

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

**RSA No.842 of 2014 (O&M)
Date of Order:06th February, 2019**

Kahan Singh

..Appellant

Versus

Mohan Lal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None for the appellant.

Mr. Vivek Suri, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Counsel representing the appellant has not been appearing since 21.04.2016, although, hearing of the appeal has been adjourned thrice. On 10.01.2019, taking note of the aforesaid fact, office was directed to inform learned counsels. As per office report, a communication was sent to Sh. A.P.S.Rana, Advocate, who has reported that the party has taken away the case file. Thereafter, Mr. Satbir Rathore, Advocate, was informed telephonically, who has appeared for the appellant. However, on 30.01.2019, although, the case was listed in urgent and called more than once but no one has come present. Therefore, the arguments of learned counsel for the respondent were heard and judgment was reserved, which is being released.

Plaintiff filed a suit for possession by way of specific

performance of the agreement to sell dated 22.11.2000 with respect to plot measuring 163.34 square yards situated in Pathak Vihar, Patiala. It was claimed that Kahan Singh, defendant-appellant is owner and had entered into an agreement to sell with the plaintiff for a total sum of Rs.1,14,338/- and received Rs.1,00,000/- as earnest money. The target date for execution and registration of the sale deed was fixed as 22.04.2001 when the balance sale consideration was to be paid. Plaintiff claims that he went to the office of Sub-Registrar but the defendant did not come present. Thereafter, the plaintiff got served a notice dated 12.07.2001 calling upon the defendant to come present but he refused to come and execute the sale deed which he refused to accept forcing him to file a suit on 13.08.2001.

Defendant contested the suit and pleaded that the agreement to sell is vague and uncertain and he is co-sharer with his mother Smt. Kareshni as per sale deed dated 23.05.2000. He claimed that no earnest money has been paid and the plaintiff is not entitled to specific performance being government servant. He further claimed that the decree for specific performance of the agreement to sell would cause great hardship.

On appreciation of the evidence, both the courts have passed a decree.

While filing the appeal, following substantial questions of law have been proposed:-

“i) Whether the impugned judgments and decrees passed by both the Ld. Courts below are perverse and liable to be set aside?

ii) Whether the alleged agreement to sell dated 22.11.2000, Ex.P-1 is a forged and fabricated document

and is having no course in law and are liable to be set aside?

iii) Whether the person claiming execution of any agreement is required to prove the fact of passing of consideration and are liable to be set-aside?

iv) Whether the findings of the court below are self-contradictory and are liable to be set-aside?

v) Whether the findings of courts below are result of misreading of evidence and are liable to be set aside?

vi) Whether the judgments and decree passed by the Ld. Courts below are based on conjectures and surmises and are liable to be set-aside?"

This court has gone through the grounds of appeal, however, did not find which may indicate that the judgments passed by the courts below are result of substantive misreading or non-reading of the evidence. In the grounds of appeal, it has been claimed that the defendant-appellant is a simple and rustic villager and the plaintiff was a police official and his thumb impressions were obtained on some blank papers on which the agreement to sell has been got typed lateron. It may be noted that the defendant had pleaded that on the persuasion of his sister Smt. Devki he sold his agricultural land and residential house in the State of Haryana and came to Patiala (Punjab) where Smt. Devki, his sister would settle them with prosperous future. It is claimed that he sold the property in the State of Haryana and handed over Rs.3,50,000/- to his sister and thereafter started living in a residential house at Patiala, although, all sale proceeds remained in the custody of plaintiff and Smt. Devki. Thereafter, Smt. Devki took him

to tehsil complex where he executed the sale deed of the property in dispute in his favour and Smt. Kareshni and thumb impressions were obtained on various documents on one pretext or the other. The original sale deed was not given to the defendant as they have been representing him that the sale deed is lying in the office of Sub-Registrar.

In paragraph 18 of the judgment of the first appellate court, it has been noted that the defendant when appeared has admitted that he executed the agreement to sell in favour of Mohan Lal i.e. the plaintiff-respondent but now he does not want to execute the sale deed. Paragraph 18 of the judgment of the first appellate court is extracted as under:-

“18. After going through the evidence on record in context with the pleadings of the parties, here I have no hesitation in holding that plaintiff/respondent was able to discharge the initial burden to prove the due execution of agreement to sell Ex.P1. But however the defendant/appellant was not able to show that the agreement to sell was result of fraud committed by Mohan Lal in active connivance with sister of defendant/appellant. It is the plea of the appellant that the respondent had forged the agreement in question on some blank paper which was got thumb marked by him on the pretext of collecting the sale deed from the office of Sub Registrar, Patiala. However, there is nothing worth on record to substantiate this plea of the defendant/appellant. The only witness examined by the appeal in this regard i.e. DW1 Jagat Singh is not able to defend the case of defendant/appellant. Even I have no hesitation in saying that DW1 Jagat Singh or defendant himself are not able to rebut the case of the plaintiff. So far as testimony of DW1 Jagat Singh is concerned, it is clear from his testimony that he is close relative of defendant Kahan Singh and he tried to conceal this fact

from the court during his cross examination, which casts doubt upon his veracity. Moreover, there is clear cut admission of the defendant/appellant regarding execution of agreement to sell regarding the suit land in favour of plaintiff/respondent. During his cross examination, he has stated that he executed agreement to sell in favour of Mohan Lal but now he does not want to execute the sale deed in his favour. In this manner he admitted the execution of agreement to sell in favour of plaintiff/respondent. There are no specific allegations that blank papers were got signed by the plaintiff from the defendant in lieu of obtaining original sale deed from the office of Sub Registrar, Patiala executed by Mohan Lal as attorney of Gurmail Kaur in his favour. Defendant Kahan Singh had pleaded that his thumb impressions were obtained by playing fraud upon him, but he failed to substantiate his plea of fraud. Perusal of cross-examination of defendant reveals that the thumb impressions were obtained after obtaining the certified copy of the sale deed. The defendant failed to explain as to why he thumb marked the stamp papers as there is no requirement under law to sign/thumb mark the stamp papers for obtaining the certified copy of sale deed. It is also admitted by the defendant that he was made the owner of the plot measuring 244 Sq. Yards and the possession was also delivered to him and the said sale deed was executed by Mohan Lal as attorney of Gurmail Kaur. The said sale deed has never been challenged by Gurmail Kaur. In the sale deed Mark X, Rs. One lac has been shown to be received by Kahan Singh as earnest money out of the total sale consideration of Rs.2,46,500/-, but the defendant pleaded that Rs.3,50,000/- have been paid to the plaintiff and Devki Devi. The defendant further failed to rebut the report of Document Expert, who has duly proved the thumb

impressions of Kahan Singh on the agreement. No complaint whatsoever has been made by the appellant to any higher authority regarding the obtaining of his thumb impressions on blank papers and stamp papers by the plaintiff.”

In view of the aforesaid discussion and the reasons recorded in the judgment passed by the courts below, there is no good ground to interfere with the concurrent findings of fact arrived at by the courts below. The proposed questions of law are neither substantial questions of law nor they arise in the facts of the present case.

The regular second appeal is dismissed.

06th February, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No