

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) RSA No. 2656 of 2014 (O&M)
Date of decision : 20.9.2019

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Mukhtiar Singh and others

.....Appellants

vs.

Balbir Singh

.....Respondent

2) RSA No. 2657 of 2014 (O&M)

...

Mukhtiar Singh and others

.....Appellants

vs.

Balbir Singh

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. N.K. Vadhera, Advocate and
Ms. Aarzoo. B Garewal, Advocate for the appellants.

Mr. Rahul Verma, Advocate for the respondent.

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H. S. Madaan, J.

Vide this judgment, I intend to dispose of two appeals,
bearing RSA 2656-2014 titled as 'Mukhtiar Singh and others vs.
Balbir Singh' and RSA 2657-2014 titled as 'Mukhtiar Singh and
others vs. Balbir Singh', as both these appeals have been directed

against the same judgment and decree.

Briefly stated facts of the case are that plaintiff Balbir Singh had brought a suit against defendants – Mukhtiar Singh, Jagtar Singh, Shivtar Singh – sons and Kamlesh Kaur widow of Sh. Avtar Singh, all residents of village Jagatpur Kalan, Tehsil and District Gurdaspur, seeking possession by way of specific performance of agreement dated 1.11.1995 revalidated on 13.11.1995, for land measuring 56 kanals, total 34 kanal 6 marla, situated at village Jagatpur Kalan, Tehsil Gurdaspur, as per jamabandi for the year 1996-97 and 21 kanal 14 marla situated at village Tanda, Tehsil and District Gurdaspur as per jamabandi for the year 1996-97, fully described in head note of the plaint, in alternative, seeking recovery of Rs.5,00,000/- alongwith interest @ 18% per annum w.e.f. 30.6.1996, onwards till realization. In addition to that asking for consequential relief of permanent injunction restraining the defendants from alienating the suit land to any other person except the plaintiff.

As per version of the plaintiff, Sh. Avtar Singh, since dead, predecessor-in-interest of defendants had entered into an agreement to sell the suit land with him, on 1.11.1995 at the rate of Rs.2,05,000/- per acre, receiving Rs. 2 lacs as earnest money. Thereafter, a further amount of Rs.50,000/- was paid by the plaintiff to Sh. Avtar Singh, on 13.11.1995, the dates of sale deed had been fixed as 30.6.1996 and 15.10.1996, respectively. On 1.7.1996, the plaintiff remained present before Sub-Registrar with balance consideration amount but Sh. Avtar Singh did not put in appearance over there, though earlier Sh. Avtar

Singh was assuring the plaintiff that as and when he got 'No Objection Certificate' from the departments, he would execute the sale deed in favour of the plaintiff. Sh. Avtar Singh had died in the year 1998. After his death, his legal heirs also did not come forward to execute the sale deed in favour of the plaintiff. Feeling aggrieved, he had brought the suit in question.

On notice, the defendants appeared and filed written statement contesting the suit denying that Sh. Avtar Singh had entered into any agreement to sell with the plaintiff or had received any earnest money under the agreement dated 1.11.1995 or further received an amount of Rs.50,000/- on 13.11.1995, or for that matter the stipulated dates for execution of the sale deeds were agreed to be 30.6.1996 and 15.10.1996. It was further denied that Sh. Avtar Singh had been assuring the plaintiff that as and when he got 'No Objection Certificate' from the departments, he would execute the sale deed in favour of the plaintiff. According to the defendants, the agreement set up by the plaintiff is a forged and fabricated document and does not bear signatures of Avtar Singh. The agreement purports to have signatures of Sh. Avtar Singh in Urdu, when he used to affix his signatures in English. The defendants raised several legal pleas also while praying for dismissal of the suit.

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

1. Whether the defendant has entered into an agreement to sell on 1.11.95 in favour of

plaintiff for selling the suit land ? OPP

2. If issue No. 1 is proved whether the plaintiff is entitled for specific performance of the agreement to sell dated 1.11.1995 ? OPP
3. If plaintiff is not entitled for recovery of Rs.5,00,000/- alongwith interest at the rate of 18% pr annum from 30.6.1996 till its realization? OPD
4. Whether suit is time barred? OPD
5. Relief.

Parties led evidence in support of their respective claims.

During the course of evidence, plaintiff has examined Surjit Singh, scribe of the agreements Exhibits P-1 and P-2, on 1.11.1995 and 13.11.1995, respectively, as PW-1. Sarvshri, Rasal Singh and Manjit Singh, attesting witnesses of the agreements were also examined as wittiness for the plaintiff. Plaintiff had further summoned Clerk from the bank, who had deposed that amounts paid by the plaintiff through cheques for Rs.1,90,000/- and Rs.50,000/- were deposited in the account of Sh. Avtar Singh.

During the course of evidence of defendants, they examined Shivtar Singh, who deposed as per case of the defendants contained in their written statement. He proved various documents i.e. passport of his father Avtar Singh as Exhibit D-5, sale deed of 1983 as Exhibit D-6, sale deed of 1983 as Exhibit D-7, sale deed of 1991 as Exhibit D-8, sale deed of 1997 as Exhibit D-9, sale deed of 1990 as Exhibit

D-10, sale deed of 1983 as Exhibit D-11, sale deed of 1986 as Exhibit D-12, sale deed of 1986 as Exhibit D-13, exchange of 1985 as Exhibit D-14, sale deed of 1986 as Exhibit D-15.

DW-2, another official from the bank proved the account/form of Sh. Avtar Singh, as Exhibit D-16, cheque Exhibit D-17 and back side of the cheque as Exhibit D-18.

After hearing the arguments, the trial Court of Civil Judge (Junior Division), Gurdaspur, decided issues No. 1 and 2 against the plaintiff, but plaintiff was held entitled to recover Rs.2,40,000/- with interest. Issue No.3 was decided in favour of the plaintiff. Issue No.4 was decided in favour of the plaintiff. Resultantly, the suit of the plaintiff was decreed for recovery of Rs.2,40,000/- with interest @ 9% per annum from 1.11.1995 till date of decree and 6% per annum from the date of decree till actual realization, vide judgment and decree dated 24.7.2007.

Feeling aggrieved, both the plaintiff, as well as, the defendants, had preferred appeals before the District Judge, Gurdaspur, which were assigned to Additional District Judge, Gurdaspur. The appeal filed by defendants Mukhtiar Singh and others was allotted Civil Appeal No. 223 of 2007, whereas appeal filed by Balbir Singh was allotted Civil Appeal No. 245 of 2007. Both the appeals having arisen out of one judgment and decree, were heard and disposed of together by learned Additional District Judge, Gurdaspur, vide his judgment and decree dated 25.5.2013, in as much as, the appeal filed by the defendants- appellants was

dismissed, whereas the appeal filed by the plaintiff was accepted. The judgment and decree passed by the trial Court were set aside and suit of plaintiff Balbir Singh was decreed for possession by way of specific performance of agreement dated 1.11.1995 and 13.11.1995 Exhibits P-1 and P-2, with regard to suit land as detailed and described in the head note of the plaint. The defendants Mukhtiar Singh, Jagtar Singh and Shivtar Singh were restrained from alienating the suit property to any third party except to Balbir Singh. Mukhtiar Singh and his co-defendants were directed to execute the sale deeds as per Exhibits P-1 and P-2 qua suit land in favour of Balbir Singh after one month from the date of receipt of copy of that judgment.

So, these judgment and decrees passed by the learned Additional District Judge, Gurdaspur, left the defendants aggrieved and they have filed the present two regular second appeals before this Court, one challenging the judgment and decree accepting the Civil Appeal No. 245 of 2007 filed by the plaintiff – appellant Balbir Singh and the other bearing Civil Appeal No. 223 of 2007, vide which the appeal against judgment and decree dated 24.7.2007 passed by the trial Court was dismissed.

Notice of both the appeals was given to the respondents, who have put in appearance through counsel.

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

The trial Court while declining the relief of specific performance to plaintiff Balbir Singh and granting him alternative

relief of refund of the amount paid by him to Sh. Avtar Singh deceased, with interest, has given following reasons for doing so. Para No. 12 of the judgment by the trial Court is quite relevant. The same is being reproduced for ready reference :-

“12. From the above rival contentions, this Court concludes that absence of any other document signed by Avtar Singh in Urdu certainly makes his signs in Urdu doubtful. It does not seem logical that an Advocate will attached with the plaint copy of unsigned agreement. Readiness and willingness of the plaintiff is also in doubt because after 7.1.1996, he did not show his readiness on 15.10.1996 and thereafter gave note late in February 1999 and did not care to press for the sale deed when Avtar Singh was alive, despite fact that he was living in neighbourhood. Version of purchase of stamp papers on the same day is false. Version that all went together for agreement is also false or contradictory. Money lending tendency of the Defendant is admitted. Absence of signs on Ex. PW5A is certainly doubtful. Hence, all the suspicious circumstances pointed out by the defendant could not be dispelled by the plaintiff to entitle him for specific performance. But, it is

proved beyond doubt that Rs.1,90,000/- and Rs.50,000/- were paid to Avtar Singh. Defendants simply failed to prove for what these amounts were paid? Hence, plaintiff is certainly entitled to get back this amount with genuine interest because in between the suit land remained under the user of the defendant not plaintiff. Consequently, issues No. 1 and 2 are decided against the plaintiff but the plaintiff is held entitled to recover Rs.2,40,000/- with interest and issue No.3 is accordingly decided in favour of the plaintiff.”

Learned Additional District Judge, Gurdaspur, in his judgment has based his conclusions as per discussion, relevant part thereof is being reproduced for ready reference :-

“ Apart from that, it was discretion of Avtar Singh to use any language for putting signatures on Ex. P-1 and Ex.P-2. Neither Balbir Singh, nor scribes were supposed to advise him to sign the said documents in a particular language. Had appellant Mukhtiar Singh etc. been able to give any explanation qua receipt of both amounts by Avtar Singh from Balbir Singh, then pleas taken by them in their written statement could be of some value and merit. In view of all these facts

and circumstances, coupled with the evidence of both the parties, there is nothing on record to suggest that Ex. P-1 and Ex.P-2 are forged or fabricated documents.

13. So far as ready and willingness on part of Balbir Singh is concerned, he has specifically stated that earlier he asked Avtar Singh to perform his part of the contract and after his death, he made requests to his L.Rs to execute the sale deeds qua suit land, in accordance with Ex.P-1 and Ex.P-2. First sale deed was to be executed on 30.6.1996, which was declared holiday. So, he remained present in the office of Sub-Registrar on 1.7.1996, but none appeared on behalf of Avtar Singh etc. Plea of the appellants Mukhtiar Singh etc. that Balbir Singh kept on waiting for a long time to file the suit, is not enough, rather, it is to be seen as to whether Balbir Singh has filed his suit within period of limitation or not. There is nothing on record that the suit in question was filed beyond limitation.

14. So far as minor discrepancies in the statements of witnesses examined by Balbir Singh are concerned, they are bound to occur, even in the statements of most truthful witnesses,

when they step into the witness box after a long gap. Agreements were executed in the year 1995, whereas evidence of witnesses of Balbir Singh was recorded in the year of 2002, after about 6/7 years. Otherwise also, where documentary evidence is available, oral statements cannot be considered. Case of appellant/plaintiff Balbir Singh is fully proved on record as per his pleadings. But while deciding the suit and passing judgment /decree under challenge, learned trial Court did not consider his evidence in its right perspective. Suit of Balbir Singh has been wrongly decreed only for recovery of an amount of Rs.2,40,000/- whereas it should have been decreed for the main relief. So, findings of trial Court qua issues No. 1 to 3 being not sustainable in the eyes of law, stand reversed. Accordingly, issues No. 1 and 2 are decided in favour of appellant/plaintiff Balbir Singh, whereas issue No.3 has become redundant and same stands disposed of accordingly. Findings of issue No.4 qua limitation of the suit are not challenged. Otherwise also, suit filed by Balbir Singh was well within limitation and said findings of the lower court stand affirmed.

Appeal preferred by Mukhtiar Singh etc. deserves dismissal, whereas appeal filed by Balbir Singh is liable to be allowed. Judgment/decree under challenge deserve to be set aside.”

I find that the entire approach of learned Additional District Judge, has been faulty and erroneous. As a matter of fact, no case was made out to grant relief of specific performance to the plaintiff. Such relief was rightly declined by the trial Court considering all the facts, but learned Additional District Judge, brushed aside those reasons and by mis-appraisal of evidence and wrong interpretation of law, came to the conclusion that plaintiff has been ready and willing to perform his part of contract and under the circumstances of the case, was entitled to the relief of specific performance.

The defendants had placed on record several registered documents to show that Sh. Avtar Singh used to append his signatures in Punjabi and in English, whereas agreement set up by the plaintiff purports to bear signatures of Sh. Avtar Singh in Urdu. Plaintiff could not bring on record even a single document admittedly bearing signatures of Sh. Avtar Singh in Urdu, giving rise to a suspicion that the agreement set up by the plaintiff was not genuine.

Alongwith the plaint, the plaintiff had attached a photocopy of agreement Exhibit P-1 and original agreement was not placed on file with the plaint at the first instance. The defendants had moved an application under Order 11 Rule 14 CPC and only thereafter, the original agreement was placed on file, but original agreement is

different from photocopy already placed on record as Exhibit PW 3/A. Photocopy of the agreement is not having signatures of Avtar Singh, Rasal Singh, Balbir Singh, Rachpal Singh or Piara Singh, indicating thereby that signatures on the agreement were appended much after filing of the suit.

It transpires that the plaintiff had been finding ways and means to get the suit decreed with ulterior methods. He had tried to approach the Presiding Officer of the trial Court and the Presiding Officer of such Court had requested for transfer of the suit. Plaintiff had also moved a transfer application, but the same was declined.

Plaintiff had stopped appearing in the Court and his suit was dismissed in default on 23.5.2003 and it was restored on 8.5.2007, in the process the plaintiff had wasted four precious years of the Court.

The dates fixed for specific performance were 30.6.1996 and 15.10.1996. The plaintiff submits about his presence before Sub-Registrar on 1.7.1996, but there is nothing on record as to how readiness and willingness were shown by the plaintiff on 15.10.1996. After 1.7.1996 till February 1999, the plaintiff did not care to send any notice for execution of the said sale deeds and after death of Sh. Avtar Singh, for a long time he did not contact the legal heirs as such the readiness and willingness on the part of the plaintiff is in doubt since from 1.7.1996 till February 1999, he did not make any effort to get the sale deeds executed.

As per plaintiff and his witness, stamp papers were purchased on 1.11.1995 when the agreement was entered into, but on

the back of the stamp paper the date of purchase is mentioned as 25.10.1995. From the evidence adduced by the plaintiff and as rightly observed by the trial Court, it cannot be concluded that plaintiff has all along been ready and willing to perform his part of contract. Thus his trying to influence the Presiding Officer of the Court, there being difference between photocopies of the agreement placed on record and original agreement, there being no evidence that plaintiff had gone to the office of Sub Registrar on 15.10.2006 and got his presence marked there, there being gross delay in filing of the suit for specific performance, which was filed on 17.7.1999 when limitation for filing of the suit was about to expire, his not pursuing the matter properly and allowing the suit to be dismissed in default and then getting it restored after a considerable time, the specific performance should not have been granted to him.

However, since payment of Rs.2,40,000/- by plaintiff to Sh. Avtar Singh predecessor-in-interest of defendants stands proved on record, the defendants are bound to return that amount to the plaintiff.

Learned counsel for the appellants had referred to various authorities in support of his contention that when a suit for specific performance is filed after a long time on entering into an agreement, though within limitation, the specific performance should not be granted, i.e. *K.S. Vidyanadam vs. Vairavan 1997 (2) RCR (Civil) 312; Kanwaljit Singh and another vs. Fuljit Kumar and others 2016 (4) RCR (Civil) 328; Makhan Singh vs. Ajit Singh and others, in RSA 5258 of 2012 decided on 1.3.2016 by a Coordinate*

Bench of this Court; *Bal Krishna and another vs. Bhagwan Das (Dead) and others* 2008 (2) RCR (Civil) 732; *Sant Ram vs. Brij Mohan Kaura and another* 2006 (2) RCR (Civil) 769; *Dalip Singh vs. Banarsi Dass (deceased) through LRs* 2014 (57) RCR (Civil) 611; *Kamal Devgun vs. Santosh Kumari, in RSA 1484 of 2016, decided on 17.8.2006 by a Coordinate Bench of this Court; I.S. Sikandar (D) by LRs vs. K. Subramani and others* 2014 (1) RCR (Civil) 236; *Seth Narain Dass through LRs vs. Jatindra Steel and Tubes Ltd. Surekha Building, Faiz Bazar, Delhi-6 and others* 2011 (5) RCR (Civil) 913; *Ravail Singh vs. Natha Singh and others* 2018 (4) Law Herald 2992 and *Punjab Breeders Limited, Rajpura vs. Parbhu Dutt and others* 2017 (4) RCR (Civil) 977.

He had further referred to authority *N.P. Thirugnanam (Dead) by LRs vs. Dr. R. Jagan Mohan Rao* 1996 AIR (SC) 116 wherein it was observed that remedy for specific performance is an equitable remedy which is in the discretion of the Court and such discretion is to be exercised according to the settled principles of law and not arbitrarily. It was further observed that the Court is not bound to grant relief just there was valid agreement of sale.

Thus, I find that judgment and decree passed by learned trial Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. No reason is there to interfere with the same.

The judgment passed by the learned Additional District Judge, Gurdaspur, is not sustainable. The same is accordingly set

aside.

In view of the above discussion, RSA 2657-2014 is partly allowed.

No substantial question of law arises in RSA 2656-2014. Accordingly, the same stands dismissed.

20.9.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes/ No
Whether reportable	Yes/ No