

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CM-15777-C-2018 in/and
RSA-5742-2018 (O&M)
Date of Decision: July 17,2019.

Gurmej Singh and another

...Appellants

Versus

Smt. Mukhtiar Kaur

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. VK Sandhir, Advocate
for the appellants.

JAISHREE THAKUR, J. (Oral)

CM-15777-C-2018

In view of the averments made in the application, the delay of
821 days in filing the appeal is condoned.

Main case

1. The instant regular second appeal has been filed by the appellants seeking to challenge the judgment and decree dated 29.01.2016 passed by Additional District Judge, Taran Tarn affirming the judgment and decree dated 07.08.2014 passed by Civil Judge (Sr. Division), Tarn Taran in civil suit No. 123 of 2011 whereby suit for specific performance was decreed.

2. Briefly the facts of the case are that the appellants were in possession of the suit property in equal shares. They entered into an

agreement to sell dated 03.12.2010 with the respondent in respect of the house measuring 2-1/4 marlas consisting of two rooms, one baithak (drawing room), one kitchen, bath room etc. situated in village Fatehchack, Tarn Taran, Tehsil and Distt. Tarn Taran for a sale consideration of ₹3,50,000/-. The sale deed was to be executed on 06.04.2011. At the time of the execution of agreement in question, the appellants received ₹75,000/- from the respondent as earnest money and agreed to receive balance price on 6.4.2011. It was further alleged that the appellants approached respondent on 05.04.2011 and requested that they need ₹1,50,000/- urgently and the sale deed would be executed on 11.04.2011 instead of 06.04.2011. The respondent arranged ₹1,40,000/- and gave it to the appellants on 05.04.2011 as part payment in presence of witnesses Khazan Singh and the appellants thumb marked the same on the back of the agreement to sell dated 03.12.2010 and date of execution of sale deed was extended to 11.04.2011. It is averred that the appellants failed to execute the sale deed on the stipulated date i.e. 11.04.2011 even after given assurance on 10.04.2011 to execute the same whereas the respondent was present in the office of the Sub Registrar, Tarn Taran on 11.04.2011 with the balance sale consideration but the appellants did not come present. Thereafter the respondent sent a registered notice on 19.04.2011 through her counsel to execute the sale deed within 15 days but the appellants again failed to perform their part of the agreement to sell in question. Therefore, the suit for specific performance was filed by the respondent.

3. Upon notice, the appellants put in their appearance through counsel and filed written statement taking preliminary objections of

maintainability of the suit, suit being barred by limitation etc. It was admitted that the appellants received ₹75,000/- and but denied that the appellants ever approached the respondent and demanded ₹1,50,000/- and also denied that they received ₹1,40,000/- as alleged. They further alleged that the entry made by the respondent on the endorsement of the agreement to sell was forged. They further denied the factum of date of execution of sale deed on 11.04.2011 instead of 06.04.2011. They stated that as per the agreement to sell they remained present in the office of the Sub Registrar, Tarn Taran on 06.04.2011 for whole day to execute the sale deed but the respondent did not turn up on that day. Hence, prayed for dismissal of the suit.

4. From the pleadings of the parties, the Civil Judge (Sr. Divn.) Tarn Taran, framed the following issues:-

1. *Whether the defendant entered into agreement to sell dated 03.12.2010 for the sale of disputed land? OPP*
2. *Whether the plaintiff is still ready and willing to perform his part of contract? OPP*
3. *Whether the plaintiff is entitled to the relief of specific performance of agreement to sell in question? OPP*
4. *Whether the plaintiff is entitled to recovery as prayed for?OPP*
5. *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ?OPD*
6. *Whether the suit is not maintainable? OPD*
7. *Whether the plaintiff has no locus standi to file the present suit?OPD*
8. *Relief.*

5. Both the parties led evidence in support of their case. Respondent-plaintiff examined herself as PW-1 and further examined Rajinder Kumar Bhandari as PW-2, Khazan Singh, marginal witness as PW-3, Gurmit Singh PW 4, Kulwant Singh, Draftsman a PW5 and thereafter closed evidence whereas the documentary evidence adduced were

the agreement to sell Ex. P1, endorsement Ex.P2, affidavit dated 11.04.2011 P3, notice dated 19.4.2011 Ex.P4 and postal receipts P4/A and P4/B. On the other hand, defendants in order to rebutt the evidence led by the respondent examined Sukhpreet Kaur, Handwriting and Fingerprints Expert a DW-1, Gurmej Singh, defendant No.1 as DW-2; Mukhtar Singh as DW3; Jagir Kaur as DW-4, Gurmit Singh son of Harabans Singh as DW 5 and closed the evidence. In documentary evidence, defendants have placed on file documents viz., reports Ex.DW1/1, and Ex. DW1/2, photocharts Ex. DW1/3 to Ex.DW1/6, affidavit dated 06.4.2011 Ex.DA and agreement to sell dated 03.12.2010 Ex. DB.

6. On appreciation of the evidence, the trial Court decreed the suit as filed holding that the respondent would be entitled for possession by way of specific performance of agreement to sell dated 03.12.2010 and directed that the sale deed be executed qua land detailed in the headnote. The findings stood affirmed by the first Appellate Court.

7. The respondent in order to prove her case examined two attesting witnesses to the agreement to sell namely Khazan Singh and Gurmeet who sworn their affidavits Ex. PW3/A and PW4/A. Gurmeet Singh who tendered his affidavit in examination-in-chief did not turn up for his cross-examination and therefore, his evidence could not be read into. However, Khazan Singh came forward and was cross-examined. Kulwant Singh, Draftsman also stepped into the witness box and was examined as PW-5. The respondent herself stepped into the witness box and closed the evidence.

8. The appellants herein sought to rely upon evidence of

Sukhpreet Kaur, Handwriting and Fingerprints Expert who testified through her sworn affidavit Ex.DW-1/A that she carried out detailed comparison of thumb impressions of the appellants with that of their admitted ones and submitted her report in this regard. The appellant Gurmej Singh deposed as his own witness as DW-2 and Mukhtar Singh, witness was examined as DW-3. Gurmeet Singh, the witness who had appeared on behalf of the respondent and had submitted his affidavit but did not face cross-examination also appeared and deposed in favour of the appellants as DW-5 and faced cross examination. Thereafter the appellant closed the evidence.

9. The sale agreement dated 03.12.2010 is not in dispute nor is the fact that a sum or ₹75,000/- was received as earnest money in the presence of Khazan Singh and Gurmeet Singh, attesting witnesses. The dispute between the parties is regarding the endorsement by which the appellants allegedly received a sum of ₹1,40,000/- within the balance sale consideration and extended the date from 06.04.2011 to 11.04.2011. The marginal witness Gurmeet Singh categorically admitted that the date of sale deed was extended from 06.04.2011 to 11.04.2011. Jagir Kaur, appellant stepped into the witness box as DW-4 and admitted in the cross-examination that she has taken the consideration amount on the agreement to sell dated 03.12.2010 and affixed the thumb on the said agreement Ex. P5 and her husband also put thump impression along-with fore-fingers. Mukhtar Singh, who appeared as DW-3 admitted that he is not a marginal witness to the agreement to sell whereas Gurmej Singh, the appellant who stepped into the witness box as DW-2 also could not stand the acid test of cross-examination admitting that he and his wife Jagir Kaur used to affix

thumb impressions. The respondent herein was able to prove the due execution of Ex. P1 and P2 by examining Khazan Singh, marginal witness in whose presence the appellants had received a sum of ₹1,40,000/- on 05.04.2011 and the other marginal witness Gurmeet Singh who appeared as a witness for the appellants also corroborated the version of the respondent regarding the agreement to sell having been executed on 03.12.2010. The handwriting expert stepped forward and opined in her report Ex. DW-1/1 that she could give no definite opinion as the questioned thumb impressions were not affixed properly. She also categorically admitted in her cross-examination that she has not met Gurmeet Kaur and Gurmej Singh specifically that they had not put any thumb impressions in her presence.

10. In order to prove the endorsement on the agreement to sell extending time, the respondent herein established the execution of agreement between the parties and that there is an endorsement on the reverse side of the said agreement extending the time for execution of the said sale. Marginal witnesses have stepped into the witness box and thereafter the onus would lie upon the appellants herein. The best piece of evidence would have been to get their thumb impressions matched with the thumb impressions found available on the agreement to sell and the endorsement extending the time to execute the sale deed. For reasons best known to the appellants themselves, they chose not to affix thumb impressions properly with the result there was no definite report in their favour to disprove that the thumb impressions were not their. There is a categorical admission on the part of both the appellants that they used to affix their thumb impressions and had entered into an agreement to sell. An onus

was cast upon them to substantiate their contention that the thumb impressions as available on the endorsement were not theirs. Even the appellant's own witness was not able to support the fact that the thumb impressions on the endorsement on the reverse of the agreement were not of the appellants. Once the appellants herein were not able to discharge the onus as cast upon them by leading any positive evidence, the Courts below rightly returned a finding in favour of the plaintiff-respondent.

11. A perusal of the judgments and decree of both the Courts below do not reflect that there is any substantial question of law to be adjudicated by the High Court in this regular second appeal. The Courts below have rightly appreciated the evidence available on the record and returned a finding that the suit of the respondent deserves to be decreed.

12. For the reasons stated above, the appeal stands dismissed.

July 17, 2019

seema

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No