

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

RSA No.457 of 2019 (O&M)
Date of Decision: January 18, 2019

Kuldeep and others

...Appellants

Versus

Hawa Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rahul Deswal, Advocate
for the appellants.

JAISHREE THAKUR, J. (Oral)

CM-996-C-2019

1. Deficiency in the court fees has already been made good, as such, the application in hand stands disposed of, as having been rendered infructuous.

CM-997-C-2019

1. There is delay of 49 days in filing the main appeal.
2. The application is supported by affidavit.
3. For the reasons mentioned in the application, the same is allowed and delay of 49 days in filing the appeal is condoned.

CM-998-C-2019

1. Allowed as prayed for, subject to all just exceptions.

RSA-457-2019

1. This is the defendants' regular second appeal seeking to challenge the impugned judgment and decree dated 17.07.2017 passed by the lower court allowing the suit of the respondent-plaintiff for specific performance as well as the judgment and decree dated 25.07.2018 passed by the first Appellate Court, dismissing the appeal of the appellants-defendants.

2. In brief, the respondent-plaintiff filed a suit for specific performance based on agreement to sell dated 03.11.2014 wherein, the appellants-defendants had agreed to sell their 09 kanal land for a total sale consideration of ₹ 30 lacs. Earnest money of ₹ 15 lacs was received in the presence of two witnesses namely Narender and Mehtab. It was alleged that agreement to sell dated 03.11.2014 was executed between the respondent-plaintiff and appellant No.1/defendant No.1 in the presence of aforesaid witnesses and appellant No.1/defendant No.1 also signed agreement to sell and receipt of earnest money and further took the agreement to sell for obtaining the signatures of appellant No.2/defendant No.2 at their house. Thereafter, appellants No.1 and 2/defendants No.1 and 2 came out of the house together and appellant No.2/defendant No.2 admitted of having received ₹ 7.5 lacs in the shape of earnest money, as per his share and acknowledged the agreement and receipt. The date of execution and registration of the sale deed was fixed as 02.02.2015. As appellants No.1 and 2/defendants No.1 and 2 did not appear in the office of Sub Registrar Sampla, respondent-plaintiff got his presence marked before the Sub Registrar by way of affidavit dated 02.02.2015. Later on, he came to know that appellants No.1 and 2/defendants No.1 and 2 have further transferred

the suit property along with other properties by way of transfer deed in favour of appellants No.3 and 4/defendants No.3 and 4 by document dated 13.11.2014 to defeat his right. In fact, appellant/defendant No.3 is the wife of appellant/defendant No.1 and appellant/defendant No.4 is the son of appellant/defendant No.2. Based on this, the suit was filed by the respondent-plaintiff for directing the appellants-defendants to execute the sale deed in his favour, on receiving the balance sale consideration of ₹ 15 lacs and also sought declaration to the effect that transfer deed dated 13.11.2014 is null and void and not binding upon him.

3. The appellants-defendants appeared and all filed a joint written statement. It was alleged that the agreement to sell as relied upon as well as the receipt were forged, false and fabricated documents prepared in collusion with the witnesses and deed writer with an intention to grab the property.

4. Replication was filed and from the pleadings of the parties, the following issues were framed on 08.10.2015:-

- (1) Whether the plaintiff is entitled to get the possession of the suit property by way of passing a decree for specific performance of agreement for sale dated 3.11.2014 executed by defendants No.1 and 2 in his favour or in the alternative whether the plaintiff is entitled to effect the recovery of an amount of Rs.30,00,000/- from the defendants along with interest at the rate of Rs.24% per annum w.e.f. 3.11.2014 till actual realization of the amount?OPP.
- (2) Whether the suit of plaintiff is not maintainable in the present form?OPD.
- (3) Whether the plaintiff has no cause of action to file and maintain the present suit?OPD.

(4) Relief.

5. In order to prove his case, the respondent-plaintiff himself appeared in the witness box as PW1 and tendered original agreement to sell and receipt along with other documents. One of the attesting witness of the agreement to sell Narender was examined as PW2. Yogesh Kumar, Stamp Vendor was examined as PW3. Subhash Chander Sangwan, Draftsman was examined as PW4 (wrongly mentioned as PW3).

6. On the other hand, the appellant No.1/defendant No.1 Kuldeep was examined as DW1. Dr. Siddharth, Sr. Resident Department of Psychiatric was examined as DW2. Appellant No.2/defendant No.2 Pardeep was examined as DW3.

7. After hearing learned counsel for both the sides, the lower court has decreed the suit of the plaintiff with costs. Aggrieved, the appellants-defendants herein filed an appeal before the lower Appellate Court, which too stood dismissed. Aggrieved against the concurring findings of both the courts below, the instant regular second appeal has been filed.

8. Learned counsel appearing on behalf of the appellants-defendants argues that the agreement to sell in question was never executed by the appellants nor they have signed the same and it is the result of forgery and fabrication. It is contended that the respondent/plaintiff never paid ₹ 15 lacs as earnest money to the appellants No.1 and 2/defendants No.1 and 2 nor he was in financial capacity to pay ₹ 30 lacs along with registration charges. It is also argued that the lower court failed to appreciate the evidence of PW2 Narender and other material witnesses. It is also contended that both the courts below did not consider the fact that

appellant/defendant No.4 was minor at the time of filing of the suit and without complying with the mandatory provisions in this regard, the decree passed is void and not enforceable. It is also argued that both the courts below have wrongly observed that appellants No.1 and 2/defendants No.1 and 2 have transferred the suit property in favour of appellants No.3 and 4/defendants No.3 and 4 *mala fide*ly.

9. I have heard learned counsel for the appellants-defendants and have gone through the pleadings of the case.

10. All these arguments, which have been raised before this court, were also raised before the courts below and have been dealt with in detail by them. The trial court, while allowing the suit of the respondent-plaintiff has observed as under:-

“16. To prove execution of agreement to sell plaintiff himself appeared in the witness box as PW1 and he reiterated the above contentions. He placed on record original agreement to sell Ex.P1 and receipt Ex.P2 bearing signatures of defendants No.1 and 2. Further to prove execution of agreement to sell and receipt plaintiff examined PW2 Narender as one of the attesting witness of agreement to sell. Even PW3 Yogesh Kumar, Stamp Vendor and PW4 Subhash Chander, Draftsman materially reiterated the above contentions. Defendant side failed to point out any material contradiction in the testimonies of these witnesses which could shatter shutter the case of plaintiff. In the present case defendants have taken vague stand. Defendants in the written statement stated that agreement to sell and receipt are result of fraud, forgery and manipulation. They stated that there is possibility that plaintiff had obtained signatures of defendants No.1

*and 2 on some blank papers with an intention to grab the suit property. As per authority titled as **Lali Devi and other vs. Jai Singh and others 2013(1) LJR 333 (P&H)** even in a civil case plea of fraud has to be proved like criminal case beyond reasonable doubt. Burden to prove plea of fraud is upon the party taking that plea. Leave aside the proof of proving of plea of fraud and forgery, even particulars of alleged forgery are not mentioned by defendants in the written statement. It is not mentioned that as and when plaintiff obtained the signatures of defendants No.1 and 2 on blank papers. Even it is not pleaded that what was the relation between defendants No.1, 2 and plaintiff. Defendants No.1 Kuldeep Singh during his cross-examination as DW1 at page no.2 stated that he does not know plaintiff. If defendants No.1 and 2 were unknown to plaintiff then it is highly improbable that under the influence of any intoxication plaintiff had obtained signatures of defendants No.1 and 2 on blank papers. Moreover, testimony of PW3 Yogesh Kumar, Stamp Vendor is demolishing the defence of defendants. From Ex.P7 it is clearly proved that defendant No.1 Kuldeep even signed in the register of stamp vendor as purchaser of the stamp paper used for preparing agreement to sell in question. It is not the defence of defendants that plaintiff took defendant No.1 to any stamp vendor under the state of intoxication. So in these circumstances, it is clearly proved that in the present case defendants have miserably failed to prove the plea of alleged fraud or forgery.”*

11. The lower Appellate Court did not find any illegality committed by the lower court, and therefore, the first appeal filed by the appellants-defendants was dismissed.

12. So far as the respondent-plaintiff is concerned, he has duly proved the execution of the agreement to sell Ex.P1 by examining himself as well as PW2 Narender, one of the attesting witness, who supported the case set by the respondent-plaintiff that the appellants/defendants No.1 and 2 executed the agreement to sell Ex.P1 whereby, they agreed to sell the suit property for a sale consideration of ₹ 30 lacs and received the earnest money of ₹ 15 lacs. PW4 Subhash Chander, the scribe and PW3 Yogesh Kumar, Stamp Vendor also support the case of the respondent-plaintiff to the effect that agreement to sell Ex.P1 was prepared on the instructions of the parties and it was signed by the parties on understanding the same to be correct and that stamp paper of agreement to sell Ex.P1 was purchased by Kuldeep i.e. appellant/defendant No.1.

13. On the other hand, the appellants-defendants failed to rebut the case of the respondent-plaintiffs. The appellants-defendants set up the plea of fraud, however, 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, appellants-defendants 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, they were 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. Another ground to challenge the impugned judgments and decrees raised by the appellants-defendants is that the suit land stood transferred to the minor by the transfer deed dated 13.11.2014, and therefore, no decree could have been passed against him without appointing a court guardians in this regard. This argument has rightly been dealt with by the first Appellate Court by relying upon judgments rendered in *Nagaiah and another vs. Smt. Chowdamma (dead) by Lrs and another* passed in

Civil Appeal No.22969 of 2017 on 08.01.2018, Rajinder Kumar vs. Sanatam Dharam Mahabir Dal, 1999(1) Civil Court Cases 684 (P&H), Kehar Singh and others vs. Shankar and others, 1976 PLJ 186 (P&H) and Mushtaq Ahmad vs. Mohd. Shafi, AIR 1983 Jammu and Kashmir 44

wherein, it came to be held that no prejudice could have been caused to the minor in case, a court guardian was not appointed since his interest would have been taken care of by his natural guardian being his father and next friend namely appellant No.2/defendant No.2 Pradeep.

15. Before this court, the appellants-defendants have also moved an application (CM-999-C-2019) under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence. In fact, the appellants-defendants want to produce on record report of the Handwriting Expert dated 19.11.2018 (Annexure A-9) with regard to matching of signatures of appellant No.2/defendant No.2 Pardeep by way of additional evidence, in which the expert has opined that agreement to sell dated 03.11.2014 do not bear the signatures of appellant No.2/defendant No.2. In this regard, this court is of the considered view that this report of the handwriting expert is nothing, but an attempt to fill the lacuna left by the appellants-defendants before both the courts below. The suit of the respondent-plaintiff was decreed by the lower court on 17.07.2017 and the first appeal of the appellants-defendants was dismissed on 25.07.2018. This report of the handwriting expert (Annexure A-9) is dated 19.11.2018 whereas the photography for the same was allegedly done on 16.11.2018. Meaning thereby, this report of the handwriting expert was procured after dismissal of first appeal of the appellants-defendants on 25.07.2018, that too within

four days of taking the photography of the signatures of appellant No.2/defendant No.2. Before the lower court, no handwriting expert was examined by the appellants-defendants and even before the first Appellate Court, no such application for additional evidence was moved. When both the courts recorded concurrent findings against the appellants-defendants, they in an attempt to come out of the same, want to produce on record the report of the handwriting expert before this court in second appeal, which cannot be permitted at this belated stage, that too, when the agreement to sell dated 03.11.2014 has been duly proved by the respondent-plaintiff by way of leading cogent and convincing evidence. As such, this miscellaneous application is hereby dismissed.

16. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. No question of law requiring determination arises in this appeal, which has no merit.

17. Dismissed.

January 18, 2019

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No