

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

RSA No.1725 of 2015 (O&M)

Date of decision: 9th April, 2021

Sardul Singh

... Appellant

Versus

Bagicha Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sandeep Verma, Advocate for the appellant

Mr. G.C. Shahpuri, Advocate for the respondent.

FATEH DEEP SINGH, J.

In this regular second appeal, then plaintiff Bagicha Ram (wrongly denoted as Bagicha Singh) filed a suit against then defendant Sardul Singh (now appellant) for possession by way of specific performance of the agreement to sell dated 19.02.2008. The claim is based on the contentions that the then defendant offered to sell to the then plaintiff land in question measuring 34 kanals 8 marlas, being 1/3rd share out of the total land measuring 191 kanals 3 marlas which he claims to have received by way of family partition. The agreed rate was Rs.4,50,000/- per acre to which the plaintiff agreed and paid an amount of Rs.14.00 lacs as earnest money by virtue of which in acknowledgement of the same the agreement to sell was reduced into writing by way of Ex.P1. The parties had agreed to execute the sale deed on or before 15.12.2010. Before that date, the seller had agreed to get his

land, which was under mortgage with the bank, redeemed. When the plaintiff insisted upon the defendant to get the sale deed executed upon arrival of the time fixed the defendant backed out and took the plea that no such agreement to sell was ever executed which is forged and fabricated document. It is stand of the defendant that the plaintiff in connivance with their agent had procured his signatures on blank papers and got the sale deed executed and denied each and every stand of the plaintiff. From the pleadings, the trial Court framed the following issues vide orders dated 10.10.2011:-

1. Whether defendant executed an agreement to sell dated 19.02.2000 in favour of plaintiff for consideration of Rs.4,50,000/- ? OPD
2. Whether the plaintiff was always ready and willing and is still ready and willing to perform his part of contract? OPD
3. Whether plaintiff is entitled to get relief of specific performance of the agreement to sell or in the alternative relief of recovery the earnest money of Rs.14,00,000/- along with interest at the rate of 1.50%? OPP
4. Whether the plaintiff has no locus standi and cause of action? OPD
5. Whether the suit of the plaintiff is not maintainable? OPD

6. Whether the alleged agreement to sell is forged and fabricated document and without consideration? OPP

7. Relief.

Vide orders dated 05.09.2013, following issues No.1 and 2 were recast and additional issue No.3-A was framed:-

1. Whether the defendant executed an agreement to sell dated 19.02.2008 in favour of the plaintiff for consideration of Rs.4,50,000/- as acre? OPP

2. Whether the alleged agreement to sell is forged and fabricated document and without consideration? OPD

3-A. Whether plaintiff is entitled to decree for permanent injunction as prayed for? OPP

The plaintiff at the trial examined himself as PW1, the scribe Fakir Chand as PW2, Registration Clerk Gurmail Singh as PW3, Joginder Singh as PW4, and the Handwriting and Fingerprint Expert Anil Kumar Gupta as PW5. To controvert the same, defendant examined himself as DW1 and in his support examined DW2 Parkash Kataria, DW3 (wrongly denoted in the evidence) Amanprit Singh, and DW4 (wrongly denoted in the evidence) ARK Sunil Kumar. Consequent thereupon, the Court of learned Additional Civil Judge (Senior Division), Sardulgarh (Mansa) decreed with proportionate costs suit of the plaintiff allowing recovery of Rs.14.00 lacs. Aggrieved over the same, the unsuccessful defendant chose to file an appeal which too met its nemesis

when the Court of learned Additional District Judge, Mansa dismissed the appeal of Sardul Singh vide impugned judgment and decree dated 25.11.2014 with costs. That is how the appellant is in this appeal.

Upon hearing Mr. Sandeep Verma, Advocate for the appellant and Mr. G.C. Shahpuri, Advocate on behalf of the respondent and perusal of the records.

In the light of admitted legal proposition as has been laid down 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 Court is not supposed to frame substantial questions of law in view of the provisions enshrined under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana.

The pleadings are the very foundation of the case of a party. It is the stand of the then defendant that his signatures have been obtained on blank papers by his commission agent for Madan Lal owner of firm M/s Nek Ram Jai Chand and in connivance with the plaintiff Bagicha Ram had prepared the agreement. It is there in the evidence and duly admitted by the seller that a Panchayat was convened in pursuance of this dispute between the parties on 27.02.2010 and it was agreed by the defendant seller that by 20.05.2010 he and his son would pay back a sum of Rs.7.00 lacs. Compromise Ex.DA was put to the defendant who accepts the signatures thereon. The plaintiff in his testimony as PW1 had reiterated his case which has been duly and materially corroborated by

the scribe of the agreement PW2 Fakir Chand and who in no uncertain terms proves the due execution of the agreement and its entry in the register of the scribe which is proved as Ex.PW2/A. The fact that the defendant admits his signatures on the writing dated 27.02.2010 Ex.DA casts a heavy burden and onus on the defendant to rebut the case of the plaintiff. None of the witnesses of the defendant including Sardul Singh defendant himself as DW1, Partap Kataria DW2, Amanprit Singh DW3 and Sunil Kumar DW4 carried forward the claim of the defendant in this regard. The argument that is sought to be raised by learned counsel for the appellant Mr. Sandeep Verma, Advocate does not augur well for the appellant in the light of the fact that it is admitted stand of the parties that the land was under mortgage with the Bank and to the specific query of the Court, by what means land has been redeemed, counsel for the appellant was at loss of words. Thus by all means it is sufficiently established that the land at the time of the agreement and at the time of filing of the suit was under mortgage of the Bank and rather an attempt has been made by the plaintiff Sardul Singh to deposit the balance sale consideration in the account of the defendant in the State Bank of India but the defendant has failed to undergo his obligation. Rather to the mind of this Court together with the proven testimony of Registration Clerk PW3 Gurmail Singh, the signatures of the Sub Registrar Sardulgarh on application of the plaintiff Ex.D2 and who has proved signatures of the Sub Registrar along with Handwriting and Fingerprint Expert as Ex.PW3/A marking the letters of the plaintiff, are matters which leave no

scope to doubt that the plaintiff was ready and willing to undergo his part of the contract. The factum of due execution of the agreement to sell is duly corroborated by the subsequent agreement Ex.DA which is an admitted document even by the defendant. Since the defendant has taken a specific plea that his signatures were obtained on blank papers and which were prepared subsequently into an agreement to sell. Therefore, the onus lay heavily upon the defendant in terms of Sections 101, 102, 103, 104 of the Evidence Act and which the defendant has failed to establish and thus displace the case of the plaintiff.

The plaintiff had knocked at the doors of the Court under Section 20 of the Specific Relief Act which is purely discretionary based on acceptable principles comprising of fairness and reasonableness. The learned trial Court and so the first appellate Court had given due consideration to the evidence led by the two sides as well as their respective pleas in the pleadings and thus have rightly exercised their discretion. The impugned findings of the two Courts below are well reasoned and need to be upheld. Thus the appeal being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

April 9, 2021
rps

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