

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

RSA No.3457 of 2018 (O&M)
Date of decision : 01.03.2019

Bahadur Singh and another

...Appellants

Versus

Anil Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Chaudhary, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit for specific performance of the agreement to sell.

Plaintiffs had sought specific performance of the agreement to sell dated 02.11.2004. They had pleaded that on the target date for execution and registration of the sale deed, they had visited the office of the Sub-Registrar and marked their presence.

On appreciation of the evidence, both the Courts have recorded the findings. Learned trial Court has recorded the finding which is as under:-

“14. There is a specific condition in Ex.P1 that the loan for the land attached with the property in dispute had to be paid by the defendants (first party) and it will be the sole responsibility of the defendants to redeem the land at the time of registration or before that and the second party (plaintiffs) will have a right that by paying the loan amount they can pay rest of the sale amount to the first party i.e. defendants and the first party will have not any objection in that. So, this stipulation has attached some responsibility on the plaintiffs also. It is pleadings of the plaintiffs that the defendants did not reach to the office of Sub Registrar on 16.06.2005 and, if so, then it was the duty of the plaintiffs to know about the clear title of the land and its clearance. They should have cleared the title, as per this stipulation in Ex.P1. If defendants had not cleared the title then the plaintiffs should have. The land for sale should have been cleared only after payment of loan amount to the Ambala Co-operative Bank and the loan amount should have been cleared by the plaintiffs also as per stipulation as they themselves had this right. So, over all responsibility was of the plaintiffs to know about the clear title or clearance of land before execution of sale deed. However, the plaint is completely silent that they verified this fact from the revenue authorities or not regarding clearance of the loan by the defendants. They straight away filed this case. They did not serve any legal notice to the defendants that they were very much present on 16.06.2005 before the Sub Registrar to perform their part of contract and there are no such averments in the plaint to this effect. Only one legal notice was served which is Ex.P6 but that legal notice was served before the date of execution of the sale deed i.e. 16.06.2005 and this

legal notice is further supported by document Ex.P7 to Ex.P12 and it is stipulation in Ex.P6 that land should have been cleared from all encumbrances and clearance of all encumbrances was also a condition attached with the plaintiffs also as per Ex.P1 as a right which they had. The plaintiffs have marked their presence before Sub Registrar as per Ex.P2 & Ex.P3. There was no need to appear before Sub Registrar on 13.06.2005 as per Ex.P3 and this was an over act on part of the plaintiffs and on Ex.P2 there is a doubling/over writing in the date in 14th line and this was the date on which the plaintiffs should have been appeared before Sub Registrar. Over writing over this particular date clearly shows that ill intention on the part and it seems that they were not present on 16.06.2005. On both Ex.P2 & Ex.P3 the revenue tickets have been pasted later on as both these revenue tickets covers the fact of date also and both these documents have been prepared on one day by one person. Though the same has been proved by PW3 for different date but I am not considering this document Ex.P2 as true document. There was no need to prepare document Ex.P3 as this was a stipulation in Ex.P1 or in Ex.P6 to appear on 16.06.2005 and in Ex.P2 there is clear over writing in the document over date 16.06.2005. Moreover, this is not a pleadings in the plaint that the plaintiffs appeared before the Sub-Registrar on 13.06.2005 and 16.06.2005 with the amount of stamp papers as well as rest of the amount and there is lacking of readiness and willingness on the part of the plaintiffs to this effect and this fact has been admitted by PW4 in his cross-examination also and the court is of the opinion that both these are the prepared documents at a very late stage after filing of the plaint. Moreover, the Sub Registrar has

not appeared. Only PW3 appeared who at the time of appearance was a retired employee and he accepted that Sub Registrar was Sh. Jagpal Singh at that time who is still alive but this Jagpal Singh has not been examined by the plaintiffs. The defendants have relied upon Ex.D2 for their presence and on document Ex.D2 there is similar signature of Jagpal Singh showing the presence of defendants also on 16.06.2005. So, the best evidence with the plaintiffs was the then Sub Registrar who at the time of evidence of PW3 was also alive and only this particular Sub Registrar should have cleared that who were present on that day and if the plaintiffs were present then whether they were present with the money to purchase stamp papers as well as to pay rest of the amount to the defendants. The plaintiffs did not purchase any stamp papers and they did not prepare necessary preliminaries for the purpose of getting the sale deed executed and registered. They also did not show the amount. No doubt they have examined PW6 and PW7 to availability of the amount with them but this fact of amount is silent in the plaint. If the plaintiffs had arranged the money on 16.06.2005 from their relatives then this fact should have been mentioned in the plaint also. So, all these facts clearly put a strong doubt on the part of the plaintiffs and the court is of the opinion that plaintiffs did not appear before the Sub Registrar on 16.06.2005 and Ex.P2 is a manipulated document and was prepared later on. Moreover, there is no wording in the hand of PW3 or by Sub Registrar that the parties are present on 16.06.2005 whereas this particular wording is mentioned in Ex.P3 and Ex.D2 in Hindi. So, readiness and willingness is not proved on the part of the plaintiffs.

15. The defendants no.1 to 3 have pleaded that a compromise had taken place between the plaintiffs and defendants no.1 to 3 and a receipt Ex.D1 was prepared which has been denied by the plaintiffs. Bahadur Singh who appeared as PW4 denied in his cross-examination that it is wrong that any receipt was written and same was signed by him. He has seen the original receipt dated 22.07.2005 whose true copy is Mark-A but this does not contains his signature. However, he further deposed that he has seen the reply dated 04.09.2005 of application dated 10.08.2005 which contains his signature at point 'x' and it is correct that this reply was prepared by their counsel on their instructions and it is also correct that this reply was got understood by their counsel to them and after considering the same as correct he put his signature and it is correct that it was written in this reply that the receipt dated 22.07.2005 available on file contains his signature and the file shows all these facts, as one application was moved by the defendants for dismissal of the suit on 10.08.2005 and the present plaintiffs filed their reply dated 04.09.2005 on 06.09.2005 with the following averments:-

“That para No.5 of the plaint is incorrect. No amount was ever received by the plaintiffs, as alleged. The photo copy of the receipt placed on record though bear the signature of one of the plaintiff Bahadur Singh, but no amount was paid to Bahadur Singh. Rest of the para is incorrect.”

So, once the plaintiff Bahadur Singh admitted his signature on the receipt then how he can deny the signature on the same receipt in his evidence. There is no answer with the plaintiffs and now it becomes the duty of

plaintiffs to explain how the signature of Bahadur Singh came on receipt. The hand writing expert DW4 has tallied signature of Bahadur Singh Q1 & Q2 available on receipt Ex.D1 with various standard signatures of Bahadur Singh S1 to S19 available on amended title, amended plaint, Vakalatnama, agreement and on various applications which are the standard signatures and opinion of this handwriting expert is that the questioned signatures Q1 & Q2 on receipt dated 22.07.2005 tally with standard signature of Bahadur Singh with Mark-S1 to Mark-S19 and the signatures were written by one and the same person. This witness was cross-examined at length but nothing has been came out to support them. The plaintiffs have also examined one hand writing expert as PW10. But this PW10 does not say anything about the signature of Bahadur Singh rather he has given seven other points to disbelieve Ex.D1 and not signature. It seems that these points have not any merits and have been mentioned just to complete the report and these seven points hardly have any bearing to disbelieve the receipt Ex.D1. Moreover, signature on receipt is not denied. The receipt Ex.D1 was written by Tersem Lal and this fact has been proved by Tersem Lal and by the evidence of Som Parkash, Jasbir Singh and Anil Kumar who appeared as DW3, DW5 and DW7. The money was handed over by Jasbir Singh to Bahadur Singh and this fact has been mentioned in evidence of these witnesses. There is withdrawal of huge amount of ₹12,40,000/- from the account of Anil Kumar on 22.07.2005 and this fact can be seen from Ex.D3. So, the payment of ₹13,50,000/- to the plaintiffs can not be disbelieved in view of evidence led by the defendants. So, the agreement Ex.P1 executed between the plaintiffs as

well as defendants no.1 to 3 was cancelled by way of Ex.D1 as the defendants no.1 to 3 paid ₹13,50,000/- to Bahadur Singh for plaintiffs.”

As noticed above, the First Appellate Court has on re-appreciation of evidence, affirmed this finding.

Learned counsel for the appellant although made sincere attempt, however, could not draw attention of the Court to any substantive error in reading of the evidence or in appreciation thereof. Hence, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below .

Regular Second Appeal is dismissed.

01.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No