

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

**RSA No.6357 of 2017 (O&M)
Date of Decision:28.11.2019**

Jarnail Singh

.....Appellant

Versus

Jagir Singh

..... Respondent

And

RSA No. 3418 of 2018 (O&M)

Jagir Singh

.....Appellant

Versus

Jarnail Singh

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Vipin Mahajan, Advocate
for the appellant (in RSA No. 6357 of 2017)

Mr. Arun Abrol, Advocate
for the appellant (in RSA No. 3418 of 2018).

LISA GILL, J.

R.S.A Nos. 6357 of 2017 and RSA No. 3418 of 2018, are taken up together for hearing and decision as both the appeals arise out of a common judgement and decree dated 20.08.2014, passed by the learned Additional Civil Judge (Sr. Division), Gurdaspur as well as judgement and

decree dated 05.04.2017, passed by the learned Additional District Judge, Gurdaspur.

RSA No. 6357 of 2017, has been filed by Jarnail Singh-defendant and RSA No 3418 of 2018, has been filed by the plaintiff-Jagir Singh.

Brief facts necessary for the adjudication of the case are that plaintiff-Jagir Singh filed a suit for possession of the land as detailed in the plaint by way of specific performance of agreement to sell dated 31.01.2002. Alternate relief of recovery of ₹1,80,000/- (earnest money paid as ₹90,000/- and ₹90,000/- as damages) was sought. It is pleaded that the defendant had entered into an agreement to sell his land as detailed in the plaint, on 31.01.2002 for a consideration of ₹1,00,000/- and he received a sum of ₹90,000/- as earnest money in the presence of marginal witnesses. It is further pleaded that the defendant had agreed to execute and register the sale deed of the land in question in favour of the plaintiff on 20.01.2003 on receipt of balance sale consideration. The plaintiff, on 20.01.2003, alongwith the balance sale consideration and other expenses remained present in the office of the Sub Registrar, Gurdaspur, but the defendant did not turn up. Accordingly, plaintiff got marked his presence in the form of an affidavit, duly attested by Sub Registrar/Executive Magistrate, Gurdaspur. It is further, pleaded that the plaintiff was/is always ready and willing to perform his part of contract. Hence, the present suit was filed.

Suit was resisted by the defendant. Various preliminary objections were raised in the written statement including the plea that the plaintiff has not approached the Court with clean hands. It is admitted that

the defendant is the owner in possession of the suit property. The plaintiff is claimed to be habitual of preparing false documents like the alleged agreement of sale. Plaintiff also procured an agreement of sale regarding the land owned by Ranjit Singh, Rano Devi and Rattan Devi and procured an *ex parte* judgement and decree against them. However, the abovesaid persons approached the Court and *ex parte* judgement and decree dated was set aside. It is pleaded that when the defendant came to know about the false and fraudulent agreement dated 31.01.2002, regarding the land in question, he reported the matter to the police. FIR No. 119 dated 18.09.2003, under Sections 465, 467, 468, 471, 120-B IPC, was registered at Police Station, City Gurdaspur, in this respect. It is stated that the defendant never agreed to execute any agreement to sell in favour of the plaintiff nor he received a single penny from the plaintiff. Dismissal of the suit was prayed for.

Replication was not filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for the relief of possession as prayed for?OPP
2. Whether in alternative, the plaintiff is entitled for the relief of recovery as prayed for?OPP
3. Whether suit filed by the plaintiff is not maintainable?OPD
4. Whether plaintiff has not come to the Court with clean hands?OPD
5. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court, on considering the evidence on record, concluded that the execution of the agreement to sell dated 31.01.2002 was proved on record, but concluded that the same was in-fact a money

transaction and the intention of the parties was not sale of the land in question. It is held that the plaintiff successfully proved the execution of the document dated 31.01.2002 having examined the scribe-PW-1-Mandeep Singh, Pargana Moharir, Judicial Record Room and the attesting witness PW-4-Raj Kumar. Accordingly, suit of the plaintiff was decreed to the effect that the plaintiff is entitled to recover a sum of ₹90,000/- (earnest money) along with costs and interest at the rate of 9% per annum from the date of execution of agreement till the filing of the suit and at the rate of 6% per annum from the date of filing of the suit till its actual realization.

The plaintiff as well as the defendant preferred appeals against the judgement and decree dated 20.08.2014, passed by the learned Additional Civil Judge (Sr. Division), Gurdaspur. Learned Additional District Judge, Gurdaspur, dismissed both the appeals vide impugned judgement and decree dated 05.04.2017.

Aggrieved therefrom, both the plaintiff and the defendant have filed the present appeals.

Learned counsel for the appellant/defendant-Jarnail Singh vehemently argues that thumb impression of the defendant was found to be smudged and therefore, the handwriting expert, DW-3-Kranti K. Sharma, could not give a definite opinion regarding the same. The fact that the thumb impression is smudged, shows the effort on the part of the plaintiff to prepare a fraudulent document. Moreover, FIR No. 119 dated 18.09.2003, under Sections 461, 465, 467, 468, 471 and 120-B IPC, Police Station City Hoshiarpur, in respect to the preparation of the said fraudulent document was registered at the instance of the defendant. The plaintiff, in his cross-

examination admitted that he was involved in another matter regarding the preparation of a fraudulent document in which one of the attesting witnesses namely Raghbir Singh, is the same person who is claimed to have attested the agreement to sell dated 31.01.2002. Thus, keeping in view the track record of the plaintiff, it is contended that the document is proved to be a fraudulent one. Furthermore, no person would wait for one year for the execution and registration of the sale deed, having paid most of the consideration amount. It is thus prayed that the appeal filed by the appellant-defendant-Jarnail Singh, be allowed and consequently the suit filed by the plaintiff be dismissed throughout.

Learned counsel for the appellant-plaintiff-Jagir Singh, while refuting the aforementioned arguments vehemently argues that the execution of the agreement to sell dated 31.01.2002, is duly proved on record. This has been so held by both the learned Courts below. In this situation, it was incumbent upon the Courts below to have afforded the relief of specific performance of the agreement to sell to the plaintiff. The same could not have been denied in the manner as done by the learned Courts below. Learned counsel submits that there is no evidence on record to indicate that the transaction in question was a money transaction. He relies upon the decisions of this Court in **Narinder kaur Vs. Surjan, 2010(63) RCR (Civil) 666** and **Manjit Kumar Vs. Ram Swaroop and others 2017(2) R.C.R (Civil) 225**, to contended that once the agreement to sell is proved, the Court has no option but to grant the relief of specific performance to the plaintiff. It is thus prayed that the appeal filed by the appellant-plaintiff be allowed.

I have heard learned counsel for the parties and have gone through the record as well as photocopy of the record which was produced in Court today, with their assistance.

At the very outset, it is relevant to note that the plaintiff is admittedly the nephew of the defendant. This fact is admitted by the defendant in his cross-examination. Agreement to sell dated 31.01.2002, was executed between the parties for a consideration of ₹1,00,000/-. A sum of ₹90,000/- is stated to have been received as earnest money at the time of execution of the sale deed. The plaintiff in order to prove the execution of the said document, Ex.P-1, has examined PW-4-Raj Kumar, the attesting witness of the agreement to sell. PW-2-Bakhshish Singh Aujla, Advocate, the scribe of the agreement dated 31.01.2002, has also been examined. The plaintiff has successfully proved the execution of the document dated 31.01.2002 as well as the payment of the earnest money. Contention raised on behalf of the defendant that the said document is a forged and fabricated document, is not borne out from the evidence on record. It is a settled position that in order to prove the document to be so, it was incumbent upon the defendant to have led positive evidence to this effect. The handwriting expert, DW-3-Kranti K. Sharma, not being able to render a definite opinion regarding thumb impressions, the same being smudged, cannot be a reason to impinge upon the genuineness of the said document. Furthermore, the learned trial Court in para no.17 of the impugned judgement dated 20.08.2014, has specifically observed that it has gone through the disputed thumb impressions as well as the standard thumb impressions of Jarnail Singh produced on record and has opined that it cannot be said that the same

are not comparable. Furthermore, it is a matter of record that the plaintiff stands acquitted in the criminal proceedings initiated against him by the defendant. Appeal against him is also informed to have been dismissed.

In the given facts and circumstances of the case, learned trial Court has rightly held that the defendant could not discharge the onus upon him satisfactorily, to prove that the said document is a forged or fabricated one. However, at the same time, learned trial Court correctly proceeded to hold that the transaction in question is a money transaction specifically as there is no plausible explanation as to why the execution of the sale deed was delayed for a period of one year without conveying the possession of the property. I have also perused the statement of the defendant as well as of the plaintiff. Perusal of the same reveals that the learned trial Court has correctly declined the relief of specific performance to the plaintiff. Judgements relied upon by learned counsel for the appellant-plaintiff are not applicable to the facts and circumstances of the case. It is a settled position that the remedy of specific performance, as sought is a discretionary relief. Therefore, to say that once the agreement to sell is proved, the Court is bound to grant the said relief notwithstanding any other factor, is not correct. Needless to say, discretion has to be exercised in a reasonable manner on established judicial principles and not in an arbitrary or whimsical manner. Learned counsel is unable to point out anything to the contrary in the impugned judgement.

Learned counsel for the appellant-defendant and the appellant-plaintiff, are unable to point out any question of law much less substantial question of law, which may be involved for consideration in these regular second appeals or any ground under Section 41 of the Punjab Courts Act,

which justifies interference by this Court in these regular second appeals.

No other argument has been raised.

There is a delay of 8 days in filing of R.S.A No. 6357 of 2017. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this appeal is rendered academic. Application is disposed of accordingly.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 20.08.2014 and 05.04.2017 passed by the learned Additional Civil Judge (Sr. Division) Gurdaspur and learned Additional District Judge, Gurdaspur, respectively, are upheld.

Present appeals are, consequently, dismissed with no order as to cost.

28.11.2019
s.khan

[LISA GILL]
Judge

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