

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

RSA-5119-2015(O&M)

Date of decision:-18.3.2019

Lakhvir Singh and another

...Appellants

Versus

Anil Kumar

...Respondent

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

Present: Mr.J.S. Toor, Advocate
for the appellants.

Mr.Sapan Dhir, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – Anil Kumar had filed a suit for possession and in the alternative suit for recovery of Rs.8 lacs besides craving for grant of permanent injunction against defendants Lakhvir Singh and Harkewal Singh, both sons of Surjeet Singh son of Gurnam Singh, residents of village

Bajak, Tehsil and District Bathinda on the assertions that the defendants entered into an agreement to sell with plaintiff on 9.1.2006 regarding land measuring 25 kanals 10 marlas being 1/30 share of 714 kanals 19 marlas situated at village Bajak, Tehsil and District Bathinda, fully detailed in the head-note of the plaint earlier as per jamabandi for the year 1996-97 and thereafter as per jamabandi for the year 2006-2007; that the defendants had received a sum of Rs.4 lacs as earnest money from the plaintiff; that as per the terms and conditions of the agreement, the rate of land was settled to be Rs.1,50,000/- per killa of 8 kanals; that written agreement to sell was witnessed by Rajinder Kumar son of Phul Chand and Anil Kumar son of Suresh Kumar besides scribe of the agreement; that the final date for execution of sale deed was settled to be 20.1.2007; that both the defendants had signed the agreement in Punjabi language; that the plaintiff had also appended his signatures thereon; that as agreed upon between the parties, if the plaintiff failed to get the sale deed executed and registered in his name upto 20.1.2007, then the earnest money paid by him would be forfeited; however, if the defendants failed to perform their part of contract in execution and registration of the sale deed upto the date agreed, then they would be liable to pay double of the earnest money and plaintiff would also be entitled to get the sale deed executed and registered through process of court of law. According to the plaintiff, he had informed the

defendants a day earlier to 20.1.2007 with a request to get the sale deed executed in his favour on 20.1.2007 but to no effect; that the plaintiff went to the office of Sub-registrar, Bathinda on 20.1.2007 having remaining sale consideration amount and money to bear ancillary expenses but the defendants did not turn up; though 20.1.2007 being Saturday was a holiday in Tehsil office, however, plaintiff kept waiting for defendants there for the whole day; that he got his affidavit attested to prove his presence at Bathinda on 20.1.2007; that he had sent a registered notice dated 14.11.2008 to the defendants on 15.11.2008 but in vain; that on 21.1.2007, the plaintiff again informed the defendants that as 21.1.2007 was Sunday, as such both the parties should appear before Sub Registrar, Bathinda on Monday i.e. on 22.1.2007 for the purpose of getting the sale deed executed and registered and defendants promised to do the needful; that again the plaintiff along with remaining amount of sale consideration and expenses for completion of the transaction went to the office of Sub Registrar, Bathinda but defendants were not found to be there, throughout the working hours; that the plaintiff got his presence marked in the office of Sub Registrar, Bathinda by moving an application along with affidavit. According to the plaintiff, he has been ready and willing to perform his part of contract, however, defendants tried to alienate the suit land to some other person. Feeling aggrieved by such conduct of the defendants, plaintiff filed

the suit in question against him in the Court of Civil Judge at Bathinda.

On notice the defendants had appeared and filed written statement contesting the suit raising preliminary objections challenging the maintainability of the suit alleging that the suit is result of fraud and misrepresentation perpetrated by the plaintiff upon the defendants; that the plaintiff had not disclosed before the Court that he is working as a commission agent at Mandi Gidderbaha and defendants used to sell their crops through the plaintiff; that relations between the parties were very cordial; that the plaintiff used to obtain signatures of the defendants on some blank papers and some blank stamp papers on the pretext to prepare the accounts regarding the sold crops through him and to receive the money of sold crops from purchasing agency and to send the same to the office of market committee as well as purchasing agency; that the defendants used to put their signatures on blank papers as well as on blank stamp papers in a good faith on trust of the plaintiff. According to the defendants, they did not put their signatures on the alleged dispute agreement to sell and plaintiff might have used the signatures of defendants for fabricating and preparing the alleged agreement to sell dated 9.1.2006 on the already taken signatures of defendants on blank stamp papers; that the defendants denied having received a sum of Rs.4 lacs as earnest money from the plaintiff or putting their

signatures on the agreement to sell in presence of alleged marginal witnesses. According to the defendants, they did not purchase stamp papers used for alleged agreement to sell dated 9.1.2006 from the stamp vendor and they had not agreed to execute the sale deed in favour of the plaintiff or any other person upto 20.1.2007. Contesting the material assertions in the plaint, the defendants took up a plea that name of scribe was not mentioned in the agreement to sell. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

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

1. Whether the defendants agreed to sell the suit land vide agreement dated 9.1.2006 after receiving Rs.Four Lacs as earnest money? OPP.
2. Whether the plaintiff always remained willing to perform his part of the contract? OPP.
3. Whether the plaintiff is entitled to decree for possession by way of specific performance of agreement of sale in question? OPP.
4. Whether in the alternative, the plaintiff is entitled to recover Rs.Eight lacs from the defendants, as prayed for? OPP.
5. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.

6. Whether the agreement of sale in question is forged and fabricated document? OPD.
7. Whether the defendants had been selling their agricultural produce through commission agency of the plaintiff? OPD.
8. Whether the suit is not maintainable in the present form? OPD.
9. Relief.

In order to prove his case, the plaintiff had got recorded his statement as PW1 further examining Sh.Anil Kumar as PW2, Sh.Rajinder Kumar as PW3 and Sh.Shelender Goyal, Registry Clerk as PW4 (wrongly numbered as PW3) besides tendering some documents.

On the other hand, defendant No.1 Lakhvir Singh got recorded his statement as DW1 further examining Sh.Bihari Lal as DW2, Sh.Baljit Singh as DW3 and Sh.Gurnaib Singh as DW4.

After hearing the learned counsel for the parties, the trial Court vide judgment and decree dated 7.2.2014 decreed the suit of the plaintiff with costs for possession by way of specific performance of agreement to sell dated 9.1.2006 with respect to the land measuring 25 kanals 10 marlas being 1/30 share of 714 kanals 19 marlas out of total khewat No.128(714-19), situated within the revenue limits of village Bajak, Tehsil and District Bathinda and in addition to that granted permanent injunction to the plaintiff restraining the defendants from alienating the suit land in any manner

except to the plaintiff. The defendants were directed to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration within three months, failing which, the plaintiff shall be entitled to get the sale deed executed through the agency of the Court on deposit of the balance sale consideration in the Court.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Bathinda, who vide judgment dated 15.5.2015 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

Being dissatisfied with the judgments and decrees passed by the Courts below, the defendants filed the present regular second appeal before this Court, notice of which was issued and the respondent-plaintiff appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I do not find any merit in this appeal.

Both the Courts below on the basis of evidence adduced by the parties, the arguments advanced by learned counsel representing the parties, have given concurrent findings with regard to defendants being owner in possession of the suit land measuring 25 kanals 10 marlas situated at village Bajak, Tehsil and District Bathinda having entered into an agreement to sell the suit land with plaintiff on 9.1.2006 @ Rs.1,50,000/- per killa of 8 kanals receiving Rs.4 lacs as earnest money, the stipulated date being fixed for

20.1.2007 and further plaintiff having been ready and willing to perform his part of contract, whereas defendants having backed out of the same. Therefore, the Courts below found the plaintiff to be entitled to possession of the suit land by way of specific performance of agreement to sell. The plaintiff has proved the execution of agreement to sell by getting his own statement recorded as PW1 besides examining attesting witnesses PW1 Anil Kumar and PW3 Rajinder Kumar. The plaintiff has further examined PW4 (wrongly numbered as PW3) Sh.Shalander Goyal, Registry Clerk. Though the defendants have taken up a plea denying that they had entered into any agreement to sell with the plaintiff or had received Rs.4 lacs as earnest money or that final date for execution of sale deed was fixed as 20.1.2007, rather they have come up with a plea that the agreement set up by the plaintiff is not a legal and valid document and in fact it is result of fraud and misrepresentation inasmuch as there was fiduciary relationship between the parties as the defendants had been selling their crops through the commission agency of plaintiff during the course of which the plaintiff used to obtain signatures of the defendants on blank papers and blank stamp papers, which might have been converted into agreement to sell. There are serious allegations of fraud and misrepresentation.

The law is well settled that these allegations are required to be strictly proved as is done in a criminal case. Though the

defendants denied their having entered into agreement to sell but they indirectly admit their signatures thereon. In any case, if the defendants had any doubt regarding the genuineness of their purported signatures on the agreement to sell, nothing prevented them from examining any Handwriting Expert to prove that. No doubt science of comparison of handwriting is not a perfect one. However, it is fairly accurate. Thus, the defendants having not made any effort to get their purported signatures on the agreement to sell compared with their admitted signatures is to be taken adversely against them.

Another important fact to be taken note of is that the defendants are not shown to have taken any criminal legal action against the plaintiff for indulging in alleged forgery and fabrication. If the plaintiff had in fact done so, nothing prevented the defendants from taking recourse to law enforcement agency to get criminal action initiated against the plaintiff. A person, who is cheated and victim of fraud and misrepresentation would not sit quietly at home in such like manner. The defendant No.1 Lakhvir Singh, who had appeared as DW1 though stated that the matter had been reported to police but in his cross-examination, he could not tell the date of application statedly moved to the police for taking action against the plaintiff and had not brought copy thereof with him to the Court. He further stated that they did not lodge any complaint against the police

officer, who had allegedly not taken the action against the plaintiff; that they did not file any complaint against the plaintiff before Artia Association, Gidderbaha; that he had not got any proof regarding working of commission agent by the plaintiff. With regard to testimony of DW2 Bihari Lal, he had just stated that plaintiff is doing business of commission agent with his father and that oral evidence does not inspire much confidence. Coming to testimony of DW3 Baljit Singh, Clerk, Market Committee, Gidderbaha, that at best shows that commission agency business is being run by father of the plaintiff and the plaintiff is not shown to have any concern therewith. Thus, there was no occasion for the plaintiff to obtain signatures of defendants on blank papers or blank stamp papers and the allegations levelled by the defendants in that regard do not call for acceptance.

The defendants had a chance to create doubt in the mind of Court by summoning record of the stamp vender to show that the stamp paper on which the agreement to sell is typed had not been purchased by them. As per rules every stamp vendor selling stamp papers to the customers is required to make relevant entry in that regard in his register obtaining signatures of the purchaser/customer. If the defendants had not purchased the stamp paper on which the agreement to sell is scribed then entry in that regard in the register of the stamp vendor would not have been there. Of course signatures of defendants would not be there. If such evidence was brought on file

that would have created a major dent in the case of plaintiff but the defendants failed to adduce that evidence, which leads to the natural inference that such allegations levelled by the defendants are not correct.

Learned counsel for the appellants has argued that the plaintiff has not brought any evidence as to how the amount of Rs.4 lacs was paid by him to the defendants as earnest money. However, this contention does not have much merit since in the agreement to sell itself, it is incorporated that the defendants had received Rs.4 lacs as earnest money. The execution of the agreement to sell having been successfully proved by the plaintiff, Sections 91 and 92 of the Evidence Act clearly debars the defendants from raising such plea.

Another contention put forward by learned counsel for the appellants was that the suit has been filed after two years of the agreement, which puts a question mark over the readiness and willingness of the plaintiff to get the sale deed executed in his favour. Again I am not impressed by this contention. The Courts below on analysis of the evidence adduced by the parties considering the facts and circumstances of the case have returned clear findings that the plaintiff has been ready and willing to perform his part of contract and it were the defendants, who backed out of the transaction. Furthermore, as is settled law that time is not essence of contract with regard to sale of immovable property. The suit has admittedly

been filed within period of limitation and no adverse view can be taken on account of the plaintiff filing suit for specific performance after two years of the agreement to sell.

Learned counsel for the appellants has contended that replication is part of pleadings and though the defendants had levelled specific allegations of fraud and misrepresentation in the written statement, the plaintiff did not file any replication. Therefore, the allegations are deemed to be admitted.

Whereas learned counsel for the respondent has submitted that replication is not essential to be filed in each and every case and merely because the plaintiff has not filed replication does not mean that he admits the allegations in the written statement.

After hearing learned counsel for the parties, I find that the contention of learned counsel for the appellants is misconceived. The matter would have been different if the plaintiff had filed replication but had not specifically controverted the allegations of fraud and misrepresentation levelled in the written statement. However, merely for the reason that plaintiff did not opt to file replication did not mean that allegations in the written statement stand admitted. The authority referred to by learned counsel for the appellants **Salig Ram and another Versus Shiv Shankar and others, AIR 1971, P&H 437** is not applicable for the said reason.

Learned counsel for the respondent/plaintiff has

submitted that no substantial question of law arises in this case and in terms of Section 100 CPC, the appeal cannot be entertained unless a substantial question of law is involved. I find merit in such contention of learned counsel for the respondent/plaintiff.

The concurrent findings on the issues so recorded do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

The appeal being without merit stands dismissed accordingly.

18.3.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No