

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

RSA-5081-2014(O&M)

Date of decision:-1.4.2019

Jaswant Singh

...Appellant

Versus

Dinesh Kumar @ Dinesh Chand

...Respondent

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

Present: Mr.Abhilaksh Grover, Advocate
for the appellant.

Mr.Vijay Jindal, Sr. Advocate with
Mr.Gopal Soni, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Jaswant Singh had brought a suit against defendant Dinesh Kumar @ Dinesh Chand craving for grant of relief of specific performance of agreement to sell dated 12.10.2007 with possession as owner, in addition to that asking for relief of permanent injunction, on the assertions that the defendant had entered into an agreement with plaintiff to sell land measuring 19 kanals 16 marlas situated at village Babain, Tehsil Thanesar, District Kurukshetra as per jamabandi for the year 2000-01 detailed in the plaint, which was mortgaged with PLDB, Ladwa @ Rs.8 lacs per acre receiving

Rs.2 lacs as earnest money; that the final date for execution of sale deed was fixed as 13.5.2008; that the said agreement was thumb marked by the defendant and attested by the witnesses. According to the plaintiff, he has been ready and willing to perform his part of contract; that he is cultivating the suit land at the spot as prospective vendee since the defendant had put the plaintiff in physical possession of the suit land as part performance of the agreement to sell and in terms of Section 53-A of the Transfer of Property Act, the plaintiff is deemed to be owner in possession of the suit land, however, the defendant threatened to dispossess the plaintiff from such land and to alienate the same. According to the plaintiff, the defendant refused to accede to his request to admit his claim and to execute and get registered the sale deed qua the suit land in his favour and not to alienate such land to anybody else except the plaintiff, giving rise to a cause of action to the plaintiff to bring the suit.

Notice of the suit was given to the defendant, who appeared and filed written statement wherein he took up several legal objections that the suit was not maintainable; that suit was false, frivolous and vexatious; that plaintiff had no locus standi or cause of action to file the suit; that the plaintiff was estopped from filing the suit by his own act and conduct etc. On merits, the defendant denied having entered into any agreement to sell with the plaintiff, rather he came up with the allegations that such agreement to sell set up by the plaintiff was a result of fraud and coercion played upon the defendant by brother of plaintiff in collusion with his associates; that as a matter of fact, the defendant had neither

agreed to sell the suit land with the plaintiff nor received earnest money and signatures and thumb impressions of defendant were obtained on blank stamp papers of Rs.10/- each and also in the register of the Deed Writer Singh Ram; that the defendant being owner in possession of the land had mortgaged the same with Punjab Land Development Bank, Ladwa. Refuting the remaining allegations in the plaint, the defendant prayed for dismissal of the suit.

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

1. Whether the plaintiff is entitled for the decree of possession by way of specific performance of agreement to sell dated 12.10.2007 as prayed for? OPP.
2. Whether the plaintiff is entitled for the relief of declaration alongwith permanent injunction as prayed for? OPP.
3. Whether the plaintiff is estopped from filing the present suit? OPD.
4. Whether the plaintiff has no locus standi? OPD.
5. Whether the plaintiff has not properly valued the suit for the purpose of Court fee and jurisdiction? OPD.
6. Whether the plaintiff has not come to the Court with clean hands? OPD.
7. Whether the suit is not maintainable? OPD.
8. Relief.

In order to prove his case, the plaintiff had examined Sh.Darshan Singh as PW1, Sh.Fakir Chand, Reader to Naib Tehsildar as PW2, Sh.Singh Ram as PW3, Sh.Surender Kumar as PW4 and Sh.Sanjeev

Kumar as PW5, whereas the plaintiff got his statement recorded as PW6 besides tendering some documents.

On the other hand, the defendant had examined Sh.Anil Kumar as DW1, Sh.Rajender Kumar as DW3, HC Krishan Kumar, MHC of PS Shahabad as DW4, Sh.Agya Ram as DW5 and Smt.Poonam Rani as DW6, whereas the defendant got his statement recorded as DW2 besides tendering certain documents.

After hearing learned counsel for the parties, the trial Court decided issues No.1 and 2 against the plaintiff, issues No.3 to 7 against the defendants. Resultantly, suit of the plaintiff was dismissed. This was so done vide judgment and decree dated 11.11.2013.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Kurukshetra which was assigned to Additional District Judge, Kurukshetra, who vide judgment and decree dated 14.8.2014 dismissed the same affirming the judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, resultantly the impugned judgments and decrees passed by the Courts below be set aside and suit of the plaintiff be decreed.

On getting notice of regular second appeal, the respondent/defendant has appeared before this Court through counsel.

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

The instant appeal is found to be without any merit, as such doomed for failure. Learned trial Court on proper appraisal of evidence and correct interpretation of law had disbelieved the transaction for various reasons, which are shortly enumerated as under:

- (i) that in agreement dated Ex.P1 dated 12.10.2007, it is mentioned that defendant was in need of money since his daughter was to be married within 3-4 days and that earlier a suit for permanent injunction was filed on 19.10.2007; if the defendant's daughter got married on 16/17.10.2007, what was the urgency with the plaintiff to file the suit for permanent injunction within 2-3 days of the marriage and rather filing of such suit for permanent injunction in such a haste creates doubt about truthfulness of case of the plaintiff;
- (ii) that in FIR no.156 dated 11.10.2008, the present defendant Dinesh has levelled allegations that the plaintiff alongwith some other persons including Sandeep, Jaswant, Jitender, Singh Ram and Sitar Ahmad had kidnapped him, taking his signatures forcibly on stamp papers; the accused were arrested and all of them had suffered their disclosure statements Ex.D12, Ex.D13, Ex.D14, Ex.D18, Ex.D29 and Ex.D39; the trial Court has found such statements to be relevant piece of evidence coming to the conclusion that FIR registered against the plaintiff and Darshan Singh shows that they are land grabbers and involved in such type of cases;
- (iii) that depositions of plaintiff as well as Darshan Singh appearing as PW1 and PW5, respectively shows that they were unaware of the location of the property and further their taking copy of jamabandi

showing the defendant as owner of property after agreement to sell creates a doubt about execution of the agreement;

(iv)that the agreement to sell Ex.P1 comprising of 10 pages in the form of 10 stamp papers of Rs.10 denomination each but the serial number of stamp papers is not in any order; the contents of agreement are written on Sr.No.01AA741221, 01AA741222, 01AA741223, 01AA741224 only;

(v)that an other circumstance taken to be suspicious by the trial Court was as to why the defendant agreed to take Rs.2 lacs as earnest money only especially when his daughter's marriage was to be solemnized after 2-3 days of agreement and if he was really in need of money, he would have taken at least half of the amount of the agreed consideration;

(vi)that the plaintiff had failed to show the source of money of Rs.2 lacs allegedly paid by him to defendant at the time of entering into agreement;

(vii)that wife of defendant had withdrawn Rs.15 lacs on 5.10.2007 and withdrawal was made of Rs.1 lac on 10.9.2007 showing that the defendant had sufficient funds at the time of marriage of his daughter and furthermore there was a a credit balance of Rs.3 lacs in account of the wife of the defendant;

(viii)that Dinesh Kumar (defendant) had withdrawn Rs.50,000/- on 27.8.2007 out of Kissan Credit Limit with the bank; those facts were corroborated by bank certificates Ex.D1 and Ex.D2 showing that there was no urgent requirement with the defendant for money;

(ix)that it stood established on record that consent of the defendant to the agreement was not free and same was taken as a result of coercion and threat rendering the agreement voidable in terms of Section 19, 19A of Indian Contract Act, 1872 and as such voidable at the instance of option of defendant; under the circumstances, the agreement could not be enforce and plaintiff was not entitled to any relief.

The First Appellate Court also came to the same conclusion thereby affirming the findings given by the trial Court. Some additional facts noted by the First Appellate Court were that on agreement Ex.P1, there are signatures of appellant as “Dinesh Chand” on the revenue stamp and the agreement to sell is having thumb impression of respondent-defendant, the copy of entry in the register of stamp vendor Ex.P3 bearing Sr.No.831 has signatures of “Dinesh Kumar” instead of “Dinesh Chand” and word Dinesh written there was not matching with signatures on agreement to sell Ex.P1. It has not been explained as to why the stamp of Rs.100/- was not purchased for scribing agreement to sell Ex.P1 and why 10 stamp papers of Rs.10/- each were purchased. The First Appellate Court has observed that the plaintiff had failed to prove due execution of agreement to sell Ex.P1.

The First Appellate Court has dealt with the contentions put forward by learned counsel for the plaintiff- appellant there that FIR No.156 had been cancelled by the police, therefore disclosure statements were not admissible. Learned counsel for the respondent had submitted that cancellation report filed by the appellant has not been accepted, rather

the defendant – respondent has filed a protest petition and proceedings are pending before the Illaqa Magistrate. May it be so but the documents in the form of disclosure statements could very well be considered by the Courts below being relevant piece of evidence.

Another contention put forward on behalf of the plaintiff/appellant was that there was a credit balance of only 1.5 lacs in account of defendant and the trial Court wrongly read it to be 15-16 lacs observing that respondent-defendant had no urgent requirement for money. Referring to bank statement Ex.D1, the First Appellate Court has observed that there was balance of Rs.3,02,056/- on 10.9.2007 in account of wife of defendant and she had withdrawn amount of Rs.1 lac on 10.9.2007 and Rs.1.5 lac on 5.10.2007, though the transactions were prior to execution of agreement to sell. However, the execution of agreement to sell Ex.P1 and payment of earnest money was not proved.

From the record, it also comes out that Darshan Singh and Jaswant Singh have got criminal antecedents, Darshan Singh having 13 criminal cases and Jaswant Singh is having 17 criminal cases registered against them.

Learned counsel for the appellant/plaintiff has contended that since the defendant had denied having entered into an agreement to sell with the plaintiff, therefore, plaintiff was not required to prove readiness and willingness on his part to get the sale deed executed in his favour. However, this argument was rebutted by learned counsel for the respondent stating that the plaintiff has miserably failed to prove the execution of agreement, payment of earnest money to the defendant and it

is fully proved on record that the agreement to sell set up by the plaintiff is an illegal document, which cannot be enforced for the reason that it was result of threat and coercion and no consideration amount had passed.

I find that the plaintiff has been unable to prove that defendant had entered into legal and valid agreement to sell with him on 12.10.2007 receiving a sum of Rs.2 lacs as earnest money or that he has always been ready and willing to perform his part of agreement but the transaction could not materialize on account of fault of the defendant. Rather the defendant has been successful in establishing that his signatures had been obtained by threat and coercion. Therefore, such type of agreement cannot be enforced. The Courts below had rightly declined the relief sought by the plaintiff.

As regards the authority *Sant Singh Versus Amarjit Singh, 2015(9) RCR(Civil) 185* referred to by learned counsel for the appellant, the same does not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

I do not see any reason to disagree with the concurrent findings recorded by the Courts below.

No substantial question of law arises in this appeal.

The appeal stands dismissed accordingly.

1.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No