

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

RSA No.514 of 2019 (O&M)
Date of Decision: January 21, 2019

Jagga Ram

...Appellant

Versus

Mangat Ram and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ashwani Talwar, Advocate
for the appellant.

JAISHREE THAKUR, J. (Oral)

1. The appellant-defendant has filed the instant regular second appeal against the judgment and decree dated 28.03.2014 passed by the lower court decreeing the suit of the respondents-plaintiffs for specific performance of the agreement to sell dated 11.12.2000 as well as judgment and decree dated 12.09.2018 passed by the first Appellate Court where the first appeal filed by the appellant-defendant has been dismissed.

2. In brief, the facts of the case as stated are that, on 11.12.2000 appellant-defendant entered into an agreement to sell with the respondents-plaintiffs to sell the suit land (as described in the headnote of the plaint) for a sum of ₹ 3,85,000/- and received ₹ 1 lac as earnest money. Vide the agreement to sell, the appellant-defendant had agreed to execute and register the sale deed on 11.9.2003. It is averred that the respondents-defendants were always ready and willing to get the sale deed executed and even

remained present before the office of Sub Registrar, Rajpura for getting the sale deed executed and registered as per the agreement to sell dated 11.12.2000 with the balance sale consideration amount and the expenses of registration and stamps. In this regard, they got an affidavit attested on 11.09.2003 from the Executive Magistrate, but the appellant-defendant did not turn up. Hence, the present suit.

3. Upon notice, appellant-defendant appeared and filed the written statement while taking the preliminary objection as to non-joinder of necessary parties. On merits, the appellant-defendant alleged that agreement to sell dated 11.12.2000 is fictitious document and has been prepared by playing fraud upon her. The appellant-defendant denied that she received ₹ 1 lacs from the respondents-plaintiffs. It is averred that the appellant-defendant had entered into an agreement to sell dated 11.09.2000 with Bhupinder Singh and Gursewak Singh for a consideration amount and question of defendant entering into agreement with the respondents-plaintiff on 11.12.2000 does not arise. It is claimed that possession of the respondents-plaintiffs over the suit land is as co-sharer and not as a result of alleged agreement to sell. Remaining averments have been denied.

4. Replication was filed. From the pleadings of the parties, the following issues were framed:-

1. Whether defendant Chalti Devi executed agreement for sale dated 11.12.2000 for sale of 8 bighas of land in favour of the plaintiffs, if so, its consequent effect?OPP.
2. Whether the plaintiff has been ready and willing to perform his part of agreement dated 11.12.2000?OPP.

3. Whether in the alternative the plaintiff is entitled to decree for the recovery of ₹ 3,85,000/-?OPP.
4. Whether the agreement dated 11.12.2000 is result of fraud?OPD.
5. Whether defendant No.1 Chalti Devi has entered into an agreement for sale dated 11.9.2000 in favour of Bhupinder Singh and Gursewak Singh, as alleged, if so its consequent effect?OPD.
6. Relief.

5. In order to prove their case, the respondents-plaintiffs have examined eight witnesses in all. Surjan Singh was examined as PW1, Gurmeet Singh, Deed Writer as PW2, Ram Kumar, Sarpanch as PW3, Budh Singh, Clerk o/o Tehsildar Rajpura as PW4, respondent No.1/plaintiff No.1 Mangat Ram himself examined as PW5, Swaran Singh, Deed Writer was examined as PW6, Sardara Ram respondent No.2-plaintiff No.2 himself examiner as PW7 and Pardeep Kumar @ Deepa (son of Madan Lal, Stamp Vendor) was examined as PW8. On the other hand, the appellant-defendant examined Jagga Ram (legal heir and brother of Chalti Devi) as DW1, HC Jagmail Singh as DW2 and Surinder Kumar as DW3.

6. After hearing learned counsel for both the sides, the lower court decreed the suit of the respondents-plaintiffs by directing the appellant-defendant to executed the sale deed, as per agreement to sell dated 11.12.2000 within two months, after receiving balance sale consideration and other costs from the respondents-plaintiffs. The appellant-defendant challenged the judgment and decree passed by the lower court in appeal, however, the same came to be dismissed by the lower Appellate Court on 12.09.2018. Hence, this regular second appeal.

7. Learned counsel for the appellant-defendant argues that both the courts below have not properly appreciated the evidence brought on record. It is contended that the respondents-plaintiff have not been able to prove their readiness and willingness to perform the agreement to sell in question. It is also argued that Ex.P1 is not a genuine document, but the respondents-plaintiffs have colluded together to give it the shape of agreement to sell.

8. I have heard learned counsel for the appellant-defendant and have also gone through the pleadings of the case.

9. The lower court, while dismissing the suit of the respondents-plaintiffs, has observed that in order to prove the agreement to sell dated 11.12.2000 as well as payment of the earnest money of ₹ 1 lac to the appellant-defendant, the respondent No.2/plaintiff No.2 Sardara Singh himself stepped into the witness as PW7 and also examined both the attesting witnesses of the agreement to sell dated 11.12.2000 namely Surjan Singh as PW1 and Ram Kumar, Sarpanch as PW2, apart from Gurmeet Singh, Deed Writer as PW2 and they have proved the due execution of agreement to sell and receiving of ₹ 1 lac as earnest money by the appellant-defendant Chalti Devi. The lower court also took note of the cross-examination of DW1 Jagga Ram, the legal heir of appellant-defendant Chalti Devi wherein he stated that Ex.P1 is that agreement agreement which is in favour of plaintiffs and having thumb impressions of Chalti Devi and voluntary stated that the thumb impressions were put on blank papers. He further stated in his cross-examination that the stamp paper of Ex.P1 was purchased by Chalti Devi in his presence and voluntary stated that the same

was purchased for mortgage deed. He further stated in his cross-examination that Chalti Devi received a sum of ₹ 1 lac from the plaintiffs but the same was mortgage amount. He further goes to the extent of saying that he also put his thumb impressions on document Ex.P1 and voluntarily stated that as witness of Ex.P1. He further admitted in his cross-examination that he also put his thumb impressions in the vasika register of Gurmit Singh Nut Deed Writer Rajpura on the original of Ex.P3 and voluntarily stated that he had put his thumb impressions in good faith.

10. The lower court has further noticed that during his cross-examination DW1 Jagga Ram further stated that he remained power of attorney of Chalti Devi and admitted that he as attorney of Chalti Devi instituted a civil suit for declaration to the effect that agreement to sell alleged to be executed by plaintiff Chalti Devi in favour of defendants Mangat Ram and Sardara Ram is wrong, illegal, null and void and further challenged the validity of agreement to sell Ex.P1 vide said suit. He further admitted in his cross-examination that the said suit was dismissed by the judgment Ex.P7 and decree Ex.P8. He further admitted in his cross-examination that the appeal against the said judgment and decree was dismissed vide judgment Ex.P9 and decree Ex.P10. While noticing the above facts, the trial court noticed contradictions in the evidence led by the appellant-defendant as to that of para 2 of the written statement wherein it was pleaded that the appellant-defendant never received ₹ 1 lac from the respondents-plaintiffs whereas, in his cross-examination DW1 Jagga Ram taken a different stand, as stated above, that Chalti Devi received a sum of ₹ 1 lac from the respondents-plaintiffs, but the same was mortgage amount.

Further, in the written statement no such plea of mortgage of suit land was taken and evidence led by the appellant-defendant was beyond pleadings in this regard. So far as the plea taken by the appellant-defendant of playing fraud upon her, the appellant-defendant failed to prove the same by leaving any cogent and convincing evidence. Regarding the question of readiness and willingness of the respondents-plaintiff, the lower court observed that the respondents-plaintiffs have proved on record affidavit dated 11.09.2003 duly executed before the Executive Magistrate, Rajpura regarding their presence in the office of Sub Registrar for execution and registration of the sale deed as per agreement to sell dated 11.04.2000 Ex.P1. PW4 Budh Singhs, Clerk office of Tehsildar Rajpura and PW6 Swaran Singh, Deed Writer, scribe of affidavit dated 11.09.2003 supported the case of the respondents-plaintiffs to this effect.

11. The lower Appellate Court, while dismissing the first appeal of the appellant-plaintiff, affirmed the findings recorded by the lower court.

12. This court is of the considered view that the both the courts below have rightly granted the relief of specific performance of agreement to sell dated 11.12.2000 Ex.P1 to the respondents-plaintiffs. The respondents-plaintiffs by leading cogent and convincing evidence duly proved the execution of the agreement to sell dated 11.12.2000 Ex.P1 and that the appellant-defendant received a sum of ₹ 1 lac as earnest money, pursuant to Ex.P1. Both the attesting witnesses and the deed writer fully supported the case of the respondents-plaintiffs. Further, there are contradictions in the stand of the appellant-defendant. On the one hand, in the written statement as well as in his examination-in-chief the appellant-

defendant denied that she received a sum of ₹ 1 lac as earnest money and that she agreed to sell the land to the respondents-plaintiffs, however, during his cross-examination DW1 Jagga Ram took a totally different stand from the pleadings, as mentioned in the written statement, to the effect that appellant-plaintiff Chalti Devi received ₹ 1 lac, but the same was mortgage amount. However, no such plea of execution of mortgage deed was taken by the appellant-defendant in the pleadings filed by way of written statement. The respondents-plaintiffs also established their stand of readiness and willingness by leading sufficient evidence.

13. So far as the plea of deception or fraud is concerned, the appellant-defendant miserably failed to prove the same. It goes without saying that it is very easy to raise a plea of fraud but it is equally difficult to prove the same. It is so said because a plea of fraud is to be proved like a criminal charge. However, since in the case in hand, appellant-plaintiff took the plea of fraud in a casual manner and did not make even a sincere effort to prove the said plea of fraud by leading relevant and cogent evidence in this regard, he was bound to fail. That is what has been held by both the learned courts below. Under these circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their impugned judgments and decrees and the same deserve to be upheld, for this reason also. This view taken by this court also finds support from the judgments of the Hon'ble Supreme Court and judgments of this court in ***Gautam Sarup vs. Leela Jetly and others, 2008 (7) SCC 85, Santa Singh vs. Tarsem Singh, 2010(67) RCR (Civil) 520, Devi Lal vs. Shekaran and another, 2011(5) RCR (Civil) 615, Usha and***

others vs. Subhash Chander and others, 2014(5) RCR (Civil) 813, M/s Machhi Ram Kishan Singh Sidana, Rice Mills vs. Sham Singh and others, 2015(9) RCR (Civil) 506, RSA No.4070 of 2016 (Chamkur Singh and another vs. Raghbir Singh and another) decided on 13.1.2017, RSA No.1239 of 2016 (Satbir Singh vs. Mukesh Rani and others) decided on 17.1.2017, State Bank of India vs. Ghamandi Ram (dead) by his legal representatives Gurbux Rai, 1969 AIR (SC) 1330, Surjit Lal Chhabda vs. Commissioner of Income-tax, Bombay 1976 AIR (SC) 109, Surjit Singh and others vs. Gurmit Singh and others, 2010(3) PLR 122 (P&H), Hawa Singh vs. Daya Nand and others, 2010(21) RCR (Civil) 918, Gurmail Singh vs. Rajbir Singgh and another, 2014 (4) RCR (Civil) 397 and Jagdev Singh and another vs. Major Singh and others, 2014(82) RCR (Civil) 214. Thus, the plea of fraud and forgery has been rightly rejected by the courts below.

14. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-plaintiff, which has no merit.

15. Dismissed.

January 21, 2019

vijay saini

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No