

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

RSA-804-2018(O&M)

Date of decision:-2.4.2019

Anand Kumar alias Aad Ram

...Appellant

Versus

Munsha Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Monika Sharma, Advocate
for the appellant.

Mr.Gurmeet Singh Saini, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Munsha Singh had brought a suit for possession by way of specific performance against defendant Anand Kumar alias Aad Ram on the averments that defendant being owner of land measuring 4 kanals 17 marlas i.e. 1/6 share of total land measuring 29 kanals situated at

village Tootwala, Tehsil Abohar, District Fazilka had entered into an agreement to sell the same with plaintiff on 3.8.2011 @ Rs.6,60,000/- per acre, receiving a sum of Rs.2,06,000/- as earnest money, in presence of witnesses Sh.Kanshi Ram, SC Lamberdar and Sh.Mukhtiar Singh; that the final date for execution and registration of the sale deed was fixed as 30.1.2012. According to the plaintiff since 30.1.2012 was a holiday on account of elections, the plaintiff went to the office of Sub Tehsil Khuian Sarwar on 31.1.2012 and remained present there outside office of Joint Sub Registrar from 9:00 a.m. to 5:00 p.m.; that he was having balance sale consideration amount, but the defendant did not turn up to execute the sale deed; that the plaintiff got marked his presence by executing an affidavit, which was got attested from Notary Public; that the plaintiff had also served a notice dated 1.5.2012 sent through registered AD post upon the defendant but to no effect, rather subsequently defendant refused to perform his part of contract and threatened to alienate the suit property to some other person. According to the plaintiff, he was always ready and willing to perform his part of agreement and is still ready and willing to do so. Feeling aggrieved by the act and conduct of the defendant, who had not come forward for execution and registration of the sale deed, the plaintiff brought the suit in question.

On notice the defendant appeared and filed written statement contesting the suit raising preliminary objections that the

plaintiff had no cause of action to file the present suit; that the plaintiff had concealed true and material facts from the Court; that the defendant had neither entered into an agreement to sell his land measuring 4 kanals 17 marlas with the plaintiff on 3.8.2011 nor he had received an amount of Rs.2,06,000/- as earnest money. According to the defendant, as a matter of fact, he had borrowed a sum of Rs.50,000/- from the plaintiff for his domestic needs and at that time the plaintiff had got his signatures on some blank stamp papers for security purpose, in addition to that the plaintiff had also obtained two blank cheques duly signed by the defendant giving an assurance that as and when the amount was repaid, the blank stamp papers and blank cheques bearing signatures of defendant would be returned to him and would not be misused by the plaintiff. According to the defendant, he has repaid the borrowed amount along with interest within stipulated time in presence of the witnesses but the plaintiff did not return those blank papers on the pretext that he had put those papers at some place and subsequently the plaintiff in connivance with Kanshi Ram and Mukhtiar Singh prepared a false and forged agreement on blank stamp papers by showing value of suit land as Rs.6,60,000/-, whereas in the year 2011, the market value of the land at village Tootawala was Rs.15 lacs. According to the defendant in that way, the plaintiff in connivance with Kanshi Ram and Mukhtiar Singh had played a fraud with him and the plaintiff

was not entitled to any relief. On merits, the defendant had controverted the material assertions in the plaint and reiterating the averments in the preliminary objections. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether defendant executed agreement to sell dated 3.8.01 in favour of plaintiff, as prayed for in the plaint? OPP.
2. Whether plaintiff always remained ready and willing to perform his part of the contract? OPP.
3. If issues No.1 & 2 are proved, whether plaintiff is entitled to specific performance of the agreement or is entitled to the relief of recovery as alternative relief? OPP.
4. Whether plaintiff is entitled to the relief of permanent injunction? OPP.
5. Whether suit of the plaintiff is not maintainable in the present form? OPD.
6. Relief.

In order to prove his case, the plaintiff had got recorded his statement as PW1 besides examining Sh.Mukhtiar Singh as PW2 and Sh.Kanshi Ram as PW3.

On the other hand, the defendant had appeared himself as DW1 and he further examined Sh.Sunil Kumar as DW2, MHC Fateh

Chand as DW3 and Parkash as DW4.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 3 against the plaintiff and in favour of the defendant, issue No.2 against the plaintiff and in favour of the defendant, issue No.4 against the plaintiff and in favour of the defendants, issue No.5 against the defendant and in favour of the plaintiff. Resultantly vide judgment and decree dated 28.10.2016 the suit of the plaintiff was dismissed by the trial Court with the observations that plaintiff had failed to establish his claims for the relief of possession of the suit property by way of specific performance of agreement to sell dated 3.8.2011 because he had failed to prove the due execution of the agreement to sell.

Feeling aggrieved by the said judgment and decree, the plaintiff filed an appeal, which was heard and disposed of by learned Additional District Judge, Fazilka vide judgment and decree dated 19.9.2017 inasmuch as the appeal was partly accepted and suit of the plaintiff was decreed for recovery of Rs.2,06,000/- with interest @ 6% per annum from 3.8.2011 with proportionate costs. The relief of specific performance or permanent injunction and for recovery of remaining amount was declined.

Being dissatisfied with the judgment and decree passed by Additional District Judge, Fazilka, the defendant filed the present regular second appeal before this Court, notice of which was issued

and the respondent-plaintiff appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The trial Court on analysis of the evidence adduced by the parties in light of the facts and circumstances has observed that the agreement to sell Ex.P1 is a unilateral document signed by defendant Anand Kumar only and counsel for the plaintiff was not able to explain the reason as to why the agreement was not signed by the plaintiff when allegedly both the parties were present at the time of alleged execution of the agreement and after scribing of the same the defendant and attesting witnesses had put their signatures thereon. The trial Court further observed that it was a grey area on the part of the plaintiff but counsel for the plaintiff was unable to convince the Court and explain the reason thereof. This aspect has been further dealt in detail. For ready reference, the relevant part of the discussion is reproduced as under:

18. The agreement to sell is bilateral document and must have between two parties and the same must have been signed by both the parties. For this basic necessity, there may be exception under exceptional circumstances, as to be proved by the plaintiff by way of cogent, convincing and plausible evidence. However, the evidence led by the parties as well as argument advanced

by learned counsel for the plaintiff, yet not able to fall this case under the exceptional circumstance, wherein only one party of the agreement i.e. defendant had signed the same. Learned counsel for the plaintiff has miserably failed to explain the reason why the plaintiff has not signed the agreement on the stipulated date when the alleged agreement was entered into. Furthermore, the cross examination of plaintiff Munsha Singh is very important to throw the light on the circumstances why he had not signed the agreement Ex.P1. The careful scrutiny of the execution of the same reflects otherwise, wherein he has categorically stated that he put his signatures on the agreement to sell Ex.P1, which is altogether contradict plea of the plaintiff stated in the cross examination. It is also pertinent to mention here that upon the said answer to the plaintiff a specific suggestion was put to plaintiff that the agreement was not signed by him. It was a duty cast upon the plaintiff to explain the reason what circumstances restrained him or what circumstances happened at that particular time that he did not sign the agreement to sell Ex.P1. Even otherwise the plaintiff in his cross examination has failed to give plausible and cogent answer on the very question put to

him with regard to the due execution of the agreement to sell. The plaintiff has specifically stated in the cross examination that he had put his signature upon the agreement to sell Ex.P1 in Punjabi script. The document i.e. agreement to sell speaks on the different and having no signature appended upon the same by the plaintiff. The evidence of other marginal witness of the agreement to sell namely PW1 Mukhtiar Singh is also important, who stated during his cross examination that the agreement to sell was not scribed by Gokal Chand, Deed Writer and he also made entry in this regard in his register. However, said deed writer, who was the vital witness, has not been examined by the plaintiff to prove the legality and validity of the agreement to sell ex.P1. This fact also goes against the plaintiff. On the other hand, the plaintiff in his evidence even does not know the name of the deed writer, who scribed the said agreement to sell Ex.P1, which proves that there are number of material discrepancies in the evidence of the material witnesses. Accordingly, this court has no hitch to arrive at a conclusion and holding that agreement to sell ex.P1 is neither any agreement nor can be taken as genuine document and enforceable in the eyes of law. This Court

*has also taken the reliance upon the law laid down in case titled as **R.Chinnadurai Versus Raja Laxmi decided on 18 December 2003 by Hon'ble Madras High Court.** In the light of the law laid down by Hon'ble Madras High Court in the abovesaid case, which is fully applicable on the facts of the present case and the above mentioned discussion as well as peculiar circumstances of the case, it strengthens the plea taken by the defendant that the defendant had taken a domestic loan from the plaintiff and at that time the plaintiff has obtained his signatures on the blank stamp paper and converted it into agreement to sell. Accordingly, this Court is of the considered view that the plaintiff has failed to prove his case by leading cogent and convincing evidence that defendant executed agreement to sell dated 3.8.2011 in his favour. Resultantly, the plaintiff is not entitled to the relief of specific performance as well as alternative relief of recovery. Accordingly, both these issues are decided against the plaintiff and in favour of the defendants.*

ISSUE No.2

19. The onus to prove this issue was upon the plaintiff. As it has already been held while recording my findings on issue No.1 & 3 above that agreement to sell Ex.P1 is

neither any agreement nor can be taken as genuine as well enforceable document in the eyes of law. Though, there is no need to record further findings on issue No.2 with regard to the readiness and willingness on the part of the plaintiff but the case of the plaintiff also suffers from another angle. It was argued by learned counsel for the defendant that plaintiff has failed to prove the due execution of the agreement to sell and as such no question arises for the readiness and willingness of the performance of the agreement in question. He further argued that even the plaintiff has failed to bring on record any cogent and convincing evidence to prove his readiness and willingness on his part to perform the part of agreement in question. I have considered the contentions made by learned counsel for the plaintiff and have gone through the file. It is case of the plaintiff that there was holiday on 30.1.2012, the date fixed for the execution and registration of the sale deed and on 31.1.2012 he remained present in the office of Joint Sub Registrar but the defendant did not turn up and he got his presence marked by executing an affidavit. It is pertinent to mention here that the plaintiff has brought on the file photocopy of the said affidavit as mark-A and

further brought on file copy of notice dated 1.5.2012 as mark-B. It was the imperative duly cast upon the plaintiff to bring on record cogent and convincing evidence to prove the fact that he remained always ready and willing to perform his part of the contract. But, in the present case the plaintiff has failed to bring on record the original affidavit vide which he stated to be got his presence marked. The plaintiff was to examine the Notary Public, who allegedly attested the said affidavit, who could have proved the due attestation of the affidavit by bring on record copy of his register but the plaintiff has not examined the said Notary Public. The plaintiff has also failed to prove the issuance of notice served upon the defendant by examining the Advocate through whom the said notice was served upon the defendant. In the absence of any such evidence this Court has no hesitation to infer that the plaintiff has failed to establish the plea set out by him and it can also be inferred that the plaintiff has not come to the Court with clean hands and this Court also finds force in the submission made by learned counsel for the defendant. Accordingly, this Court is thus of the view that the plaintiff has failed to prove that he remained ready and willing to perform his

part of the contract failed to discharge the onus of issue no.2. Resultantly, issue No.2 is decided against the plaintiff and in favour of the defendants.

The trial Court has rightly come to the conclusion that the plaintiff had failed to prove the due execution of agreement to sell, as such he was not entitled to relief of specific performance or alternative relief of recovery as well as permanent injunction thereby suit was dismissed with costs.

However, while in appeal learned Additional District Judge, Fazilka referring to statement of PW3 Kanshi Ram, an attesting witness and PW2 Mukhtiar Singh another attesting witness and cross examination of defendant Anand Kumar appearing as DW1 wherein he had admitted that Ex.P1 bears his signatures and the stamp paper on which Ex.P1 is written was purchased by him, the defendant was an educated person and that he had signed the agreement with his free will, it was observed that the version of the defendant was not believable and he would not have signed on blank stamp papers, even otherwise he might be knowing the consequences of signing the blank stamp papers. Other contentions raised by the defendant have been discussed parawise, which for ready reference are being reproduced as under:

16. No doubt, this agreement Ex.P1 is not signed by

the plaintiff. The defendant had agreed to sell suit land to the plaintiff. Therefore, this agreement was required to be signed by the defendant. There was no requirement on the part of plaintiff to sign this agreement. The plaintiff has admitted the execution of this agreement by defendant in his favour. He has filed the present suit for specific performance of agreement to sell. The above act and conduct of plaintiff shows that he had accepted this agreement from the very beginning. The matter would have been otherwise if the plaintiff had not accepted this agreement in his favour. Then this agreement could not have been imposed upon him legally. As such, I hold that no signing of this agreement Ex.P1 by the plaintiff is not material. The lower court erred in rejecting this agreement on that ground.

17. Now coming to the plea raised by the defendant. The defendant has alleged that he had borrowed Rs.50,000/- from plaintiff. The plaintiff obtained signatures of defendant on blank stamp papers as security. The defendant had repaid this amount. For this purpose, defendant examined DW2 Sushil Kumar and DW4 Ved Parkash to prove that the defendant had repaid Rs.50,000/- to plaintiff. These DWs also

mentioned in their affidavit that plaintiff was habitual in obtaining blank signed papers while advancing loan. But I am unable to agree with the counsel for respondent. Such evidence can be procured at any time. The defendant has not placed on file any writing regarding borrowing of Rs.50,000/- from plaintiff or regarding the return of that amount. Mere oral evidence is not sufficient to rebut the agreement to sell Ex.P1. Therefore, I hold that story put forward regarding the borrowing or return of Rs.50,000/- does not inspire confidence. The agreement to sell Ex.P1 is not surrounded by suspicious circumstances.

18. So far as possession is concerned, though it is mentioned in the agreement that possession of suit land was delivered to the plaintiff. But actually no transfer of possession had taken place. The plaintiff is not shown to be in possession of suit land as per the copies of jamabandi and khasra girdawri placed on the file. Moreover, the agreement Ex.P1 is not registered one. If the possession was to be delivered, then the agreement must be registered one. Moreover, the plaintiff has filed the present suit for possession which implies that the plaintiff is not in possession of the land in question

rather he is seeking its possession by way of specific performance. The lodging of FIR Ex.D1 has no effect on the present case.

19. So far as the relief of specific performance of agreement to sell is concerned, the plaintiff has failed to show that he remained ready and willing to perform his part of the contract. The plaintiff has alleged that he remained present in the tehsil complex Khuian Sarwar on 31.1.2012 and got executed an affidavit for proving his presence. But the plaintiff has not placed on file original affidavit dated 31.1.2012. He placed on file its photocopy Mark-A. This affidavit is not proved on the file. Notary Public who had attested this affidavit has not been examined. The plaintiff has alleged that he has given notice to the defendant to show his readiness and willingness but this notice dated 1.5.2012 is not proved on the file. The copy of this notice Mark-B is placed on the file. But it is not signed by Sh.Ashok Charaya, Advocate who is alleged to have send this notice. Plaintiff failed to examine Sh.Ashok Charaya Advocate or his clerk to prove this notice. As such, I hold that plaintiff is not entitled for specific performance of agreement to sell.

20. *So far as receipt of earnest money of Rs.2,06,000/- is concerned, the same is proved on the file. The defendant is bound to repay this amount with interest at the rate of 6% per annum since 3.8.2011. The defendant had utilized this amount. Therefore, he is bound to pay the interest. The plaintiff has failed to prove that he is entitled to recover Rs.4,20,000/- from the defendant. He is entitled to recover Rs.2,06,000/- with interest. It was held by our own Hon'ble High Court in case law Mangat Singh Vs. Rakesh Kumar Gupta and another 2014(4) RCR(Civil) 387 (Para No.31) as under:-*

“It is the case of the plaintiff that earnest money worth L 2,70,000/- was paid to defendant No.1. On the other hand, defendant No.1 has pleaded that his signatures were obtained on blank papers as security of loan amount. Defendant No.1 has admitted his signatures on the agreement (Ex.P-1). This clearly indicates that amount was paid to defendant No.1 either fraudulently or otherwise. As such, in the circumstances of the case, to keep balance and in the interest of equity and justice, this Court deems it fit to hold that alleged earnest money should be refunded by appellant-defendant

No.1 to respondent No.1 – plaintiff with interest @ 6% per annum from the date of making the payment till payment. This substantial question is answered accordingly.”

21. So far as relief of permanent injunction is concerned, the plaintiff is not entitled to the same because the decree for specific performance is not being passed.

After perusing the judgments passed by the trial Court and First Appellate Court in light of facts and circumstances of the case and law on the subject and considering the evidence adduced by both the parties, I find that the judgment delivered by First Appellate Court is a result of better appreciation of legal as well as factual position and inference drawn by First Appellate Court appears to be correct and appropriate. The First Appellate Court has rightly observed that in a case of civil nature, the Court is to see the preponderance of probabilities and burden of proof is not fixed as is there in a criminal case. Once the defendant had taken up a specific stand that his signatures had been obtained on blank papers as security while advancing Rs.50,000/- to him, it was for him to prove those facts. However, he has been unable to discharge that onus. No sane person would sign a blank paper just at the asking of the lender of money and even if he does so, on return of money, he would

definitely ensure that such papers are returned to him. The defendant had admitted the receipt of money though to the extent of Rs.50,000/- only. There is no reason to disbelieve the recital of agreement to sell Ex.P1 that a sum of Rs.2,06,000/- had been paid by the plaintiff to the defendant. The execution of agreement stood proved from the testimonies of PW2 Sh.Mukhtiar Singh and PW3 Sh.Kanshi Ram, Lambardar, both attesting witnesses of the agreement. The defendant Anand Kumar alias Aad Ram appearing as DW1 in his cross-examination had admitted his signatures on the agreement. The stamp paper on which the agreement Ex.P1 is rendered had been purchased by him. The blank stamp paper theory propounded by the defendant does not come out to be plausible and convincing. Though in ordinary course, the plaintiff having entered into an agreement with defendant would have put his signatures thereon. The absence of his signatures on the agreement though is a suspicious circumstance but then the same cannot be taken to be fatal.

Learned counsel for the plaintiff-respondent has referred to authority ***Alka Bose Versus Parmatma Devi and Ors., 2009(1) RCR(Civil) 450*** by the Apex Court wherein dealing with an eventuality when agreement of sale of property was not signed by purchaser and it was bearing signatures of vendor only, and delivered to the purchaser, which was accepted by him, there held to

be a valid contract. Learned counsel for the respondent-plaintiff had further referred to *In Re : Kuttadan Velayudhan, Muhammad, 2001(2) RCR(Civil) 447* wherein it was observed by Division Bench of Kerala High Court that when a defendant claimed that his signatures were obtained on blank papers, on evidence adduced by plaintiff regarding execution of document, which is found to be reliable and discharge of burden sufficiently by plaintiff then the onus would shift to the defendant to show that he had not executed the document.

Another flaw in the agreement Ex.P1 is that though it is mentioned that possession had been delivered to plaintiff but as a matter of fact it was not so, rather in the suit filed, the plaintiff had sought possession of the land. The plaintiff was unable to prove that he has always been ready and willing to perform his part of contract and is still ready and willing to do so. He had not placed on file original affidavit dated 31.1.2012 said to have been got executed by him and attested from Tehsildar concerned at Tehsil Complex Khuian Sarwar on 31.1.2012. The original notice dated 1.5.2012 said to have been served by him upon the defendant was also not placed on file. Therefore, though no case for specific performance of the agreement to sell Ex.P1 was made out, rather it comes out to be a loan transaction with agreement Ex.P1 got by plaintiff from the defendant as security. Therefore, the First Appellate Court was

justified in denying specific performance of agreement Ex.P1, however directing the refund of earnest money of Rs.2,06,000/- with interest @ 6% per annum.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Fazilka.

The appeal stands dismissed accordingly.

2.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No