

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.176 of 2020

Date of Decision: 26.02.2020

Karnail Singh

.....Appellant

versus

Jagdish Lal (since deceased) through LRs and others

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Vinod Khunger, Advocate
for the appellant.

AMOL RATTAN SINGH, J.

This is the second appeal of the plaintiff in a suit instituted by him seeking a decree of possession of the suit property, after specific performance of an agreement of sale dated March 30, 2013.

That suit having been dismissed by both the learned courts below, this 2nd appeal has been filed.

2. As per the plaintiff, respondent no.1 (now represented by his legal representatives), being the owner of the suit property, which is stated to be a plot measuring 4.41 marlas out of a larger plot measuring 2 kanals and 18 marlas, had entered into the aforesaid agreement of sale for a total sale consideration of Rs.20,00,000/-, out of which Rs.5,00,000/- were paid as earnest money at the time of execution of the agreement, in the presence of a witnesses, one of them being one Gurnam Singh, with the document having been signed by (the now deceased) respondent Jagdish Lal, who had signed it in the *Persian* script (*Urdu*).

The appellant-plaintiff and the witnesses are also stated to have

singed it.

The sale deed was to be executed within 6 months of the date of the agreement, i.e. March 30, 2013.

However, after receiving the sale consideration from the appellant, Jagdish Lal died on June 07, 2013 with the property inherited by his legal representatives, upon whom a legal notice was served on 14.09.2013 to execute the sale deed, but with none of them having turned up before the Sub-Registrar, Ferozepur, on September 30, 2013.

Thereafter, though the appellant contends that he approached the respondent-defendants many times to execute the sale deed, they refused to do so and in fact told him that they had transferred the suit property in favour of defendants no.2 and 3 (presently respondents no.2 and 3 in this appeal), on 25.09.2013.

Hence, the appellant also sought a declaration to the effect that that sale deed was illegal, null and void and the mutation thereafter sanctioned was also required to be reversed.

3. In their written statement, the respondent-defendants upon having put in appearances, raised preliminary objections with regard to maintainability of the suit, concealment of facts, cause of action etc., further contending that the agreement itself was a very vaguely drafted document with neither the name of the appellant nor his address given therein. Similarly, the parentage of the witnesses were also not mentioned, with the *killla* numbers and boundaries of the suit property also not given.

Hence, it was further contended that the agreement itself seemed to be the result of a fraud perpetuated by the appellant, in connivance with the witnesses, and that in fact if the witnesses were actually present, their names

would be typed on the agreement on the stamp paper, whereas they were actually hand written (the implication being that actually their names were added subsequently).

Next, it was contended by the respondent-defendants that the stamp paper itself was seen to be purchased in the name of Lila Wati wife of Labh Singh, bearing no.5385 dated "05.12.20" (as stated in paragraph 3 of the uncertified copy of the judgment of the learned trial court as has been annexed with this appeal).

It is next stated by the respondent-defendants that though it was stated in the agreement that Rs.5,00,000/- was deposited in the account of the late Jagdish Lal in the presence of the appellant-plaintiff (in cash by Jagdish Lal), however no such deposit was actually made.

The factum of the ownership of the suit property by Jagdish Lal was admitted, as was the factum of it having been sold by the LRs of Jagdish Lal to respondent-defendants no.2 and 3 on 25.09.2013, with them having become the owners thereof, such sale having been made for 'valuable consideration'.

Respondent-defendants no.2 and 3, in their written statement, also are stated to have taken the same pleas.

4. Replications having been filed, the following issues were framed by the trial court:-

1. *"Whether plaintiff is entitled for specific performance of agreement to sell dated 30.03.2013? OPP*
2. *Whether plaintiff is entitled to the injunction as prayed for? OPP*
3. *Whether plaintiff is entitled to alternative relief for the recovery of Rs.20 lacs i.e. Rs.5 lac paid as earnest money and remaining as damages/interest? OPP*

4. *Whether plaintiff remained ready and willing to perform his part of the contract, if so its effect? OPD*
5. *Whether the suit of the agreement in question is result of fraud, forged and fabricated document? OPD*
6. *Relief.”*

5. The appellant-plaintiff having examined ten witnesses including himself as also the witnesses to the agreement and a handwriting and finger print expert, he led documentary evidence in the form of the agreement itself, postal receipts, and his application to show his presence before the Sub-Registrar, other than signatures of the late Jagdish Lal, photographs, a site plan, the sale deed etc.

The respondent-defendants examined one of the LRs of the late Jagdish Lal, i.e. Yashpal son of Jagdish Lal (present respondent 1(iii)) and one Joginder Singh, and tendered documents in the form of a sale deed and two copies of bank accounts.

6. Upon appraising the aforesaid evidence, the trial court found that the agreement of sale indeed did not show either the parentage or address of the appellant-plaintiff, with no parentage of the marginal witnesses also given, and further, the *kill*a (*kh*asra) number of the disputed property also not shown, and with the stamp paper on which the agreement was written out, also shown to be purchased by some Lila Wati wife of Labh Singh, who was obviously neither the plaintiff nor the late defendant-vendor, Jagdish Lal.

Further, it was found that the last two numbers on the date of purchase of the stamp paper had been erased, with the exact year of purchase of the document therefore not determinable at all, thereby raising a doubt on the execution of the document itself.

7. Other than the above, that court also recorded a finding that

though the appellant had examined himself as PW1, and in the first part of his cross-examination had stated that the deceased Jagdish Lal had purchased the stamp paper, and that the appellant had brought the remaining sale consideration of Rs.15,00,000/- with him on 30.09.2013, when he was further cross-examined, he stated that he did not know in whose name the stamp paper was purchased and thereafter stated that he had not taken Rs.15,00,000/- with him to the office of the Tehsildar on 30.09.2013.

He obviously also could not deny that neither his parentage or address were given on the document, which was also not attested by any Municipal Councilor/Numberdar and that no boundaries or *kill*a number of the disputed property had been recorded, with even “the sides of the alleged plot”, also missing from the agreement.

It was next found by that court that in his cross-examination he had stated that the agreement was scribed by one 'Mr. Kaushal', with the attesting witnesses not present at the spot, though they came later as “they were busy in depositing the earnest money in the bank”.

8. The trial court next noticed that the person shown to be the marginal witness to the agreement, i.e. Gurnam Singh (PW2), also testified that the stamp paper was purchased by Jagdish Lal in his own name and was typed by one Mr. Kaushal; however, instead one Tajinder Pal was examined by the appellant as PW4, who in his testimony deposed that he had typed out the agreement in the presence of the parties, and that the stamp paper was purchased by Jagdish Lal.

9. As regards the recital in the agreement to the effect that earnest money was deposited in the account of Jagdish Lal on 30.03.2013, the defendants had produced the pension account of their father (Jagdish Lal), as

Ex.DX, to show that no such amount had been deposited on that date.

10. Consequently, on the basis of the aforesaid evidence, again referring to the fact that it had not been explained as to how the stamp paper was shown to be purchased by a completely different person, i.e. Lila Wati, and why the two numerals had been erased from the date of such purchase, the primary issues no.1, 2 and 3, were decided against the appellant, with the remaining issues also consequently decided against him and the suit therefore dismissed.

11. The first appeal filed by the present appellant herein, was also dismissed by the learned District Judge, Ferozepur, essentially on the same reasoning.

12. Before this court, though on an earlier date when the appeal had come up for hearing, learned counsel had been asked to produce the notification of the Punjab Government as regards the nature and value of the stamp paper on which an agreement of sale pertaining to land property must be executed, he subsequently cited a judgment of a co-ordinate Bench of this court in **Vinod Kumar Tanwar v. Jai Bhagwan** 2012 (3) RCR (Civil) 181, to submit that an agreement not having been executed on a stamp paper of the value that it should have been scribed upon, would not affect the merits of the case, if the said document itself was never objected to on that ground before the appropriate authority/court.

13. Thereafter, upon this court having put the reasoning given by the courts below to learned counsel for the appellant, as regards the stamp paper itself not having been purchased either in the name of the respondent-defendant Jagdish Lal (prospective vendor) or even in the name of the appellant-plaintiff, Karnail Singh (prospective vendee), but in the name of a wholly different

person, i.e. Lila Wati, whose connection to the suit property or to the agreement in any manner was not even attempted to be shown at any stage, he had no explanation forthcoming to that query.

Other than that, it having been also pointed out to him as to how the agreement in question could not be held to be in doubt when even the date of purchase of the stamp paper itself was found to be tampered with by both the learned courts below, with the last two digits of the date having been erased, again no explanation for the same is forthcoming.

10. Consequently, looking at the aforesaid two very glaring facts that would put a complete question mark on the agreement having actually been executed by the late Jagdish Lal, and further, the appellant himself having contradicted himself in the cross-examination itself, to the effect that first he stated that it was Jagdish Lal who purchased the stamp paper and later denied knowledge who had purchased it, and further, the name of the scribe first having been given to be some 'Mr. Kaushik', but with actually one Tajinder Pal having been examined as a scribe (as PW4), with it not even attempted to be argued (even before this court), that his full name was Tajinder Pal Kaushik, I see no ground whatsoever to interfere with the impugned judgments and decrees issued by both the courts below.

Even for a minute, if it were attempted to be shown that Kaushik and Tajinder Pal are the same person (with it not having been actually even argued to that effect), looking at all the facts put together, of the stamp papers not having been purchased either in the name of the prospective vendor or the vendee, it having two digits missing as to the date of purchase of the paper itself, and with the alleged executor of the agreement, i.e. Jagdish Lal, having died even prior to the institution of the suit itself and prior to the date allegedly

fixed for execution of the sale deed, with no evidence led to show that any earnest money was deposited in his bank as was contended in the plaint, I would find no reason to entertain this appeal, which is therefore dismissed *in limine*, with costs throughout.

February 26, 2020
dharamvir/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes