

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 756 of 2014 (O&M)

Date of decision : 5.4.2019

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Umed Singh

.....Appellant

vs.

Jai Pal

.....Respondent

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

Present: Mr. Ashish Pannu, Advocate for the appellant.

Mr. S.S. Dinarpur, Advocate for the respondent.

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H. S. Madaan, J.

Briefly stated, facts of the case are that plaintiff Jai Pal had filed a suit for possession by way of specific performance of agreement dated 4.12.2007, besides consequential relief of permanent injunction against defendant Umed Singh, on the averments that the latter being owner of 1/2 share in the agricultural land measuring 32 kanal 5 marla, as per jamabandi for the year 2004-05, situated within village Bichpadi, Tehsil Gohana, District Sonapat, had entered into an agreement to sell 7 kanal 12 marlas out of his

share with the plaintiff vide written agreement dated 4.12.2007 for a consideration of Rs.8,00,000/-, receiving Rs.5,00,000/- as earnest money. The agreement was witnessed by Karam Singh, Sube and Rajbir, lumberdar of village Bichpadi, Tehsil Gohana, District Sonapat. The defendant had also executed a receipt acknowledging the receipt of earnest money of Rs. 5,00,000/- which was attested by Sh. Shamsheer Singh Mann, Notary Public, Gohana. The final date for execution and registration of the sale deed was fixed as 4.12.2008. According to the plaintiff, he has been ready and willing to perform his part of the contract and had gone to the office of Sub-Registrar, Gohana, on 4.12.2008 for getting the sale deed executed and registered in his favour and at that time he was having the balance consideration amount, stamp and registration charges and witnesses, etc. but the transaction could not be completed on account of failure of the defendant to appear there to show his presence and bona fides. The plaintiff got attested affidavits on 2.12.2008 and 4.12.2008 from Executive Magistrate, Gohana, who was working as Sub Registrar, Gohana.

According to the plaintiff, he had requested the defendant to come forward and get registered the sale deed in terms of agreement dated 4.12.2007, on receiving the balance sale consideration amount, but the defendant avoided doing so, on one pretext or the other. The plaintiff had served a legal notice dated 10.12.2008 on the defendant. However, the defendant failed to comply with the direction of that notice, which was duly received by the defendant. Lastly on

18.1.2009, the plaintiff again requested the defendant to execute and get registered the sale deed as per agreement dated 4.12.2007, but to no avail. Rather he threatened to alienate the suit property to some other person, giving reason to the plaintiff to bring the suit in question.

On notice, the defendant appeared and filed written statement contesting the suit raising various legal objections, with regard to maintainability of the suit; the plaintiff having suppressed the true and material facts and the suit being false and frivolous etc. on merits, the defendant came up with the version that agreement dated 4.12.2007 was written as a token of 'Yadasht' (memorandum) for the loan amount taken by defendant from the plaintiff and no agreement qua sale of land was executed. However, out of greed, the plaintiff wanted to grab the land of the defendant. According to the defendant, it was orally agreed between the parties to the agreement that when ever the defendant re-paid the loan amount alongwith interest upto 4.12.2008, the agreement would stand cancelled. The defendant did not deny attestation of the agreement and receipt attested by Notary Public. According to the defendant, the witnesses were the men of the plaintiff. According to the defendant, he has always been ready and wiling to perform part of his oral agreement and he was very much present in the office of Sub Registrar, Gohana on 4.12.2008, alongwith principal amount and interest, but plaintiff refused to accept the amount in the office of Sub Registrar, Gohana.

The answring defendant also got his presence marked from Sub

Registrar, Gohana on 4.12.2008 and that marking of presence of plaintiff on 2.12.2008 shows the bad intention of the plaintiff to grab the agricultural land of the defendant. According to the defendant, he had been requesting the plaintiff to accept Rs. 5 lacs alongwith interest but he avoided doing so. According to the defendant, he is a small farmer and is totally dependent upon his agricultural land, therefore, there is no question of alienating the suit property. In the end he prayed for dismissal of the suit.

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

1. Whether the plaintiff is entitled to decree for specific performance of agreement to sell dated 4.12.2007 ? OPP
2. Whether the plaintiff is ready and willing to perform his part of contract? OPP
3. Whether the plaintiff is entitled to decree for permanent injunction, as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff has not come with clean hands? OPD
6. Whether the plaintiff has suppressed the material facts from the Court? OPD
7. Relief.

After hearing the arguments, the trial Court decided issues No. 1 to 3 in favour of the plaintiff. Issue No. 4 was decided against the defendant. Issues No. 5 and 6 were decided against the defendant

being not pressed.

As a result, the suit of the plaintiff was decreed with costs and plaintiff was held entitled to a decree for specific performance of agreement to sell. It was observed that in case defendant failed to do so, the plaintiff shall be at liberty to get the sale deed executed and registered through process of the court. Further more, the defendant was restrained from alienating the suit property to any other person except the plaintiff and was also directed to put the plaintiff in possession of the suit property.

This was so done vide judgment and decree dated 30.11.2012 passed by Additional Civil Judge (Senior Division), Gohana.

The defendant feeling aggrieved by the judgment and decree passed by the trial Court, preferred an appeal to the Court of District Judge, Sonapat. The said appeal was assigned to Additional District Judge, Sonapat, who vide judgment dated 21.11.2013, dismissed the same.

Still feeling dissatisfied, the defendant has knocked at the door of this Court by way of filing the present regular second appeal, notice of which was given to the plaintiff-respondent, who put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record and I find that there is absolutely no merit in the present appeal.

The law is well settled that a fact which is admitted need not

be proved. In the present case, in the written statement filed by him, the defendant admits the execution of the agreement, though stating that the agreement was entered into as 'Yadasht' in the loan transaction with regard to defendant having received a loan of Rs. 5 lacs from the plaintiff and that it was orally agreed that on repayment of the loan amount, the agreement in question would not be acted upon. Such stand of the defendant is least convincing. Even otherwise, documentary evidence is best type of evidence taking precedence over the oral evidence which can be easily procured. The plaintiff has successfully proved the execution of the agreement by bringing enough cogent and convincing evidence on record including his own statement appearing as PW-1, besides examining attesting witness PW-2 Karam Singh. The defendant was unable to rebut such evidence adduced by the plaintiff.

Furthermore, the plaintiff had successfully proved that he has been ready and willing to perform his part of contract all along, therefore, the Courts below rightly found him entitled to the suit property.

Learned counsel for the respondent-plaintiff had referred to a few authorities in support of his contention. The first being **Gurbachan Singh vs. Gurmit Singh 2003 (4) RCR (Civil) 223**, by a Coordinate Bench of this Court, wherein it was observed that when there is a written document between the parties, nothing extraneous can be read into it except its plain language and where the vendor alleged that it was a paper for advancement of loan instead of

agreement to sell, while terms and conditions of agreement clearly showed it to be a simple agreement to sell, it was not open for the vendor to plead it to be a paper for loan. It was further observed that if a vendee pleads ready and willingness and had appeared before the Sub-Registrar on the date fixed to perform his part of the agreement, his ready and willingness stands proved.

The next authority, referred to by the learned counsel for the respondent is *Surjit Singh vs. Nanak Singh 2009 (5) RCR (Civil) 191*, by another Coordinate Bench of this Court, wherein it was observed that when the defendant admitted his signatures on agreement produced in court, then the onus shifts on the defendant to prove that it was obtained on blank papers or was taken under undue influence or under pressure.

He had further referred to authority *Mir Singh vs. M/s Puri Constructions (P) Ltd. 2004 (4) RCR (Civil) 267*, by a Coordinate Bench of this Court, wherein it was observed that an agreement to sell can be proved by proving the signatures of the vendor, since such agreement does not require attestation and the same cannot be questioned on the ground of non-examination of any attesting witness.

The judgments passed by the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity in the judgments passed by the Courts below. Those are upheld.

There being concurrent findings recorded by Courts below

and no substantial question of law arising in the present appeal, the same is doomed for failure and is dismissed as such.

5.4.2019
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(H.S. Madaan)
Judge

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