

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

RSA-6154-2015(O&M)

Date of decision:-21.8.2019

Mohinder Singh

...Appellant

Versus

Upar Singh

...Respondent

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

Present: Mr.Kawaljyot Singh, Advocate
for the appellant.

Mr.Rakesh Gupta, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – Upar Singh had brought a suit against defendant Mohinder Singh seeking possession by way of specific performance of agreement to sell dated 31.3.2006 with regard to 18 kanals 11 marlas of land situated at village Sanana, Tehsil & District Ropar; in the alternative praying for

recovery of Rs.12 lakhs i.e. Rs.6 lakhs paid as earnest money and Rs.6 lakhs as stipulated damages; in addition to craving for grant of permanent injunction restraining the defendant from alienating the suit property in any manner or creating any charge over it.

As per version of the plaintiff, the defendant agreed to sell 18 kanals 11 marlas of the land belonging to him fully detailed in head-note of the plaint with the plaintiff at the rate of Rs.5,85,000/- per acre; that an agreement in that regard came into being on 31.3.2006; that the plaintiff had paid a sum of Rs.6 lakhs to the defendant at that time as earnest money; that the final date for execution and registration of the sale deed was fixed as 30.9.2006; that the plaintiff had approached the defendant before arrival of the final date with a request to execute the sale deed on 29.9.2006 as 30.9.2006 being Sunday was a holiday but the defendant avoided it on one pretext or the other; that the plaintiff went to the office of Sub Registrar-cum-Executive Magistrate, Ropar on 29.9.2006 and 3.10.2006 i.e. the last working day and first working day of respective months, remaining present there from 9:00 a.m. to 5:00 p.m.; that he was having balance sale consideration amount and the necessary expenses for execution, registration of the sale deed but the defendant did not turn up; that the plaintiff executed an affidavit getting it attested from Sub Registrar-cum-Executive Magistrate, Ropar on both the dates just to show his presence in the office of Sub

Registrar-cum-Executive Magistrate, Ropar on the dates in question. According to the plaintiff, he has always been ready and willing to perform his part of the agreement and is still ready and willing to do so but the sale transaction could not be completed on account of failure of the defendant to perform his part of the agreement. Ultimately the plaintiff approached the Court for redressal of his grievances, by way of filing the civil suit in question.

On receipt of notice, the defendant put in appearance in the Court and filed written statement contesting the suit raising preliminary objections, to wit, that the suit was not maintainable in the present form; that the plaintiff had not approached the Court with clean hands and had filed the suit on the basis of forged and fabricated agreement; that no cause of action arose to the plaintiff to bring the suit etc. On merits, the defendant denied having entered into any agreement to sell with the plaintiff as asserted by the plaintiff in the plaint. According to the defendant since no such agreement had been entered into, there was no occasion for him to execute the sale deed in favour of the plaintiff. Refuting the remaining allegations in the plaint, the defendant prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

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

1. Whether the defendant had executed an agreement to sell dated 31.3.2006 in favour of the plaintiff. If so, its effect? OPP.
2. Whether plaintiff remained ready and willing to perform his part of agreement? OPP.
3. Whether agreement in question is a forged and fabricated document? OPD.
4. If issues No.1, 2 and 3 are decided in favour of the plaintiff, whether plaintiff is entitled to specific performance of the agreement to sell? OPD.
5. Relief.

In order to prove his case, plaintiff Upar Singh got his statement recorded as PW1 and he further examined Sh.Ram Singh as PW2, Sh.Kala Singh as PW3 and Dr.Inderjit Singh, Handwriting and Fingerprint Expert as PW4.

On the other hand, defendant Mohinder Singh had appeared as DW1 and he further examined Ms.Gurmeet Kaur, Handwriting & Fingerprint Expert as DW2.

In rebuttal evidence, the plaintiff tendered in evidence copy of order dated 14.3.2014 as Ex.P6.

After hearing the learned counsel for the parties, the trial Court decided issues Nos.1 to 4 in favour of the plaintiff and against

the defendant. Resultantly, the trial Court vide judgment and decree dated 15.9.2014 decreed the suit of the plaintiff for possession by way of specific performance of agreement dated 31.3.2006. The plaintiff was directed to pay balance sale consideration to the defendant within a period of two months from the date of judgment and thereafter the defendant was required to execute and get registered the sale deed in respect of the suit property. It was further directed that in the event of non-acceptance of balance sale consideration by the defendant, the plaintiff would deposit the said amount in the Court and apply for getting the sale deed executed in his favour through process of Court and the expenses, if any for registration of the sale deed would be borne by the plaintiff. As a consequential relief, the defendant was restrained from alienating, transferring, selling, mortgaging, gifting or creating any charge in favour of the any person except the plaintiff and also from changing the nature of the suit land.

Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal before District Judge, Rupnagar, who vide judgment and decree dated 8.5.2015 dismissed the same upholding the impugned judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendant has filed the present

regular second appeal before this Court, notice of which was issued and the respondent/plaintiff, who has appeared through counsel.

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

In this case the defendant had denied having entered into an agreement to sell with the plaintiff, dubbing the agreement so set up by the plaintiff, as a forged and fabricated document. However, the trial Court considering the evidence adduced by the parties came to the conclusion that the defendant did enter into such agreement to sell with the plaintiff on 31.3.2006 receiving Rs.6 lakhs as earnest money and further that plaintiff has been ready and willing to perform his part of agreement throughout but the defendant backed out of the same, in that way, the plaintiff was entitled to specific performance of such agreement to sell. The plea taken by the defendant that it was a forged and fabricated document was rejected. While coming to the conclusion, the trial Court has relied upon depositions of PW2 Ram Singh and PW3 Kala Singh, both attesting witnesses of the agreement to sell Ex.P1, who proved its execution. Though both of them were subjected to lengthy cross-examination but they stuck to their guns and could not be shattered on any material point. The plaintiff had examined Dr.Inderjit Singh, Handwriting & Fingerprint Expert as PW4, who had compared the disputed signatures of defendant Mohinder Singh on agreement to

sell Ex.P1 with standard signatures taken from various documents, giving his opinion that the disputed signatures Mark-Q1 to Mark-Q4 tallied with the standard signatures of Mohinder Singh Mark-A1 to A3 and Mark-S1 to S11 despite an attempt being there to disguise the signatures in Mark-S1 to S11 to avoid identification. He had proved his report Ex.P5 and photocharts as Ex.P6 to Ex.P23. Though in rebuttal, the defendant had appeared as DW1 and examined Ms.Gurmeet Kaur, Handwriting & Fingerprint Expert, who vide her report Ex.D1 with the help of photographs Ex.D2 to Ex.D14 had opined that disputed signatures Mark-Q1 to Q4 were copied forged signatures but the trial Court by giving detailed reasoning has found the version of the plaintiff to be convincing and reliable. It has been observed that even the standard signatures of Mohinder Singh defendant do not tally with each other and there is perceptible difference in standard signatures S1, S2, S3, S4, S5 and A1 to A4 taken by DW2 Ms.Gurmeet Kaur, which could be noticed with the naked eye and Mohinder Singh seems to have been changing his signatures, which was not easily discernible and furthermore the change in signatures could be due to passage of time, age and health. The trial Court found the report submitted by PW4 Sh.Inderjit Singh to be more logical and well reasoned, whereas report submitted by DW2 Ms.Gurmeet Kaur was not found to be reliable. Of course Section 73 of the Indian Evidence Act empowers the Court to

compare the disputed signatures with standard signatures. It has specifically been observed by the Courts below that there was nothing on record to show that Ex.P1 was a false and fabricated document. Various other contentions raised on behalf of defendant have been considered and rejected by giving convincing reasoning.

One of the arguments advanced on behalf of learned counsel for the appellant was that plaintiff happened to be a Government servant and he had not obtained prior permission from his department before allegedly entering into transaction with the defendant, therefore the specific performance of agreement should not have been granted to him since that amounted to going against public policy.

On the other hand, learned counsel for the respondent/plaintiff has argued that no specific plea in that regard has been taken by the defendant in the written statement and if the defendant had taken the plea, the plaintiff could have replied to the same and adduced evidence in that regard, therefore, the defendant cannot be allowed to raise this plea. However, according to learned counsel for the respondent/plaintiff necessary compliance had been made in the form of informing the department as required under amended Government Employees (Conduct) Rules. In support of his contention he has referred to judgment **Samey Singh Versus Ravi Dutt, 2014(3) PLR 262** by a Single Judge of this Court wherein it

was observed that as per rule 18(2) of the Government Employees (Conduct) Rules, 1966, the only requirement is that Government servant has to bring it to the notice of prescribed authority of his intention to acquire immovable property by way of purchase etc., though as per Rule 18(3), previous sanction is required in respect of movable property and since the proviso is attached to Rule 18(3), it cannot be read with Rule 18(2). Counsel for the respondent/plaintiff has further relied upon judgment **Tara Chand Versus Parkash, 2011(3) PLR 734** passed by a Co-ordinate Bench of this Court wherein it was observed that in terms of Rules 18(2) and 14.23 of Government Employees (Conduct) Rules, 1966, no previous sanction is required to be obtained for acquiring immovable property in the name of government employee or any member of his family and prior intimation is required to be given for acquiring or disposing of any immovable property but not for entering into agreement to sell.

After hearing learned counsel for the parties, I find that the contentions raised by learned counsel for the appellant are not tenable.

Another argument raised by learned counsel for the appellant was that in the original agreement dated 31.3.2006 in the second line khasra number has been mentioned as 10//9(8-0), which has been altered to 10//13(8-0), which means that forgery has been committed and the plaintiff is not entitled to get discretionary relief

of specific performance on the basis of such agreement to sell. This contention had been raised before the trial Court also, which in para No.22 of the judgment has dealt with it in detail not finding the same to be worthy of acceptance. I do not find any reason to disagree with the trial Court on that point. Even otherwise, it transpires from the record that the defendant, who is appellant before this Court had moved an application before the trial Court for grant of permission to place on file photostat copy of agreement as supplied to him by plaintiff pointing out that digit 9 in agreement was tampered with, which was not signed or initialed by any of the party. The photocopy of the agreement was sought to be placed on the file by way of additional evidence. That application was resisted by the plaintiff. The trial Court had disposed of that application with following observations:

“Admittedly, the agreement to sell dated 31.3.2006 as well as its photostat copy was filed by the plaintiff at the time of institution of the suit. There is no discrepancy as pointed out by the defendant in the same. Moreover, the defendant has never raised this plea in the written statement or not any subsequent stage. Even during the evidence no such objection has been raised. Therefore, now at the fag end of this case, the Court cannot permit the defendant to adduce additional evidence as the entire

evidence has been led by both the parties to their satisfaction. Moreover, no plausible reason has been advanced by the defendant for adducing the evidence in respect of this matter. In fact, it has not been mentioned as what additional evidence is to be lead by defendant. Rather, present application is vague for non-mentioning of witness or document to be produced. Probably, the present application has been filed to prolong the case. As such, there is no merit in it and the same is hereby dismissed.”

Therefore, I am not inclined to accept such contention of learned counsel for the appellant. Things would have been different if the defendant had taken up a plea that khasra number of the land, which he had agreed to sell with the plaintiff was 10//9, which had been wrongly altered to rectangle 13 by the plaintiff. But in this case defendant has flatly denied having entered into any such agreement. Therefore, there could not be any occasion for such alteration in the khasra number on the part of the plaintiff.

One more submission made by learned counsel for the appellant was that as a matter of fact one Bahadar Singh is pulling the strings from behind and the present plaintiff is just his yes man; that Bahadar Singh is Halqa Kanungo, who had manipulated the entire things just to grab the land of the defendant and presence of

Bahadar Singh at the relevant time is admitted by the witnesses examined by the plaintiff in their cross-examination.

On the other hand, learned counsel for the plaintiff has contended that no such plea has been taken by the defendant in the written statement and no positive evidence adduced by him in that regard and this plea is being put forward as a diversionary tactic.

After hearing the learned counsel for the parties, I find that the submission made by learned counsel for the appellant lacks merit. In his affidavit Ex.DW1/A, Mohinder Singh – defendant has not made any such mention. Therefore, this plea is not sustainable.

The First Appellate Court has affirmed the findings of the trial Court upholding the judgment and decree passed by such Court. The concurrent findings recorded by the Courts below in favour of the plaintiff do not call for any interference.

No substantial question of law arises in this appeal.

Therefore, the appeal stands dismissed.

21.8.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No