

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

RSA No.1199 of 2008 (O&M)

Date of decision: 24.02.2020

Santa Singh (deceased) thr Lrs and ors.

... Appellants

Versus

Harvinder Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Salil Bali, Advocate
for appellants No.2 to 7.

Mrs. Rupinder K. Thind, Advocate
for the respondent.

REKHA MITTAL, J. (Oral)

CM No.1306-C of 2009

Prayer in this application is for impleading legal representative(s) (in short “LRs”) of Santa Singh-appellant No.1.

In view of averments made in the application supported by an affidavit of Ajit Singh son of Santa Singh and arguments advanced, application is allowed and persons mentioned in para 2 of the application are allowed to be brought on record as LR's of Santa Singh-appellant No.1 (since deceased), subject to just exceptions, for the purpose of present lis only.

Disposed of accordingly.

Main Case

The agreement to sell dated 20.08.2002 purportedly executed

by Santa Singh defendant No.1 (appellant No.1 herein) in respect of land measuring 5 kanal 8 marlas that was sold by defendant No.1 in favour of defendants No.2 to 7 during pendency of suit vide sale deed dated 09.09.2002 is the bone of contention in the present litigation.

Harvinder Singh, respondent/plaintiff has set up the aforesaid agreement and prayed for specific performance thereof. The trial Court decreed the suit to the following effect:-

Suit of the plaintiff succeeds and is decreed against defendants with costs for specific performance of land measuring 5 kanal 8 marlas as mentioned in the headnote of the plaint on the basis of agreement to sell dated 20.08.2002 executed by defendant No.1 in favour of plaintiff. Plaintiff is directed to deposit the balance of sale consideration in this Court within a period of one month from today and thereafter defendant No.1 is directed to execute the sale deed in favour of plaintiff in another one month, failing which plaintiff shall be at liberty to get the sale deed executed through this Court. Further, the sale deed dated 09.09.2002 executed by defendant No.1 in favour of defendants No.2 to 7 is declared as null and void not binding qua rights of the plaintiff.

Appeal preferred by the defendants did not find favour with the Additional District Judge, Ferozepur as the Court affirmed findings of the trial Court without variance.

Perusal of the averments made in the written statement filed by defendant No.1 makes it evident that he has altogether denied execution of agreement of sale and receipt of earnest money with the allegations that agreement in question is forged and fabricated document prepared illegally

and fraudulently in connivance with attesting witnesses. Sale deed dated 09.09.2002, admittedly, executed by defendant No.1 in favour of defendants No.2 to 7 is stated to be valid and genuine.

Defendants No.2 to 7 also filed written statement, in line, with the allegations raised by defendant No.1. In addition, they pleaded themselves to be *bona fide* purchasers for valuable consideration without notice of alleged agreement dated 20.08.2002. Possession of the suit land has been handed over by defendant No.1 on 09.09.2002.

The plaintiff filed replication and reiterated the averments set up in the plaint.

The Trial Court framed issues, reproduced in para 5 of the judgment of said Court.

To prove his case, the plaintiff examined Darshan Lal PW1, Document Writer (scribe of the agreement in question), Balbir Singh PW3, attesting witness of the agreement, Sanjiv Sharma PW4, Hand-writing Expert and himself appeared as his own witness.

To rebut evidence of the plaintiff, Santa Singh defendant No.1 examined himself, Gurmit Singh DW4, Sucha Singh DW5 in examination in chief only, NK Jain DW6, Document Writer. Defendants No.2 to 7 examined Balbir Chand DW2, one of the defendants and Gurmit Singh DW3, one of the attesting witnesses of the sale deed.

The trial Court, on appreciation of materials on record in the light of rival submissions made by counsel for the parties, accepted case of

the respondent/plaintiff in respect of agreement of sale, readiness and willingness to perform his part of the agreement and entitlement to seek principal relief of specific performance of the aforesaid agreement. As has been noticed hereinbefore, the Court in appeal affirmed findings of the trial Court.

Counsel for the appellants has assailed correctness of the agreement of sale on few counts. It is argued that Darshan Lal, document writer and alleged scribe of the agreement tendered into evidence his affidavit Ex.PW1/A by way of examination in chief. In para 2 of the affidavit, he has deposed that agreement Ex.P1 was entered at Sr. No.70 dated 20.08.2002 in the register maintained by him. He produced copy of Rapat No.6 dated 13.10.2002 regarding loss of his register for the year 2001-02. It is vehemently argued that on the agreement, no serial number at which the agreement was entered has been mentioned. On the contrary, No.70 pertains to registration No.70 of the year 1984, may be, pertaining to licence of Darshan Lal. It is further argued that the register for the year 2001-02 would be for the period from 01.04.2001 to 31.03.2002 i.e. the financial year but as the agreement to sell propounded by the respondent is dated 20.08.2002, there was no reason for Darshan Lal not to produce the register containing entry qua the agreement of sale if actually there was an entry in his records to that effect. It is vehemently argued that the aforesaid two facts are more than sufficient to show that agreement to sell is the result of forgery and manipulation.

With regard to testimony of Balbir Singh PW3, an attesting witness of the agreement, it is argued that said Balbir Singh was indicted in criminal proceedings for becoming an attesting witness to a sale deed and he has been convicted for committing the offence of fraud/forgery upto the High Court of Punjab and Haryana. Counsel would argue that this fact alone is sufficient to create a doubt regarding credibility of Balbir Singh.

Another submission made by counsel is that as per averments made in the plaint and reiterated in the affidavit of Harvinder Singh filed by way of examination in chief, the appellant/defendant No.1 wanted to sell the suit land and requested the plaintiff to purchase the same because of findings qua possession in the previous litigation between the parties in suit titled 'Kishan Singh Etc. Vs. Santa Singh Etc.' decided by the trial Court vide decree dated 22.11.2001 that merged in the judgment of Court in appeal dated 02.08.2002. It is argued that plaintiff in cross examination had stated that Santa Singh was in possession of different specific khasra numbers other than khasra numbers involved in the suit by them. Santa Singh had not delivered specific khasra numbers to him. It was mentioned in the agreement to sell that Santa Singh had delivered possession of the suit land to the plaintiff at the time of agreement. It is argued that statement of Harvinder Singh to the aforesaid effect falsify his claim as to the circumstances under which Santa Singh approached him for sale of suit land and it proves recital in the agreement with regard to delivery of possession to be false. The last submission made by counsel is that a

cumulative view of the aforesaid facts and circumstances goes a long way to create suspicion regarding genuineness of the agreement of sale, therefore, the impugned judgments suffer from perversity and liable to be set aside.

Counsel representing the respondent/plaintiff, on the contrary, has supported concurrent findings recorded by the Courts. It is argued that concurrent factual findings cannot be intervened in second appeal unless they suffer from perversity or raise a question of law. It is further argued that even a wrong judgment may not be set aside in second appeal if it is otherwise based on evidence. It is further argued that appellant/defendant No.1 never initiated any criminal proceedings against the respondent/plaintiff for alleged forgery, sufficient to show that the agreement was executed by him but he is trying to take advantage of certain technicalities to wriggle out of his liability created under the agreement particularly in the circumstances that he sold the suit property in favour of defendants No.2 to 7 less than 20 days from the date of agreement dated 20.08.2002 was executed. It is further argued that the fact of defendant No.1 having sold the suit land to defendants No.2 to 7 further proves that defendant No.1 intended to sell the suit land.

Counsel would argue that minor contradictions and discrepancies are bound to occur in the statement of a truthful witness more particularly when he is examined after gap. It is further argued that perusal of the rapat got recorded by Darshan Lal makes it evident that even the

entry pertaining to the agreement in question was also in the register that he lost on 13.10.2002. It is further argued that the mere fact that Darshan Lal has incorrectly recorded the serial number of entry to be '70' when the same pertains to registration number as document writer, is hardly of any consequence. According to counsel, Balbir Singh PW3 was cross examined at length but nothing tangible and material has been elicited to discard or disbelieve his testimony. It is argued that the mere fact that Balbir Singh was convicted and sentenced in respect of some other transaction neither can enure to benefit of appellants nor sufficient to discard or disbelieve his testimony, taking into consideration the provisions of Section 52 of the Evidence Act. For this purpose, reliance has been placed upon judgment of the Delhi High Court **Jain Exports (P) Ltd. and ors. Vs. Union of India, 1983 Rajdhani LR 610**. Counsel would further argue that some of the khasra numbers which were the subject matter of previous litigation in suit titled 'Kishan Singh Etc. Vs. Santa Singh Etc.' are also the subject matter of the agreement to sell, therefore, statement of Harvinder Singh that Santa Singh approached him for sale of land because of their (plaintiff and his co-plaintiff in the earlier suit) possession having been established, is neither false nor contrary to record.

I have heard counsel for the parties, perused the paper book and records.

Darshan Lal has mentioned the agreement being entered at Sr. No.70 dated 20.08.2002. He was not in possession of the register in which

the entry was made as the same was stated to have been misplaced and Rapat No.6 dated 13.10.2002 was lodged with the police. As Darshan Lal was not in possession of register, his statement with regard to Sr. No.70 dated 20.08.2002 is not based upon entry made in the said register. On the contrary, he made such a statement on the basis of what has been mentioned on the agreement itself. Since there is reference to No.70 in the seal of Darshan Bajaj, document writer pertaining to his registration number, as such, the said mistake was committed while preparing his affidavit. In the given circumstances, the appellants cannot derive advantage thereof much less to find fault in consistent findings recorded by the Courts.

Darshan Lal had stated that he lodged Rapat No.6 with regard to his register for the year 2001-02 being misplaced. No such fact has been elicited in cross examination of Darshan Lal that register which is maintained by a document writer starts from 1st April of a year and ends on the 31st March of the succeeding year or to say that register is maintained on the basis of financial year in place of calendar year. Counsel for the appellants has failed to point out any materials on record to substantiate his contention that register by a document writer is maintained financial year wise and not calendar year wise. In this view of the matter, the appellants cannot derive any advantage to their contention on account of failure of Darshan Lal to produce the register containing the relevant entry qua the agreement of sale. As such, contention raised by the appellants to assail evidential value of Darshan Lal does not carry weight and liable to be

rejected.

Harvinder Singh has given the reason as to why defendant No.1 approached him for purchasing the land in dispute because of previous litigation that was decided against Santa Singh. Perusal of the judgment and decree sheet Exs.P4 and P5 respectively passed in suit titled 'Kishan Singh and others Vs. Santa Singh and others' makes it evident that in the said suit, three khasra numbers namely 20/2/2/2/1 (2-10), 20/1 (2-14) and 19/2/1 (2-14) were the subject matter of dispute and plaintiffs including Harvinder Singh of the earlier suit claimed themselves to be in possession of aforesaid khasra numbers and defendants therein including appellant Santa Singh were required to be restrained from dispossessing or interfering in lawful possession of the plaintiffs therein. All the three aforesaid khasra numbers are also the subject matter of present agreement of sale whereby Santa Singh appellant agreed to sell land measuring 5 kanal 8 marlas. The total area of the aforesaid khasra numbers is more than 7 kanals rather approximately 8 kanals. In the given circumstances, there is nothing wrong in the version of the respondent/plaintiff as to the reasons why Santa Singh approached him for sale of suit land or recital in the agreement with regard to delivery of possession.

Much stress has been laid upon evidential value of testimony of Balbir Singh, one of the attesting witnesses of the agreement. Firstly, the agreement to sell does not require compulsory attestation. As has been rightly argued by counsel for the respondent/plaintiff, Balbir Singh was

subject to searching and lengthy cross examination but nothing fruitful could be brought-forth to discard or disbelieve his testimony. Balbir Singh was not even confronted with any criminal proceedings lodged against him and his conviction in the said proceedings. The mere fact that Balbir Singh has been convicted in a case pertaining to some other transaction *per se* is not sufficient to discard or disbelieve his testimony qua all other transactions/documents attested by him. I would hasten to add that Santa Singh appellant has denied his signatures on the agreement of sale in order to say that the same is the result of forgery. Both the parties examined their document experts in support of their warring claims. Ordinarily testimony of a document expert based upon comparison of signatures/writing is of fragile nature. Experience tells that private document experts have the tendency to tow to line of their pay master. As the so called experts have given different opinions, the Court ventured to compare the disputed signatures with the admitted signatures of Santa Singh on various documents on record particularly his testimony by way of examination in chief. On comparison with naked eye but with use of magnifying glass, the opinion expressed by the expert engaged by the respondent/plaintiff appears to be correct. The agreement to sell has been signed by Santa Singh and this fact alone is sufficient to demolish the defence plea raised by him and contentions raised by his counsel to challenge findings recorded by the Courts. Analysed from any angle, I do not find any reason to interfere in well considered and well founded findings recorded by the Courts, based

upon evidence.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed with costs. All miscellaneous applications shall be deemed to be disposed of.

24.02.2020

(REKHA MITTAL)
JUDGE

ashok

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