

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1185 of 2011 (O&M)

Date of Decision: 21.12.2021

Jagsir Singh

... Appellant(s)

Versus

Harbhajan Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Anupam Gupta, Senior Advocate
with Mr. Aditya Jain, Mr. Sukhpal Singh and
Mr. S.S.Virk, Advocates, for the appellant(s).

Mr. P.K.S.Phoolka, Advocate
for the respondent.

Anil Kshetarpal, J.

1. Through this regular second appeal, the defendant, in the suit for grant of decree of specific performance along with the consequential relief of permanent injunction, assails the correctness of the judgment & decree passed by the First Appellate Court, while reversing the judgment & decree passed by the trial Court. In the considered opinion of the Court the question which arises for consideration is as to “Whether the High Court while deciding Regular Second Appeal under Section 41 of the Punjab Courts Act, 1918 is totally debarred from re-examining the evidence?
2. In this judgment, the parties shall be referred to by their status in the suit.
3. The plaintiff filed a suit on 24.12.1999 for specific performance

of the agreement to sell dated 25.12.1995. As per the case of the plaintiff, the

defendant entered into an agreement to sell with him on receipt of ₹6,00,000/- as earnest money with respect to the land measuring 43 Kanals & 18 Marlas, situated at village Chak Fatehsinghwala @ ₹1,81,000/- per acre. The remaining sale consideration was to be paid before the Sub Registrar on 24.12.1996 at the time of registration of the sale deed. The plaintiff asserted that he made several requests to the defendant to perform his part of the contract, but the defendant, on one pretext or the other, failed to perform his part. Therefore, he filed an application while visiting the office of the Sub Registrar on 24.12.1996 and 27.12.1996 to show his readiness and willingness to perform his part of contract. The defendant has also committed a breach of the contract as he has borrowed loan from P.A.D.B. Nathana. The plaintiff further claimed that the possession of the suit land was to be delivered to him, but later on the defendant forcibly took back the possession. Due to a clerical mistake, Khewat No. 410/781, 785 was wrongly typed in the agreement to sell, whereas the actual Khewat numbers were 410/781 & 411/785.

4. The defendant contested the suit and pleaded that the agreement to sell is a forged and fabricated document. It was asserted that the Jamabandi for the year 1994 was not in existence on 25.12.1995 and therefore, it was nearly impossible to get the alleged agreement scribed on 25.12.1995 while reciting the Khewat and Khatoni number of the disputed land, which came to be assigned in the Jamabandi for the year 1994-95. It was pleaded that the agreement was freshly prepared after 25.10.1996 as Khasra No. 170//6(8-0) does not fall in Khewat No. 410, but it falls in Khewat No. 411. While asserting that the stamp paper on which the alleged

agreement to sell has been scribed, was issued on 04.12.1990, the defendant alleges that two stamp papers of ₹3/- each were issued, but only one stamp paper of ₹3/- has been used for forging the agreement to sell. It was asserted that Darshan Singh, Sarpanch along with Telu Ram, Driver and Sewak Singh, Patwari, broke open the Patwarkhana (The office of the Patwari-revenue official) and forcibly took the revenue record of the village Chak Fatehsinghwala with them and on the information given by the Patwari to the Naib Tehsildar, an FIR was registered against them. It was asserted that the plaintiff is serving as a Conductor on a salary of Rs. 600/- per month on the bus belonging to his brother-in-law Darshan Singh, therefore, does not have wherewithal to purchase the land. Replication to the written statement was filed by the plaintiff and the trial Court framed the following issues:

- “1. Whether the defendant entered into an agreement of sale dated 25.12.1995 in favour of the plaintiff? OPP*
- 2. Whether the defendant has committed the breach of contract? OPP*
- 3. Whether the plaintiff is still ready and willing to perform his part of the contract: OPP*
- 4. Whether the plaintiff is entitled to the performance of specific contract? OPP*
- 5. Whether the suit of the plaintiff has not been filed within limitation? OPD*
- 6. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD*
- 7. Relief”.*

4. In order to prove his case, the plaintiff examined himself as PW.6, whereas PW.1 Davinder Singh, PW.2 Avtar Singh, PW.3 Gurdeep Singh, Senior Clerk, P.A.D.B. Nathana, PW.4 Harjit Singh, Secretary, Agricultural Co-operative Society, Chak Fatehsinghwala, PW.5 Kulwant Singh, Patwari Halqa Chak Fatehsinghwala, were examined. On the other hand, the defendant, in order to prove forgery, himself appeared as DW2 and examined DW.1 Sumit Kumar Arora, Handwriting and Fingerprint Expert.

5. The trial Court, after observing that the agreement to sell is ante dated and is surrounded by the suspicious circumstances, dismissed the suit. The trial Court further found that the plaintiff did not have wherewithal to purchase the suit property.

6. The First Appellate Court has reversed the judgment passed by the trial Court by giving the following reasons:-

- i) The evidence of PW.1 Davinder Singh and PW.6 Harbhajan Singh proves the agreement to sell and during their searching cross-examination, these witnesses have proved the agreement and there is no material to hold that the credibility of these witnesses stands impeached. The Court also observed that the plaintiff has failed to prove any motive on the part of PW.1 Davinder Singh, the marginal witness, to join hands with Darshan Singh, Naib Singh and Harbhajan Singh.
- ii) PW.2 Avtar Singh, the another marginal witness, joined hands with the defendant and hence, his statement is required to be discarded.

- iii) The usage of old stamp paper is a mere irregularity and therefore, the trial Court has erred in blowing it out of proportion. The Court further observed that the old stamp papers were used because 25.12.1995 was holiday and nobody objected to the fact that the agreement is being scribed on an old stamp paper.
- iv) The defendant has admitted that Khewat and Khatauni numbers were written by the Patwari. In the suit for permanent injunction, filed by the plaintiff, efforts to compromise the dispute were made and therefore, the plea of agreement to sell being forged is an after thought. The Court further held that since the defendant failed to make any complaint to the police authorities and therefore, the plea of agreement to sell being forged and fabricated document cannot be accepted.

6. Heard learned counsel representing the parties and with their able assistance, not only perused the paper-book, but also the lower Courts' record, which was requisitioned.

7. The learned senior counsel representing the defendant contends that there is no explanation as to how the stamp paper, issued on 04.12.1990, was used for execution of the alleged agreement to sell on 25.12.1995. He, hence, contended that the agreement to sell is, in fact, forged. While referring to the evidence of Harbhajan Singh (the plaintiff), PW.1 Davinder Singh and PW.2 Avtar Singh (the marginal witnesses on the agreement to sell), he has submitted that the First Appellate Court has erred in misreading

the evidence. While referring to the statement of the revenue official (PW.5 Kulwant Singh, Patwari Halqa Chak Fatehsinghwala), he contended that the jamabandi for the year 1994-95 was issued only w.e.f. 01.04.1996 and since the Khewat and Khatauni numbers, recited in the agreement to sell dated 25.12.1995, are from the jamabandi for the year 1994-95, therefore, it is evident that the agreement to sell has been subsequently forged. He further, while contending that PW.2 Avtar Singh has not supported the case of the plaintiff, submitted that neither he nor the defendant were present at the time of execution of the agreement to sell, therefore, the due execution of the agreement to sell is not proved. He further submitted that the Plaintiff has neither examined the stamp vendor, who issued the stamp paper, nor the scribe. Therefore, there is a serious doubt on the authenticity and genuineness of the agreement to sell. It was further contended that since the plaintiff filed a suit for grant of decree of permanent injunction on 04.11.1996, therefore, the present suit is barred as per the provisions of Order II Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC").

8. Per contra, the learned counsel representing the plaintiff has stated that the execution of the agreement to sell, on payment of the sale consideration has been proved by examining the plaintiff as well as PW.1 Davinder Singh, the marginal witness of the agreement to sell. He submitted that the First Appellate Court has correctly held that PW.2 Avtar Singh has been won over by the defendant and therefore, his statement has correctly been ignored. He further contended that merely because the old stamp paper for scribing the agreement to sell has been used, that is at the most, an

irregularity, the same is liable to be ignored. He further contends that the First Appellate Court has recorded a finding of fact and the High Court has should not interfere in the findings of fact arrived at by the First Appellate Court.

9. Before this Court proceeds to analyze and adjudicate the dispute, it is important to note that the jamabandi is prepared with respect to the land holdings after every 4 to 5 years. As per the Punjab Land Records Manual, 1935, ordinarily a jamabandi consists of 12 columns as provided under Clause 7.40 of Chapter 7. The first column is with respect to the Khewat number, which is with reference to the owners' holding. In other words, the Khewat number has a direct correlation with the ownership. In Column No.2, the Khatauni number is mentioned. This has correlation with the person in cultivation of the land. One Khewat number can consist of many Khataunis. If a person is an owner of a bigger parcel of land and some part of the said land thereof is being cultivated by himself, and the remaining part of land is with the several tenancy holders, there will many Khatauni numbers in the aforesaid Khewat. During the period of 4/5 years, before preparation of a new jamabandi, all the changes in the ownership column as well as cultivation column are entered by the revenue official (Patwari) in the remarks column. The Khewat number can change on account of sale, gift, inheritance, transfer etc. Similarly, the Khatauni numbers can change because there can be changes in the cultivation of the holdings of the village. Therefore, normally whenever the new jamabandi is prepared, the new Khewat and Khatauni numbers are assigned to a particular parcel of land holding. In Clause 7.41, it is provided that the revenue

authorities are liable to arrange owners' holdings in an order in which the names of the owners are given in the village genealogical tree (shajra nasab).

10. In the present case, two jamabandis for the years 1989-90 and 1994-95 have been produced. From a careful perusal of jamabandi for the year 1989-90, it is evident that the land is comprised in Rectangle No. 391, which is joint in the name of various owners including Jagsir Singh (Defendant-appellant). Khewat No. 391 consists of various Khatauni numbers from 694 to 714. Whereas in the jamabandi for the year 1994-95, the same land has been recorded under Khewat No. 410 & 411, Khatauni No. 769 to 785. The alleged agreement to sell was executed on 25.12.1995. On that day, the jamabandi for the year 1994-95 had not been finalized. PW.5 Kulwant Singh, Patwari, while appearing in the evidence, stated that the jamabandi was approved by the Collector of the district only on 30.04.1996 and copy thereof could only be issued thereafter. On a careful perusal of the agreement to sell, it is evident that the land has been identified while reciting, that it is comprised in Khewat No. 410, Khatauni No. 781 and 785. As per the jamabandi for the year 1989-90, the land in question was comprised in Khewat N. 391 and Khatauni nos. 694 to 714. Moreover, it has come in the evidence that Darshan Singh and certain other persons broke open the Patwarkhana and stole the original revenue record in the year 1996. For that purpose, a criminal prosecution is pending. The plaintiff has tried to explain that the defendant came with slip of paper, therefore, the Khewat and Khatauni numbers were recited in the agreement to sell from the aforesaid slip. However, the plaintiff has failed to prove the same. He has examined PW.5 Kulwant Singh, Patwari Halqa, who did not state that the defendant

had come to him to get the description of the property asking for the Khewat and Khatauni numbers of the land from the Jamabandi which was yet under preparation. It was for the plaintiff to prove that how and in what manner, the Khewat and Khatauni numbers, which were yet to be allocated to the land in question, have been recited in the agreement to sell, beforehand.

11. There is another important happening, which cast a doubt on the genuineness of the agreement to sell. The agreement to sell is alleged to have been executed on 25.12.1995, which was a holiday on account of celebration of Christmas. It has come in evidence that on 25.12.1995, the Tehsil office was closed on that day. A perusal of the agreement to sell shows that the stamp paper was purchased on 04.12.1990. In other words, the stamp paper, which was purchased more than five years ago before the execution of the agreement to sell, has been used for scribing the agreement to sell. There is no explanation as to why the defendant would purchase the stamp paper five years ago, so prior to the execution of the agreement to sell. The learned counsel representing the plaintiff, while referring to the judgment passed by the Supreme Court in *Thiruvengada Pillai vs Navaneethammal & Another (2008) 4 SCC 530* contended that the usage of old stamp paper for execution of agreement is a mere irregularity and therefore, the same would not affect the validity of the agreement. As per the case of the plaintiff, the agreement to sell is scribed by Sh.Kewal Krishan Garg, Advocate. A non-judicial stamp paper can only be purchased for a specific purpose. It is not the case of the plaintiff that he had entered into an agreement to purchase the property in the year 1990 from the defendant but the formal agreement to sell to that settlement was to be scribed in the year

1995. In such circumstances, the agreement to sell scribed on a stamp paper purchased in the year 1990 certainly creates a doubt about the genuineness of the agreement to sell. It rather gives credence to the plea of the defendant that the signed papers have been misused. Furthermore, it is evident that neither the Stamp Vendor nor the Scribe have been examined and the plaintiff has failed to give any reason for their non-examination. Moreover, it is significant to note that there was an official holiday on 25.12.1995, the day of execution of said sale deed. It is an admitted fact that on that day, the Tehsil Complex, where the Sub-Registrar has an office, was closed. The plaintiff has stated that the agreement to sell was executed in the Tehsil Complex. It has also come in the evidence that the Advocate, who scribed the agreement to sell, did not make any entry nor obtained the signatures of the defendant in his notebook which is traditionally maintained by the scribes/ professional document writers.

12. Additionally, there are various other factors which cast serious doubts about the correctness of the genuineness of the agreement to sell. Firstly, PW.2 Avtar Singh, the marginal witness to the alleged agreement to sell, while appearing in evidence, admitted that the plaintiff is the brother of Darshan Singh's wife. In other words, the plaintiff is the brother-in-law of Darshan Singh. Darshan Singh and Naib Singh are the brothers, who are in the business of running buses under Stage Carriage Permit. It is the case of the defendant that he was a partner with them in their transport business and there was some dispute between the parties. Although the plaintiff, initially disputed his relationship with Darshan Singh, however, in the cross-examination, he admitted the aforesaid fact.

13. Moreover, the financial capacity of the plaintiff is also doubtful. Admittedly, he did not own any agricultural land at the time of entering into an agreement to sell or till his appearance as a witness in the Court. When Davinder Singh appeared in evidence as PW.1, he feigned ignorance as to whether Harbhajan Singh has no financial capacity to purchase the suit land. He also stated that he has no knowledge from where the plaintiff arranged the amount of ₹6,00,000/-, that was allegedly paid as an earnest money. PW.2 Avtar Singh has stated that the plaintiff is working as a Driver on a salary of ₹1,000/- or ₹1,200/- per month under Darshan Singh and Naib Singh. He further stated that Harbhajan Singh (the plaintiff) has no financial capacity to purchase the property. When the plaintiff appeared as PW.1, he admitted that Darshan Singh, Ex-Sarpanch, is his brother-in-law and they are in the business of running the buses on Stage Carriage Permit. Although he denied that he is working as a Driver on the buses run by his brother-in-law, however, he says that he belongs to village Malout, but he has not brought any record to prove the ownership of any agricultural land. He further states that he cultivates the land on lease in village Nathana. However, on being further questioned, he stated that he cannot produce any proof of payment of the rent to anyone. He has stated that the payment was made from the amount available at in his house although he is neither an income-tax assessee nor he has any bank account.

As per the agreement to sell, ₹6,00,000/- was paid as an earnest money. In the year 1995, ₹6,00,000/- was a sufficiently large amount, particularly for a person who did not own any agricultural land. In such circumstances, the trial Court has correctly concluded that the plaintiff was

not having wherewithal to pay ₹6,00,000/-. As already noticed, the plaintiff has neither produced the statement of his bank account nor any other evidence to prove his financial capacity. As per the agreement to sell, the plaintiff was required to pay ₹9,93,273.50/- to the defendant. He has not led any evidence to prove that the remaining amount of ₹4,00,000/-, was available with him.

There is another significant factor which needs attention. As per the alleged agreement to sell, the sale deed was to be executed on or before 24.12.1996. The plaintiff filed the suit on 24.12.1999 i.e. the last day of limitation (the limitation for filing such suits is 3 years from the date the limitation begins to run). No doubt, the plaintiff had filed a suit for injunction, which was dismissed in default on 13.11.1997. Still, the plaintiff waited for a period of more than two years before filing the suit for grant of decree of specific performance.

14. At this stage, it is important to examine the evidence of Harbhajan Singh (the plaintiff) who appeared as PW.6. From a careful perusal of his cross-examination, it is evident that he has asserted that he does not know most of the facts which were put to him during cross examination to test veracity of statement made in examination in chief. He has stated that he does not know if Jagsir Singh (the defendant) had been doing the business of transport with Darshan Singh (his brother-in-law) and Naib Singh. He does not know as to whether Jagsir Singh (the defendant) was holding a route permit from Rampura to Rama with regard to the bus bearing registration No. PAB-2257. He further pleaded ignorance that the business of running the bus was being managed by Darshan Singh and Naib

Singh. He further stated that he does not know if the defendant cancelled the power of attorney given to Darshan Singh in the year 1994 and thereafter, there was enmity between them. He further pleaded ignorance about the fact as to whether Jagsir Singh (the defendant) had filed a suit for rendition of accounts against Darshan Singh and Naib Singh, wherein the parties have been directed to maintain *status quo* with regard to the transfer of the bus bearing registration No PAB-2257. He admitted that he never purchased the stamp paper for execution of the agreement to sell. He further feigned ignorance about the fact that Darshan Singh and Telu Ram stole the revenue record for which an FIR was registered and criminal prosecution is pending. On being further questioned, he stated that he does not know if the jamabandi for the year 1994-95 was not in existence. He further feigned ignorance of the fact as to who are/were the co-sharers of the land comprised in the same Khewat.

15. At this stage, it is significant to carefully examine the deposition of PW.2 Avtar Singh, one of the marginal witness of the agreement to sell. He admitted that 25.12.1995 was a holiday and the petition writers, advocates and stamp vendors did not come to the Tehsil Complex. He stated that because of the holiday, neither anyone was present nor any business was transacted in the Tehsil Complex. He further admitted that Sh.Kewal Krishan Garg, Advocate, was also not available in the Tehsil Complex at Nathan on 25.12.1995. He rather stated that no agreement to sell on 25.12.1995 was scribed by Sh.Kewal Krishan Garg, Advocate. He admitted that neither the earnest money of ₹6,00,000/- was paid nor Jagsir Singh (the defendant) signed the agreement to sell in his presence. He further stated that Sh. Kewal

Krishan Garg, Advocate, had scribed the agreement to sell at his residence and Davinder Singh and Jagsir Singh (the defendant) were not present at the time when the agreement to sell was scribed/drafted. He admitted that Harbhajan Singh is working as a Driver with Darshan Singh and Naib Singh at a salary of ₹1,000/- or ₹1,200/- per month and he does not have any financial capacity to purchase the property.

16. Furthermore, the defendant has proved that he was running the transport business along with Darshan Singh and Naib Singh in partnership. Ex.D10 is a copy of the plaint filed by Jagsir Singh (the defendant) on 30.01.1995 with a prayer to dissolve the partnership business, which was entered into pursuant to the partnership deed dated 27.10.1988. Ex.D9 is a copy of the order passed by the Judicial Magistrate Ist Class framing the charges against Telu and Sewak Singh for theft of the revenue record. Ex.D8 is a copy of FIR registered under Section 451, 379, 120-B IPC.

17. It is evident from the careful reading of the statement of Jagsir Singh (the defendant) who has appeared as DW.2 that he has stated that the jamabandi was prepared before 30.04.1996, but it was made applicable with effect from 01.05.1996. Hence, the First Appellate Court has erred in misreading the evidence in proper perspective.

18. Keeping in view the aforesaid facts, now let us examine the correctness of the reasons recorded by the First Appellate Court to reverse the judgment of the trial Court. The first reason is that the deposition of PW.6 Harbhajan Singh (the plaintiff) and PW.1 Davinder Singh could not be discredited and therefore, the agreement to sell is proved. As already noticed that Harbhajan Singh (the plaintiff) has tried to avoid answering the relevant

questions put to him in the cross-examination. In response to a significant number of questions, he has pleaded lack of knowledge. Furthermore, he has admitted that the stamp paper for the execution of the agreement to sell was not purchased either by him or in his presence. He has stated that he is neither an income-tax payee nor having any bank account nor owns any agricultural land. He failed to disclose the name of the person from whom he had taken the land on lease in village Nathana. In such circumstances, it is obvious that the First Appellate Court has failed to appreciate the evidence in proper perspective. Hence, the First Appellate Court has wrongly concluded that the learned counsel representing the defendant has failed to impeach his credibility. Similarly, when Davinder Singh appeared in evidence as PW.1, again he also avoided to answer a substantial number of questions. He does not know the name of the person who owns the land which is alleged to be cultivated by the plaintiff. He does not know as to whether Harbhajan Singh (the plaintiff) and has no financial capacity to purchase the property. He also feigned ignorance about the registration of an FIR against Naib Singh, Darshan Singh etc. He has stated that the jamabandi for the year 1994-95 was not available when the agreement to sell was executed. He also feigned ignorance as to from where Harbhajan Singh (the plaintiff) arranged the alleged amount paid as earnest money. In such circumstances, the conclusion of the First Appellate Court that the credibility of the evidence of the plaintiff and his marginal witness of the agreement to sell was not impeached, suffers from error. The First Appellate Court has further erred in observing that Davinder Singh has no motive to join hands with the plaintiff. It is well settled that the Civil Court

is required to decide the case on preponderance of the probabilities. It is not necessary that the marginal witness of the document has to prove the motive if the other party alleges fraud.

19. The First Appellate Court has also erred while observing that PW.2 Avtar Singh (another marginal witness of the agreement to sell) has joined hands with the defendant. From a careful reading of the cross-examination of PW.2 Avtar Singh, it is evident that he has admitted certain facts under the pressure of the cross-examination when the learned counsel representing the defendant grilled him by questioning on the various aspects. PW.2 Avtar Singh, under the pressure of the cross-examination, has made certain statements, which are in favour of the defendant. However, the correctness of the statement of a witness is required to be evaluated in the correct perspective.

20. The next reason assigned by the First Appellate Court that the defendant has admitted that the Khewat and Khatauni numbers, written by the Patwari, is also result of misreading of the evidence. It is rather the stand of the defendant that on the day of the execution of the alleged agreement to sell, the Khewat and Khatauni numbers had not been assigned and the new jamabandi was not available. Hence, the finding of the First Appellate Court is the result of misreading of the evidence.

21. The next reason assigned by the First Appellate Court that in a suit for injunction, the efforts to settle the dispute by settlement, is sufficient circumstance to infer that the agreement is genuine. In the considered view of this Court, the parties to the dispute made efforts to resolve. However, that would not mean that the agreement to sell is genuine. In the written

statement filed before the trial Court in the suit for grant of permanent injunction, the defendant did take a stand that the agreement to sell is the result of forgery. Thus, the First Appellate Court has erred in drawing such inference.

22.. The next reason assigned by the First Appellate Court is again erroneous as it is not necessary that the defendant must lodge a complaint with the police if an agreement to sell has been forged. Once the litigation is pending in the Civil Court, one party may opt to file the FIR, however, the failure to file an FIR or to lodge a complaint with the police, does not necessarily lead to the fact that the agreement to sell is genuine.

23. Keeping in view the aforesaid discussion, it is evident that there is a doubt on the genuineness of the agreement to sell. Hence, the trial Court correctly dismissed the suit. Consequently, the appeal is allowed. The judgment & decree, passed by the First Appellate Court granting decree of specific performance is set aside and that of the trial Court is restored.

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

(Anil Kshetarpal)
Judge

December 21, 2021

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No