

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

**RSA No.3 of 2017 (O&M)
Date of decision: 18.12.2019**

**Harjinder Singh @ Sucha Singh @ Sucha (since deceased) through LR.
.....Appellant**

Versus

Amarjit Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Narinder S. Lucky, Advocate,
for the appellant.

Mr. Kanwal Goyal, Advocate,
for respondent No.1.

Ritu Bahri, J.

CM No.9-C of 2017

For the reasons mentioned in the application, same is allowed and
delay of 62 days in filing of the appeal is condoned.

RSA No.3 of 2017 (O&M)

This appeal has been filed against the judgment dated 14.07.2016
passed by the District Judge, Kapurthala, dismissing an appeal filed by
defendant-appellants (hereinafter referred to as 'the defendants') against the
judgment and decree dated 05.11.2015 passed by the Civil Judge (Senior
Division), Kapurthala, whereby suit filed by plaintiff-respondent No.1
(hereinafter referred to as 'the plaintiff') for specific performance of
agreement to sell, has been decreed.

Amarjit Singh-plaintiff (respondent No.1 herein) filed the above
said suit with the averments that vide agreement to sell dated 07.11.2003,

defendant-Harjinder Singh @ Sucha Singh @ Sucha had agreed to sell the

suit property (as detailed in the head note of the plaint) to him for a sale consideration of Rs.5,07,500/- and had received Rs.3,50,000/- as earnest money in the presence of witnesses. The stipulated date for execution and registration of the sale deed was on or before 08.11.2004. However, date for execution of the sale deed was extended vide writing dated 08.11.2004. At that time, an amount of Rs.20,000/- was taken as earnest money. On 07.02.2005, defendant No.1 again requested the plaintiff that he was not in a position to execute the sale deed. Therefore, time for execution of the sale deed was again extended to 08.02.2006. On 08.02.2006, plaintiff had gone to the office of Sub Registrar, Dhilwan for getting the sale deed executed, but defendant did not turn up for the same. Thereafter, plaintiff got his presence marked before the Sub Registrar. Hence, the suit.

Upon notice, defendant filed written statement, wherein allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether the defendant has executed agreement to sell dated 07.11.2003 in favour of the plaintiff? OPP
2. If issue No.1 is proved, whether plaintiff is entitled to possession by way of specific performance of the agreement to sell dated 07.11.2003 or in the alternative relief of recovery of earnest money? OPP
3. Whether the plaintiff is entitled to permanent injunction, as prayed for? OPP
4. Whether suit of the plaintiff is not maintainable? OPD
5. Whether the plaintiff has no locus-standi to file the suit? OPD
6. Whether the plaintiff has not come to the Court within clean hands? OPD
7. Whether the plaintiff is estopped from filing the suit by his act and conduct? OPD

8. Relief.

Trial Court, after hearing learned counsel for the parties, decreed the suit. Appeal against the said judgment also met the same fate. Before the trial Court, plaintiff himself had appeared as PW-1 and proved on record agreement Ex.P1, endorsements Ex.P2, Ex.P3 and affidavit Ex.P4. Testimony of the plaintiff was corroborated by Harbhajan Singh (PW-2) and Major Singh (PW-3) being witnesses of the transaction in question. Narinderpal Singh, Deed Writer (PW-4) deposed with regard to the agreement to sell in question, which was scribed by his father Malkiat Singh (since deceased). On the other hand, defendants examined Bakshi (DW-1), who was witness of the receipt Ex.P2. He deposed that no such agreement or endorsement was executed between the plaintiff and defendant.

Case of the defendants was that the plaintiff had forged and fabricated the agreement to sell in question as he had got the signatures of defendant No.1 on some blank papers while advancing loan to him. Trial Court had observed that witness of the defendants namely Bakshi (DW-1), during his cross-examination, had admitted that in the presence of Harbhajan Singh, Amarjit Singh-plaintiff and Harjinder Singh, he might have signed the endorsement dated 08.11.2004, which indirectly amounts to his admission regarding execution of endorsement. Further, bald statements of Mandeep Singh and Sukhdeep Singh (DW-2 & DW-3 respectively) could not establish the version of alleged forgery with regard to the agreement to sell. With the above observations, suit of the plaintiff was decreed by the trial Court.

On appeal, the lower appellate Court affirmed the finding given by the trial Court on all the issues and further observed that no handwriting

expert had been examined by the defendants to prove that the agreement to sell in question was forged and fabricated. The agreement to sell Ex.P1 pertains to the year 2003 and no document was produced by the defendants to show that rate of the similar land in the year 2003 was about 25 lacs to Rs.30 lacs per acre. Hence, plea taken that the agreement was executed at lower price has also been rejected. It has been further observed that the defendants did not make any complaint against the plaintiff for obtaining the signatures of Harjinder Singh on blank papers. Hence, the allegations that blank papers were got signed by the plaintiff was also rejected. Out of the total sale consideration of Rs.5,07,500/-, plaintiff had paid Rs.3,50,000/- on 07.11.2003 and Rs.20,000/- on 08.11.2004, meaning thereby almost 70% of the total sale consideration has already been paid by the plaintiff.

Learned counsel for the appellants has vehemently argued that since the plea of forged and fabricated agreement to sell had been taken by the defendants, merely because the execution of agreement to sell had been proved, the suit could not be decreed for specific performance. Rather, a decree of alternative relief of returning back the earnest money could have been passed. He further argued that the agreement to sell was executed on 07.11.2003 and the price of the land has been increased manifold since then. Keeping in view that the total sale consideration had not been paid, alternative relief for recovery of the earnest money should have been passed.

Learned counsel for respondent No.1-plaintiff has argued that in the present case, plaintiff was always ready and willing to perform his part of the contract. He had paid earnest money of Rs.3,50,000/- on 07.11.2003 and Rs.20,000/- on 08.11.2004. It was defendant No.1, who did not appear

before the office of Sub Registrar on the date fixed i.e. 08.02.2006 and presence of the plaintiff before the Sub Registrar has been duly proved by examining Sewa Singh, Registry Clerk (PW-5) and Harnek Singh Bal, Deed Writer (PW-6). He further argued that now, the defendants cannot be allowed to take advantage of their own wrong.

After hearing learned counsel for the parties, present appeal deserves to be dismissed.

The first question for consideration is, whether defendant/appellant(s) had led sufficient evidence to prove that plaintiff had not come to the Court with clean hands. Before the trial Court, except Bakshi (DW-1), no evidence had been led by the defendants to prove that the agreement to sell was forged and fabricated document. Except, the oral testimony of DW-1, no evidence was led to prove that the plaintiff had got signatures of Harjinder Singh on blank papers. No such complaint was made by Harjinder Singh (when he was alive) against the plaintiff. Bakshi (DW-1) had stated that he did not witness the endorsement dated 08.11.2004 Ex.P2. The lower appellate Court has examined the deposition of Bakshi (DW-1), who was Ex-sarpanch of the village and had stepped into the witness box to support the defendants due to political and other reasons. On one hand, he has denied his signatures on Ex.P1 and Ex.P2 and on the other hand, he admitted the same. Further, DW-2 and DW-3 have admitted that they are still dealing with the plaintiff-respondent No.1, who is a Commission Agent. Keeping in view the above fact and the fact that no complaint was made by Harjinder Singh against the plaintiff with regard to obtaining his signatures on the blank papers, the defendants have miserably failed to prove their case. Execution of the agreement Ex.P1 has been duly proved

by the plaintiff by examining witnesses Harbhajan Singh (PW-2) and Major Singh (PW-3).

In view of the above discussion, this Court is of the view that defendant-appellants have failed to lead any cogent and convincing evidence to show that the agreement to sell in question was a forged and fabricated document and plaintiff had obtained the signatures of Harjinder Singh on plank papers. On the other hand, plaintiff has duly proved on record that he was always ready and willing to perform his part of the contract. Moreover, on stipulated date, the plaintiff had visited the office of Sub Registrar along with balance sale consideration to get the sale deed executed. In this backdrop, suit filed by the plaintiff (respondent No.1) has been rightly decreed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

18.12.2019
ajp

(RITU BAHRI)
JUDGE

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