

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

RSA No.209 of 2015(O&M)

Date of decision: 21.5.2019

Balbir Singh

.....Appellant

VERSUS

Jaswant Singh and another

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Rajesh Narang, Advocate for the appellant.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Gautam Sehgal, Advocate for the respondents.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit filed by the respondents/plaintiffs for specific performance of agreement to sell dated 01.01.2004 was decreed by the trial Court vide judgment and decree dated 17.01.2012 and appeal preferred by unsuccessful defendant/appellant did not find favour with the Additional District Judge, Fatehgarh Sahib.

The respondents/plaintiffs filed the suit with the allegations that the appellant agreed to sell disputed land vide agreement dated 01.01.2004 at the rate of Rs.2,50,000/- per acre and received Rs.7,50,000/- towards earnest money. The sale deed was agreed to be executed upto 02.09.2004. The date for execution and registration of sale deed was extended upto 31.12.2004. It is averred that the respondents/plaintiffs

always remained ready and willing to perform their part of the agreement but the defendant/appellant failed to execute the sale deed. Hence the suit.

The appellant/defendant filed the written statement claiming that he is not sole owner or in exclusive possession of land in dispute. He denied all the allegations with regard to agreement of sale, receipt of earnest money and his liability to execute the sale deed. He raised the plea that alleged agreement is fabricated, forged and created by the respondents to grab his land. The appellant used to sell his crops through M/s Bhag Singh and Brother, Sirhind. M/s Bhag Singh and Brother, Sirhind got some blank stamp papers signed to secure the amount advanced by them and they gave blank stamp papers to the respondents/plaintiffs and the agreement of sale was prepared with the help of witnesses. Jaswant Singh – plaintiff is real brother of Bhag Singh. All other material averments of the plaint were denied with a prayer for dismissal of the suit.

Replication was filed by the respondents/plaintiffs re-asserting their stand taken in the plaint while controverting averments raised in the written statement.

The trial Court framed issues, reproduced on internal page 6 of the judgment. 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 accepted the agreement of sale and so also entitlement of the respondents/plaintiffs to seek specific performance of the contract with a direction to the plaintiffs to deposit the balance sale consideration within one month and on deposit of said amount, the appellant shall execute the sale deed within a period of two months. In case the appellant fails to execute the sale deed, it was left

open for the respondents/plaintiffs to get the sale deed executed through process of the Court.

As has been noticed hereinbefore, judgment and decree passed by the trial Court were affirmed in appeal, as the first Appellate Court concurred with findings recorded by the trial Court without any variance.

Counsel for the appellant while re-asserting the defence plea raised in the written statement would argue that agreement to sell has been prepared on blank signatures of the appellant. It is argued that Jaswant Singh, one of the plaintiffs was examined in the case. In his cross examination, he has admitted that Balbir Singh son of Harbans Singh, an attesting witness of the agreement, is resident of his village and Kulwant Singh is the uncle of said Balbir Singh. He has further admitted that Kulwant Singh has a shop of commission agency. Bhupinder Singh is son of Harbans Singh and real brother of Balbir Singh, attesting witness. It is further argued that Balbir Singh son of Harbans Singh, attesting witness of the agreement of sale, in the opening lines of his cross examination, has expressed his ignorance that Kulwant Singh is doing commission agency business. He denied that Bhupinder Singh and Balbir Singh PW-2 were the partners of M/s Kulwant Singh and Company. In the later part of his cross examination, he has admitted that he and his brother Bhupinder Singh were partners of M/s Kulwant Singh and Company about 10 years ago. It is vehemently argued that Balbir Singh PW-2 tried to conceal the factum of his connection with the firm M/s Kulwant Singh and Company with a clear intent that defence plea raised by the appellant with regard to blank signatures being obtained by the commission agent may not come on

the fore. In addition, it is argued that perusal of agreement of sale would reveal that spacing in between the lines on the first page and second page particularly the last four lines on the second page is irregular for the reason that writer of the agreement wanted to complete the body writing upto the third page on which signatures of Balbir Singh – appellant were obtained when the papers were lying blank. It is further argued that the respondents did not examine any attesting witness of the document Ex.P3 vide which the date for execution of sale deed was allegedly extended upto 31.12.2004, therefore, the respondents failed to lead cogent and convincing evidence to prove the document Ex.P3.

Counsel for the appellant has submitted that during pendency of appeal, the appellant filed an application for amendment of written statement and the same was dismissed by the trial Court vide order dated 05.09.2011. Another application was filed for adducing additional evidence but the same was also dismissed vide order dated 24.12.2011. It is argued that in first appeal preferred before the District Judge, Fatehgarh Sahib, the appellant challenged the aforesaid order whereby application for amendment of written statement and additional evidence were dismissed by the trial Court. It is argued that the first Appellate Court has not dealt with challenge to the aforesaid orders, therefore, the judgment passed by the Appellate Court is liable to be set aside on this score alone and matter needs remittance to the Appellate Court for decision of appeal afresh after dealing with challenge to the orders passed by the trial Court dismissing the aforesaid applications.

The last submission made by counsel is that as per agreement of sale, land was agreed to be sold at the rate of Rs.2,50,000/- per acre but

in the sale deeds sought to be produced by way of additional evidence, land was sold at the rate of Rs.4,00,000/- per acre, sufficient to create doubt regarding correctness and genuineness of the agreement of sale.

Counsel representing the respondents/plaintiffs has supported concurrent findings recorded by the Courts. It is argued that it is not open for the Court in second appeal to re-appreciate evidence and interfere with the concurrent findings on the premise that a different view is possible. It is vehemently argued that the appellant has failed to make out a case that consistent findings recorded by the Courts suffer from perversity or a question of law arises that needs determination by this Court.

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 appropriate to note that the appellant/defendant has not denied his signatures on the agreement of sale and so also the document with regard to extension of time for execution and registration of the sale deed. Counsel for the appellant made submissions to derive benefit from the fact that Balbir Singh son of Harbans Singh PW-2, an attesting witness of agreement of sale, was a partner of M/s Kulwant Singh and Company and Kulwant Singh is the real Chacha (paternal uncle) of said Balbir Singh. It is difficult to fathom as to how the appellant can derive any advantage to his contention even if Balbir Singh PW-2 was earlier a partner of M/s Kulwant Singh and Company or Kulwant Singh happens to be paternal uncle of said Balbir Singh when the case is examined in the light of averments raised in para 2 of the written statement wherein it has been alleged that defendant used to sell his crops through M/s Bhag Singh and

Brother, Sirhind and M/s Bhag Singh and Brother got some blank stamp papers signed to secure the amount advanced to the appellant and said M/s Bhag Singh and Brother, Sirhind gave that blank signed stamp papers to the plaintiff on which the agreement to sell has been prepared. In the entire cross examination of the plaintiff and his witnesses, there is no reference to said M/s Bhag Singh and Brother or what is the connection of plaintiffs or attesting witness with said M/s Bhag Singh and Brother, Sirhind. In the given circumstances, the appellant cannot derive any advantage to his contention from the facts elicited in cross examination of Jaswant Singh and Balbir Singh.

I have gone through the agreement of sale which was scribed by Sh. Gurnam Singh Balagan, Advocate PW-3. Since the document is hand-written, it is difficult to accept that the writer can maintain complete accuracy with regard to spacing inter-se the lines. On the contrary, it can be said that spacing in between the lines is almost regular and does not give an inkling that the same has been prepared on blank signatures available on stamp papers. The appellant has admitted that stamp papers on which the agreement has been drafted was purchased by him, though it is stated that the same was purchased at the asking of the plaintiffs. If the stamp papers were purchased by the appellant himself, may be, at the asking of the plaintiffs, the story sought to be propounded by the appellant that his blank signatures were obtained by M/s Bhag Singh and Brother, Sirhind to secure the advance given to him gets falsified and belied. Analyzed from any angle, contention of the appellant that agreement of sale has been prepared on blank signatures has rightly been rejected by the Courts and merits no interference by this Court.

Counsel for the appellant would argue that the Appellate Court did not advert to challenge qua orders passed by the trial Court dismissing applications for amendment of written statement and additional evidence. Perusal of judgment of the first Appellate Court would reveal that there is detailed reference to the submissions made by counsel for the appellant and the Court addressed the same. In the grounds of appeal before this Court, no such contention has been raised that counsel for the appellant before the first Appellate Court had made any submissions to assail the orders passed on aforesaid miscellaneous applications but the Court omitted to take note thereof and deal with the same. A party may raise various grounds to assail the decree but unless those grounds are pressed during the course of hearing, the appellant cannot be heard to say that judgment and decree passed by the first Appellate Court is liable to be set aside in view of aforesaid submissions and the matter needs remittance to the Appellate Court for decision afresh. This apart, sanctity is attached to the Court proceedings unless there are allegations of mala fide substantiated on the basis of materials on record. In this view of the matter, I do not find any merit in contention of the appellant in respect of his challenge against orders dismissing the aforesaid applications.

Counsel for the appellant has sought to rely upon the sale deeds in respect whereof application for additional evidence was dismissed. Firstly, inadequacy of sale consideration is no ground to set aside an agreement of sale or even a sale deed. Secondly, it is difficult to compare the two documents with regard to sale consideration unless there are materials on record with regard to location, nature and extent of land etc. A buyer who has an immediate and emergent need to buy a property

may offer a higher price vis-à-vis the one who is differently placed. In this view of the matter, the appellant cannot derive any advantage to his contention from the sale deeds more particularly that his application for adducing additional evidence was dismissed by the trial Court and challenge to those orders has not been pressed before the first Appellate Court. Analyzed from any angle, there is no error much less perversity in consistent findings recorded by the Courts, warranting intervention. Furthermore, the present appeal does not raise a question of law much less a substantial one that requires determination in Regular Second Appeal.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs. As the appeal has been decided on merits, applications for condonation of delay in filing and re-filing the appeal are of academic relevance only.

MAY 21, 2019

‘D. Gulati’

(REKHA MITTAL)
JUDGE

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