

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 738 of 2014 (O&M)

Date of Decision: 26.02.2020

Narender Singh and Another

... Appellant(s)

Versus

Jasbir alias Yash Bir and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Adarsh Jain, Advocate
for the appellants.

Mr. Kulbhushan Sharma, Advocate
for respondent No.1.

Anil Kshetarpal, J.

The defendants No.1 & 3 have filed the present regular second appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for specific performance of the contract.

The undisputed facts are that the defendants along with their co-owners had mortgaged a large chunk of land in favour of Malkhan (father of plaintiff/respondent Jasbir alias Yash Bir).

The plaintiff claims that the defendants entered into an agreement to sell with him on 20.11.2000 with respect to the land measuring 6 kanals 9 marlas, which was already mortgaged and in possession with the father of the plaintiff. The total sale consideration agreed to between the parties was ₹2,42,000/-, out of which ₹ 1,20,000/- was paid through three pay orders and ₹1,17,700/- was paid in cash. The remaining amount was retained in order to redeem the mortgage. As per the agreement to sell, no target date for

execution and registration of the sale deed was fixed. The plaintiff filed a suit on 24.11.2003.

The defendants contested the suit and pleaded that there was no agreement to sell and in fact, the defendants have taken a loan of ₹ 40,000/- from the plaintiff. In other words, ₹ 1,20,000/- was taken as loan and the plaintiff has dishonestly got converted and prepared those documents into an agreement to sell.

Both the Courts below, as noticed above, on appreciation of facts, found that the agreement to sell has been proved on payment of the earnest money.

This Court has heard the learned counsel for the parties and with their able assistance, gone through the judgements passed by the learned Courts below and the records.

Learned counsel appearing for the appellants has drawn attention of the Court to Ex.P1, the agreement to sell dated 20.11.2000. He submitted that on the first page/sheet of the paper, thumb impression of the defendants were already existing and the agreement to sell has been typed thereon. He, hence, submitted that the case as pleaded by the defendants is established. He further submitted that the name of second marginal witness is not typed and has been introduced lateron. He further submitted that Ram Singh, the first marginal witness, has supported the case of the defendants.

On the other hand, learned counsel appearing for the plaintiff has drawn attention of the Court to page No. 2 of the agreement to sell, which again has the thumb impressions and signatures of three defendants.

He further drew attention of the Court to Ex.P2, the receipt of ₹ 2,37,700/-,

which again has thumb impressions and signatures of all the defendants. On the basis of the aforesaid documents, he submitted that there is no force in the arguments of learned counsel for the appellants.

This Court has analysed the arguments of learned counsel for the parties.

The jurisdiction of this Court, while adjudicating the regular second appeals, is regulated by Section 41 of the Punjab Courts Act, 1918 (hereinafter referred to as “the Act”), which is extracted hereunder:

“41. Second appeals—*(1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely :*

- (a) the decision being contrary to law or to some custom or usage having the force of law.*
- (b) the decision having failed to determine some material issue of law or custom or usage having the force of law.*
- (c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 (V of 1908), or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits.*

Explanation—A question relating to the existence or validity of a custom or usage shall be deemed to be a question of law within the meaning of this section.

(2) An appeal may lie under this section from an appellate decree passed ex parte”.

It is apparent from the plain reading of Section 41 of the Act

that this Court can interfere only if this Court finds that there is an error of law or substantive misreading or non-reading of the evidence. In the present case, on appreciation of evidence, both the Courts have found that the plaintiff has certainly proved his case.

In any case, it will be noted that the agreement to sell is on two leaves/sheets of paper. On the first leaf, photographs of two defendants have been affixed. The agreement to sell is typed in Hindi and thumb impressions and signatures of the two defendants, namely Narender Singh and Devender Singh are in Hindi, whereas Udai Singh-defendant has signed in English and has also put his thumb impression. The same is the position with regard to Ex.P2, the receipt. In the agreement to sell, it is specifically noted that the possession of the land is with the father of the plaintiff, namely Malkhan Singh as mortgagee. The amount of mortgage, representing the share of the defendants, was retained by the plaintiff. On consideration of the matter, this Court does not find that the thumb impressions and signatures of the defendants were obtained on the blank papers as is sought to be made out.

As regards the argument of learned counsel for the appellants that the name of one marginal witness is not typed, is to be appreciated in the context of the present case. The agreement to sell is not required to be attested by two marginal witnesses. In the present case, space for signatures of second marginal witness had been left after writing the word "Witness._____". Therefore, it would not be appropriate to hold that Naresh was introduced later on.

As regards statement of Ram Singh, his evidence is contrary to the written contract.

Still further, as noted above, out of the earnest money of

₹2,37,000/-, a sum of ₹ 1,40,000/- was paid through pay orders issued by the bank in favour of the defendants.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by both the Courts below.

Dismissed.

The miscellaneous application(s), if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

February 26, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No