

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

RSA No.629 of 2011 (O&M)

Date of decision: 23rd November, 2021

Kuldeep Singh

... Appellant

Versus

Suresh

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vaibhav Sharma, Advocate for the appellant.

Mr. Vikram S. Punia, Advocate for the respondent.

FATEH DEEP SINGH, J.

The present appellant (then plaintiff) Kuldeep Singh initially filed against the present respondent (then defendant) Suresh a suit for specific performance of agreement dated 09.01.2004. The brief facts are that one Mangha Ram son of Khushi Ram, father of the defendant Suresh, admittedly was the owner in possession of certain land detailed in the suit in all measuring 127K 6M. It is alleged by the plaintiff that Mangha Ram entered into an agreement to sell in favour of the plaintiff on 09.01.2004 undertaking to sell his land @ ₹ 6.00 lacs per acre, to which he had put a thumb impression and which was witnessed by one Satish Chopra and Ved Parkash as well as his two sons Jagdish Chander and Sunder Lal. In pursuance of this agreement, it is alleged that the same day Mangha Ram received ₹ 10.00 lacs in cash as earnest money and it

was agreed that the sale deed would be executed on or before 30.06.2004, however, Mangha Ram died the very next day i.e. 10.01.2004. It is subsequent the claim of the plaintiff that out of his five sons who inherited the estate of Mangha Ram, all except the defendant executed the sale deeds to which the defendant had refused and hence the suit in question. The defendants denied the averments and took the plea of lack of locus standi and maintainability of the suit.

On pleadings, the learned trial Court framed the following issues:-

1. Whether Mangha Ram deceased father of defendant entered into an agreement to sell dated 09.01.2004 in favour of the plaintiff of the land mentioned in para No.1 of the plaint for a sale consideration of ₹6,00,000/- per acre and received ₹10,00,000/- as earnest money? OPP
2. If issue No.1 is proved whether the plaintiff is entitled for a decree of specific performance? OPP
3. Whether the plaintiff has been and is still ready and willing to perform his part of contract? OPP
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

6. Relief.

Plaintiff examined Jagdish PW1 and himself appeared in the witness box as PW2 followed by Ved Parkash PW3 and Satish Kumar PW4 and tendered documents Ex.P1 to Ex.P10 and thereafter closed the evidence. The defendant Suresh on the other hand himself appeared as DW1 and closed his evidence. The plaintiff in rebuttal proved sale deed as Ex.P11.

The Court of learned Civil Judge (Senior Division), Sonapat vide judgment and decree dated 17.09.2009 decreed the suit of the plaintiff. On appeal by Suresh, the Court of learned District Judge, Sonapat vide impugned judgment and decree dated 29.09.2010 set aside the order of the trial Court and allowed the appeal and that is how the present regular second appeal has come up.

In view of the recent pronouncement in **‘Kirodi (since deceased) through his LR vs. Ram Parkash & others’ Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019**, the Hon’ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Heard Mr. Vaibhav Sharma, Advocate for the appellant; Mr.Vikram Singh Punia, Advocate for the respondent and perused the records of the case.

From the own admitted pleadings of both the sides, the agreement to sell if any was executed between Mangha Ram and the plaintiff side to which Suresh defendant was not a party. Section 10 of the Indian Contract Act, 1872 which is reproduced as below, defines what agreements are contracts and the most important emphasis is that only those agreements which are made by free consent of parties competent to contract for a lawful consideration and a lawful object, can be declared to be contracts which are enforceable.

“10. What agreements are contracts. - All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.”

Furthermore, Section 15 which defines ‘coercion’ and Section 16 which defines ‘undue influence’ renders all such contracts illegal and unenforceable if they are impregnated with undue influence or coercion. It is not in any manner displaced and is rather reflected from the testimony of PW1 Jagdish that Mangha Ram used to normally put his signatures but the agreement, on the basis of which this suit has been filed, carries the thumb impression of Mangha Ram, together with the

fact that admittedly the next day i.e. 10.01.2004 Mangha Ram is admitted to have died, is a strong element of suspicion surrounding this agreement dated 09.01.2004 that all was not well with the agreement. Since PW1 the material witness admits that Mangha Ram died within 3/4 days and was not keeping good health and the fact that none of the witnesses PW1, PW2 or PW3 clearly spell out if the contents of the agreement were read-out to Mangha Ram or not and volunteered to accept it, are matters which further render this alleged document to be an outcome of involuntariness. Out of five sons, four have executed the sale deed on 07.06.2004, much after the death of Mangha Ram and the fifth son Suresh, the defendant before this Court, has refused to do so, rather is reflective that there is disagreement between the heirs.

The learned Court in the impugned findings under challenge has taken into consideration that none of the witnesses have ever stated that either the contents of agreement Ex.P1 or receipt Ex.P2 were read-out and explained to Mangha Ram and who after admitting the contents of the agreement has put his thumb impression, and therefore has held that it was suspicious circumstance that goes against the plaintiff especially in the light of the fact that the Court was of the view that assuming Mangha Ram was an illiterate who used to put his thumb impression, then onus lay heavily on the plaintiff to prove that it was a voluntary act of Mangha Ram and who was fully aware of the contents of the document, especially in the light of the fact that at the relevant time

Mangha Ram was on bed and had died the very next day, further strengthens the case of the defendant that it was not a voluntary act of Mangha Ram. The learned first appellate Court has rightly struck-down the findings of the learned trial Court on the grounds that merely because the other legal heirs have executed the sale deed in favour of the plaintiff therefore, had reached the conclusion that even if the agreement was genuine, does not augurs well for the plaintiff. More so, on account of there being no privity of contract between the plaintiff and the defendant and that the admission of the co-sharers/other heirs of deceased Mangha Ram does not bind the defendant, are matters which go adverse to the interest of the plaintiff.

In the light of what has been detailed and discussed above, findings of the learned first appellate Court are well reasoned and duly substantiated by the evidence and needs to be upheld. The appeal of the plaintiff being hopelessly without merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

November 23, 2021

rps

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