. jamabandi, the appellant is recorded to be owner of land more than 9 kanal 15 marlas, subject matter of agreement to sell and the same falsifies and belies his plea that disputed land is the only source of livelihood for him and his family. In addition, it is submitted that a litigant who is caught telling blatant lie can neither seek indulgence in discretionary jurisdiction of the Court nor can get decrees passed by the Courts in exercise of discretionary power set aside.

I have heard counsel for the parties, perused the paper-book and records.

Before advertng to the submissions made by counsel for the parties, it is pertinent to note that consistent factual findings recorded by

the Courts may not be intervened in second appeal even if the same are erroneous but not perverse. Equally settled is that no interference in second appeal is warranted merely because a different view is possible on re-appreciation of evidence.

Indisputably, the appellant was a customer for sale of his produce at the commission agency business of M/s Roshan Lal Naresh Kumar, Ladwa. In cross examination of Naresh Kumar, one of the LRs of Roshan Lal (since deceased), he was confronted with various entries of loan obtained by the appellant from time to time and all those entries pertain to small amounts of several hundreds or thousands in single digit. The plea of the appellant is that agreement to sell has been prepared on his blank signatures obtained at the time of settlement of accounts after kharif 2000.

The question for consideration is whether in view of materials on record, findings of the Courts accepting the agreement of sale can be said to be faulty much less the agreement is the result of fraud/forgery, manufactured on blank signatures purported to be obtained by Roshan Lal in the year 2000.

The answer, at the outset, is in the negative. Perusal of the agreement Ex.P1 makes it evident that it not only bears signatures of Darshan Lal but also bears his thumb impressions. No such plea has been raised by the appellant that his thumb impressions were also obtained at the time when his alleged blank signatures were obtained on a paper. This fact goes a long way to falsify and belie the theory of blank signatures, set up by the appellant. Not only this, Ex.P1 bears endorsement in handwriting of the appellant with his signature and thumb impressions qua

receipt of Rs.3,25,000/- on 2nd November, 2001. It has never been plea of the appellant that when his blank signatures were obtained, he was paid Rs.3,25,000/- by the respondent/plaintiff. On the contrary, he has raised the plea that since some money was found to be outstanding against him at the time of settlement of accounts in view of slips of account dated 25.11.2000 and 07.06.2002 issued by the respondent/plaintiff, his blank signatures were obtained for the purpose of security. To cover up the implications of endorsement on Ex.P1, in his testimony on oath, he raised a plea that on settlement of account, the outstanding amount was Rs.3,25,000/-. Even if this plea beyond pleadings is accepted ex facie where was the occasion for the respondent/plaintiff to pay him Rs.3,25,000/- which was found to be his outstanding liability on settlement of accounts. Conversely in that eventuality, there was no occasion for the appellant to make endorsement in respect of payment made to him.

The appellant has also raised the plea in para 8 itself that the amount for which the signatures were obtained on blank papers as security had already been paid by him to the respondent but the respondent/plaintiff, did not issue receipt in respect of repayment. Again, he has not raised the plea that at the time of repayment of outstanding amount, he asked for return of paper on which his blank signatures were obtained at the time of settlement of accounts. No prudent person would return the outstanding amount without insisting for return of a paper on which his blank signatures/thumb impressions were obtained for the purpose of security or at least insisting for a receipt as an acknowledgment of repayment. All these facts lead to an irresistible conclusion that facts narrated in para 8 of the preliminary objections to assail the agreement of

sale are nothing but a bundle of lies raised to wriggle out of liability created under agreement to sell. In this view of the matter, contention raised by counsel for the appellant that agreement to sell has been prepared on his blank signatures by raising aforesaid submissions is patently misconceived and has rightly been rejected by the Courts. Furthermore, once the appellant had raised the plea of blank signatures or agreement is the result of fraud/forgery, it was obligatory for him to prove his defence plea akin to a criminal charge but he has miserably failed in his endeavour, in view of discussion made hereinbefore.

The respondent/plaintiff examined scribe of the agreement, both the attesting witnesses, Sh. Ishwar Chand, Notary Public who notarized the agreement and stamp vendor. Counsel for the appellant tried to point out certain minor contradictions in testimonies of Subhash Chand, Deed Writer, PW-1 and Rakesh Kumar PW-2. The witnesses were examined in the Court in the year 2005 to depose about the document executed in November 2001. The testimony of a witness is to be read as a whole otherwise it would lead to travesty of justice. Taking into consideration the time lag between November, 2001 and recording of statement of witnesses, the appellant cannot derive any advantage to his contention from the contradictions/discrepancies pointed out by his counsel. As the appellant never raised the plea of his thumb impressions having obtained on a blank paper, he possibly cannot seek explanation from the attesting witness as to why there are 4/5 thumb impressions on the agreement of sale. The mere fact that attesting witnesses are also commission agents of Ladwa is not a ground to discard their testimonies particularly in the circumstances that there is nothing on record suggestive

of the fact that attesting witnesses have also set up agreement to sell in their favour purported to be executed by a customer at their commission agency business which has been attested by Sh. Roshan Lal, respondent/plaintiff. The appellant has also failed to substantiate his plea that such like documents are prepared by the commission agents/money lenders in the area of Ladwa. This Court cannot ignore that minor discrepancies are bound to occur in the statement of a truthful witness, examined after a time lag. The contention of the appellant to create doubt in the agreement because of time gap of one year between the date of agreement and target date also does not carry weight, no sooner his plea of blank signatures for securing repayment of outstanding amount is falsified and belied. This apart, no explanation was sought from Naresh Kumar son of Sh. Roshan Lal in this regard. Had Roshan Lal been alive, he might have thrown light on this issue if called upon to explain the same. In this view of the matter, the appellant has failed to successfully assail consistent findings of the Courts. In view of the above, the appellant cannot seek aid to his contentions from the judgments **Mangat Singh's case** (supra) and **Subhash Chand and others' case** (supra), decided in the light of peculiar facts and circumstances of those cases.

This brings the Court to the issue of specific performance of agreement resulting in unfair advantage to the plaintiff over the appellant/defendant As has rightly been argued by counsel for the respondent, no specific plea has been raised with regard to performance of agreement resulting in hardship to the appellant or his family. Counsel for the appellant has not countered contention of counsel for the respondent that in the jamabandi, appellant is recorded to be owner of land more than

9 kanal 15 marlas and the same belies his plea that disputed land is the only source of livelihood for him and his family. This apart, a person who has not approached the Court with clean hands rather found to be telling blatant lies cannot seek indulgence in exercise of discretionary jurisdiction of the Court. Analyzed from any angle, the appellant cannot derive any advantage to his contention from the provisions of Section 20 of the Specific Relief Act, 1963 or the judgment in Shamsher Singh and others case (supra).

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

SEPTEMBER 27, 2019
'D. Gulati'

(REKHA MITTAL)
JUDGE

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