

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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RSA No.5285 of 2017 (O&M)

Date of decision:3.2.2020

Ujagar Singh (since deceased) through his LRs

... Appellants

versus

Hardalip Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Ashish Gupta, Advocate,
for the appellants

...

AMOL RATTAN SINGH, J.

This is the second appeal filed by the appellant-plaintiff (hereinafter referred to as the appellant), after his suit seeking specific performance of an agreement of sale dated 28.09.1994, stated to have been executed by one Gurdev Singh, son of Labh Singh (as the general attorney of respondent no. 1 Hardalip Singh), was dismissed by the learned trial court and the first appellate court.

2. The learned trial court, in its judgment, held that in fact the appellant herein had failed to prove the execution of the agreement itself, with Gurdev Singh having died on 31.01.1996 and there being nothing on record to show that the appellant-plaintiff had ever approached defendants no. 1 and 2 (the 2nd respondent being the wife of the first respondent-defendant), either prior to Gurdev Singhs' death or thereafter, seeking to execute a sale deed.

3. The case of the appellant was that Gurdev Singh and he had entered into the said agreement for the sale/purchase of land measuring 9 *kanals* and 2 *marlas* out of a total holding of 11 *kanals* and 06 *marlas*, as fully described in the plaint. Out of the total sale consideration settled, of Rs. 3,10,000/-, a sum of Rs. 2,10,000/- had been paid to Gurdev Singh as earnest money, with the date for execution of the sale deed fixed to be on or before 30.06.1996.

Gurdev Singh is also stated to have handed over a photocopy of the instrument granting him a general power of attorney dated 30.08.1994, with the agreement executed in the presence of three witnesses, namely, Rajinder Singh, Charanjit Singh and Jaspal Singh.

Possession of the suit land is also stated to have been handed over to the appellant, who, as contended in his plaint, continued to be in possession thereof.

4. However, thereafter, respondents no. 1 and 2 herein executed two sale deeds qua a part of the suit land in favour of respondent-defendants no. 3 and 4, the first one having been executed on 09.01.1995, registered on 11.01.1995, in respect of 2 *kanals* and 16 *marlas* of land; with the second sale deed having been executed on 02.01.1996 in respect of 03 *kanals* and 13 *marlas* of the suit land. Consideration of Rs. 32,000/- and Rs. 80,000/- in respect of each sale deed was alleged to have been paid.

Hence, it was contended that the vendees, i.e. respondents no. 3 and 4 herein, were making hectic efforts to dispossess the appellant qua the said land whereas the appellant had always being willing to perform his part of the contract entered into with Gurdev Singh/respondent no. 1 Hardalip

Singh, by payment of the remaining consideration of Rs. 1,00,000/- in addition to registration and stamp charges.

Consequently, the suit in the present *lis* was instituted on 15.06.1996.

5. Respondents no. 1 and 2 (defendants) in their written statement, other than taking the usual preliminary objections, further stated that after the sale took place, respondents no. 3 and 4 had even raised a shopping complex over the site and in any case, no such agreement had been entered into by Gurdev Singh as attorney of respondent-defendant no. 1 and therefore the agreement of sale being relied upon was a forged and fabricated document, with possession having been delivered to the appellant-plaintiff of the suit land being wholly denied.

The last date for execution of the sale deed, i.e. 30.06.1996, was also contended by the said respondents to be a 'manipulated date'. It was further contended that one of the witnesses to the alleged agreement, i.e. Rajinder Singh, was also a witness in a Special Power of Attorney executed by some other person who thereafter got sale deeds executed "in the name of the answering defendants", but with the revenue authorities having refused to enter any mutation on the basis of those sale deeds and the civil suit claiming title on the basis of those sale deeds, also having been dismissed (qua a different piece of land).

6. Respondent-defendants no. 3 and 4, i.e. the vendees of respondents no. 1 and 2, in their written statement before the trial court also essentially stated the same thing, further stating that in any case they were protected in terms of Section 41 of the Transfer of Property Act, 1882, they

having no knowledge of any alleged agreement of sale.

It was further contended by them that even as per the revenue record, the appellant, Ujagar Singh, had never been shown to be in possession of the suit property and consequently, his contention that he had been delivered physical possession thereof was wholly incorrect, it being further pointed out that in fact even in the agreement the figure “30.06.1990” had been overwritten on, to 'manipulate it', which showed that there was a forgery committed. The witnesses to the agreement were stated to be 'henchmen' of the appellant-plaintiff, which was evident from their places of residence.

7. Upon the aforesaid pleadings having been submitted, the following issues were framed by the learned trial court:-

1. *Whether defendants through their attorney Gurdev Singh had agreed to sell suit property to the plaintiff vide agreement dated 28.09.1994 for consideration of Rs. 3.1 lacs and received Rs. 2.1 lacs as earnest money? OPP*
2. *Whether the plaintiff had always been ready and willing to perform his part of the contract? OPP*
3. *Whether the plaintiff was put in possession of the suit property on 28.09.1994? OPP*
4. *Whether the plaintiff is entitled to specific performance of the agreement dated 28.09.1994? OPP*
5. *Whether the suit is under valued for the purpose of court fee and jurisdiction? OPD*
6. *Whether defendant nos. 3 and 4 are bona fide purchased suit property for*

consideration without notice of any agreement claimed by the plaintiff? OPD

7. *Whether defendants no. 3 and 4 have raised huge construction over suit property and let it out to many tenants, if so its effects? OPD*

8. *Relief.*

8. Upon examining the evidence, including five witnesses for the plaintiff and nine witnesses for the defendants, the learned trial court recorded that in fact even the plaintiff had died after his examination-in-chief and therefore could not be cross-examined, after which his son, Harnek Singh, testified as PW-3 and admitted in his cross-examination that he was not present at the time of execution of the agreement, Ex. P-2, and therefore he could not say anything with regard to its contents; nor did he know of the name of the stamp vendor from whom the paper had been purchased by his father, with him further admitting that no notice was served upon respondents no. 1 and 2 herein during the period 1994-96, nor were they asked verbally to get the sale deed executed and registered.

9. He further admitted that “they never got marked their presence before the sub-Registrar”, as they did not have funds to get the sale deed registered.

The execution of the sale deeds by respondents no. 1 and 2 in favour of respondents no. 3 and 4, with delivery of possession of the land to the latter, was also admitted by him.

10. From the aforesaid evidence, the trial court came to the conclusion that in fact the plaintiff had kept sitting on the agreement of sale without making any efforts for execution and registration of a sale deed and consequently, it could not be said that he was ready and willing to perform

his part of the contract.

It was further recorded by that court that PW-2 Charanjit Singh, one of the marginal witness to the agreement of sale, had failed to turn up to get himself cross-examined, and therefore his statement in examination-in-chief could not be relied upon.

As regards another witness, i.e. Jaspal Singh, he also did not actually support the case of the plaintiff when put to cross-examination, he having admitted in fact that no agreement of sale was ever entered into between the parties in his presence, further stating that Gurdev Singh had never signed the document in his presence, nor was any money exchanged between the parties in his presence.

He also denied knowing the other two persons shown as witnesses in the agreement, i.e. Rajinder Singh and Charanjit Singh.

11. It was also found by the learned trial court that the handwriting and fingerprint expert examined by the defendants had proved his reports and opinion, to the effect that the signatures on the agreement of sale were forged.

12. On the other hand respondent-defendants no. 3 and 4 had duly proved the execution of the sale deeds in their favour, with revenue record showing their possession over the suit property also duly proved, with no rebuttal to such revenue record, thereby presuming truth of such record.

13. Consequently, while deciding the 'primary issues' as per the case of the appellant, even while observing that respondent-defendants no. 1 and 2 had not denied that Gurdev Singh was their attorney prior to 1996, however, it was held that that fact alone would not support the case of the

appellant-plaintiffs, with in fact the plaintiffs' own witnesses having shattered the case irretrievably.

14. Essentially on the aforesaid findings, also recording that the remaining issues were either not pressed or had become redundant in view of the findings on the main issues, the suit was dismissed.

15. The learned first appellate court, after noticing the essential pleadings and the evidence led by the parties, also discussed the testimony of PW-4 Jaspal Singh (shown to be an attesting witness on the agreement), as has already been noticed hereinabove, and further observed that a perusal of the agreement of sale (Ex. P-2) revealed that on the reverse of the agreement the number of the stamp paper had been shown to be 3474 dated 28.09.1994, issued to defendant no. 1 Hardalip Singh, with the name of the stamp vendor seen to be Dhanraj Mehta, bearing his signatures. However, the testimony of DW-6, Madan Lal, from the office of the Deputy Commissioner, proved that as per record the aforesaid numbered stamp paper had been issued to one Nathe Lal, son of Mukund Lal, which was also obvious from the document proved as Ex. PW-6/A, with the document Ex. DW-6/B revealing that the licence of stamp vendor Dhanraj Mehta had in fact been suspended and subsequently cancelled vide an order dated 10.03.1983. Hence, naturally, he could not have sold any stamp papers on 28.09.1994.

Thereafter, also referring to the fact that the revenue record did not bear out the contention of the plaintiff, and that the hand-writing expert had also found that the signatures were forged, and the property having been handed over to respondent-defendants no. 3 and 4 also having been

admitted by the son of the plaintiff, the stand of the plaintiff in his plaint that he was still in possession thereof obviously could not be believed.

16. Finally, noticing that in the absence of any revenue record depicting the plaintiff to be in the possession of the suit property, defendants no. 3 and 4 also could not have had any knowledge of any alleged agreement of sale between the plaintiff and defendants no. 1 and 2, the appeal was dismissed with costs, upholding the judgment and decree issued by the learned trial court.

17. Before this court, learned counsel for the appellants submitted that even though one person shown to be a witness to the agreement of sale had turned hostile and the other did not turn up for cross-examination, however, the third witness did testify in favour of the agreement and therefore the learned courts below have wholly erred in not believing that the agreement was duly executed between the late father of the appellants, i.e. by Ujagar Singh, on 28.9.1994, and that in fact it was the respondents-defendants no.1 and 2 who did not turn up to get the sale deed executed and had sold the suit property before the date for execution thereof; i.e. that the property was sold in January 1995 and in January 1996, whereas the date of execution was actually 30.6.1996, with the suit instituted on 15.6.1996.

18. He further submitted that in fact at the time that the suit had been filed, an injunction had been granted in favour of the appellants by the learned trial court and construction on the suit property by respondents-defendants 3 and 4 was only made after that interim order was vacated/not extended by that court.

19. He next reiterated that the learned Ist appellate court has wholly erred in relying only upon the testimony of the witness who turned hostile, i.e. PW4 Jaspal Singh, while not giving any credence to the testimony of PW5 Rajinder Singh, who had testified to the effect that in fact the agreement was signed in his presence, with even the late plaintiff, Ujagar Singh, having told him about his attorney Gurdev Singh (through whom the agreement was signed) and that Ujagar Singh and Gurdev Singh had gone to purchase the stamp papers.

He has also referred to the testimony of the deed writer.

20. Having considered the aforesaid contentions raised by learned counsel, I find myself unable to agree with them, in view of the detailed findings given by both the learned courts below, especially as nothing has been shown to this court, that to dislodge the report of the hand-writing expert examined by the respondent-defendants, any other expert had been examined by the appellant-plaintiff to show that the signatures on the agreement of sale were not forged/copied.

Next, most importantly, nothing has been shown to this court to dislodge the finding of the learned lower appellate court to the effect that on the date that the stamp paper had been recorded to be sold to respondent-defendant no. 1 by stamp vendor Dhanraj @ Sweety, i.e. on 28.09.1994, he fact he was not licensed to sell such papers, his licence having been cancelled 11 years earlier in 1983, further seen with the fact that the officials from the Deputy Commissioners' office had testified that in fact the said numbered stamp paper had been issued to one Nathe Lal and not to Dhanraj @ Sweety (to whom in any case it could not have been issued after

cancellation of the licence).

21. Next, the contention of the plaintiff in his plaint being that he was in possession of the suit property since the date of execution of the agreement was disproved not just by the revenue record not showing any such possession, but further by his son PW-3 (Harnek Singh), who stated that in fact no attempt had been made to even get the sale deed registered, though he knew that two sale deeds had been executed by respondents-defendants no. 1 and 2 in favour of respondents no. 3 and 4.

In fact this court had put a specific query to learned counsel for the appellant to the effect that though, undoubtedly, the sale deeds are admitted to have been executed prior to the last date shown in the agreement of sale for execution thereof, yet, even so, no notice was shown to have been issued to the respondent-defendants to get a sale deed executed in terms of the agreement. He could not deny the said fact but stated that as the suit itself had been instituted on 15.06.1996, consequently no notice was required to be issued.

23. Even having considered that fact, for the reasons already given by the learned lower appellate court as regards the stamp paper on which the agreement of sale shown to be executed obviously being a fabricated/forged stamp paper, or at least carrying a fabricated number on it, with the opinion of the hand-writing expert as regards the signatures thereon also being forged never having been dislodged by the appellant-plaintiff, further seen with the fact that respondents no. 3 and 4 were admitted to have taken possession and constructed over the suit property, I find absolutely no ground to interfere with the judgments and decrees issued by the learned

courts below.

Consequently, finding no merit in this appeal, it is dismissed in *limine*, with all costs naturally to be borne by the appellants, throughout.

February 03, 2019
pk/nitin

(AMOL RATTAN SINGH)
JUDGE