

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-93-2020 (O&M)

Date of Decision: 01.12.2022

Tejinder Singh Randhawa since deceased
through his LRAppellant-Defendant No.1

Versus

Capt. Parwinder Singh and others..... Respondents-plaintiffs

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Rajesh Punj, Advocate
for the appellant.

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MANJARI NEHRU KAUL, J.

1. Suit for specific performance of Agreement dated 20.11.2003, declaration and for permanent injunction filed by the respondent-plaintiff was decreed by the trial court vide judgment and decree dated 27.09.2013. The appeal preferred by the defendant No.1 against the said decree failed and was dismissed on 15.02.2019. Hence, the defendant No.1 is now before this court in Regular Second Appeal. Parties to the lis, hereinafter shall be referred to by their original positions in the suit.

2. In brief, the pleaded case of the plaintiff may be noticed as thus. The plaintiff entered into an Agreement to Sell dated 20.11.2003 with defendant No.1 for a total sale consideration of Rs.12 lakhs. Defendant No.1 was paid the entire sale consideration through a bank draft and a receipt in the said regard was also endorsed at the back of the Agreement to Sell by him. Defendant No.1 further executed a Will on 20.11.2003 as well as an

affidavit dated 20.11.2003 acknowledging the receipt of the entire sale consideration, the execution of the said Will and the Agreement to Sell, with an undertaking not to cancel the deal struck between the parties. Therefore, since the entire sale consideration was paid and the possession of the suit property delivered to the plaintiff, he became owner in possession of the same and only formal transfer and ownership of suit property remained to be carried out.

3. Defendant No.1 also executed a General Power of Attorney dated 20.11.2003 in favour of the plaintiff and the plaintiff further got the conveyance deed executed in favour of defendant No.1 from the Punjab Urban Development Authority (PUDA) to avoid any complications in the future. The plaintiff was always ready and willing to do every thing on his part for the execution of the sale deed in his favour. However, as the defendant was offered a higher amount of money by some other person, he became greedy and intended to alienate the suit property to a third person. The defendant No.1 further cancelled the irrevocable General Power of Attorney executed by him in favour of the plaintiff vide Cancellation Deed dated 09.07.2004.

4. On being put to notice, defendant No.2 failed to appear as a result of which he was proceeded against ex-parte by the trial court. Defendant No.1 while filing his written statement denied the execution of the Agreement to Sell dated 20.11.2003 in favour of the plaintiff. He averred that the Agreement to Sell dated 20.11.2003 was a forged and fabricated document prepared by the plaintiff in connivance with one Subhash Sharma, Property Dealer, and some other witnesses. It was claimed by the defendant No.1 that he was in need of money for marriage

of his daughter due to which he agreed to sell the suit property to Subhash Sharma for a sum of Rs.26,75,000/-. Accordingly, he entered into an Agreement to Sell dated 20.07.2003 with said Subhash Sharma and received Rs.02 lakhs as earnest money. However, since Subhash Sharma was unable to arrange the balance sale consideration, the date for execution of sale deed i.e. 31.10.2003 was extended. Thereafter, Subhash Sharma after taking defendant No.1 into confidence, obtained his signatures on blank stamp papers, having some printed material on them. The defendant No.1 also claimed to have received a sum of Rs.12 lakhs through a draft at that time from Subhash Sharma on the pretext that he was paying Rs.14 lakhs as earnest money and the remaining sale consideration would be paid at the time of execution of the sale deed. In the written statement it was further alleged that Subhash Sharma got a General Power of Attorney executed from defendant No.1 in favour of the plaintiff by misrepresenting facts by taking advantage of the defendant's weak eye sight and other medical ailments. It was further alleged that Subhash Sharma also got the signatures of defendant No.1 on various documents without disclosing their contents, in collusion with the officials of Sub Registrar and PUDA. He, therefore, alleged that a fraud had been played upon him by the plaintiff in connivance with the officials of both the office of Sub Registrar and PUDA. The defendant No.1 denied rest of the contents of the plaint and prayed for dismissal of the suit.

5. Upon appreciation of the material and other evidence led, the trial court concluded that the Agreement to Sell was duly proved by the plaintiff, and that he was ready and willing to execute the sale deed.

Further, in the absence of any evidence to substantiate the plea of fraud and

forgery raised by defendant No.1, the plaintiff was entitled to the relief of specific performance. The judgment and decree of the trial court was upheld by the lower Appellate Court. Hence, the instant appeal.

6. Learned counsel for the appellant/defendant contends that the findings recorded by both the courts below are perverse and based on misappreciation of the evidence led by the parties. He submits that the courts below failed to appreciate that there was an apparent collusion between Subhash Sharma and the plaintiff to dupe the defendant No.1 of his valuable property. He further submits that it is highly unbelievable that the defendant No.1 would sell the suit property worth Rs.60-70 lakhs at throw away price, which lends credence to the Agreement to Sell being a forged and fabricated document. Learned counsel still further submits that the plaintiff had not approached the court with clean hands and had concealed material facts, thus, on this ground itself his suit deserved to be dismissed. Learned counsel still further submits that the suit was filed with the averments that the total sale consideration was Rs.12 lakhs. However, in his replication the plaintiff admitted that the total sale consideration was Rs.26,75,000/- and the amount beyond Rs.12 lakhs had been paid under the table. Therefore, once the basic structure of the plaint itself stood belied, the suit instituted by the plaintiff would not survive. Learned counsel still further submits that the suit of the plaintiff had been decreed on the basis of forged documents which fact was duly proved by defendant No.1. However, the courts below fell into error in ignoring the relevant evidence. Learned counsel has lastly submitted that the Agreement to Sell could not have been decreed as the plaintiff had paid only a sum of Rs.12 lakhs against the agreed sale consideration of Rs.26,75,000/-.

7. I have heard the learned counsel and perused the relevant material on record.

8. This court has no hesitation in observing and holding that the case set up by the defendant does not inspire any confidence for the reasons to follow.

9. A perusal of the evidence and material on record clearly reveals that the defendant has taken self contradictory stands as on the one hand he says that the Agreement to Sell was a forged and fabricated document and he never struck any deal with the plaintiff for the sale of the suit property, however, in the same breath the defendant No.1 is seeking payment of the alleged balance sale consideration of Rs.14,75,000/- which clearly indicates that he himself has not approached the court with clean hands.

10. If for the sake of arguments it is believed that the Agreement to Sell dated 20.11.2003 was indeed a forged and fabricated document, then this court finds it difficult to comprehend as to what was the occasion for the defendant No.1 to encash the draft drawn in his favour by the plaintiff. The only explanation put forth by the defendant No.1 is that the said draft was given to him by Subhash Sharma in lieu of the deal struck qua the suit property. However, yet again learned counsel had not been able to point towards any evidence led to prove the alleged bargain with Subhash Sharma, more so when as per the pleaded case of the defendant No.1 the original Receipt- cum-Agreement dated 20.11.2003 was in his possession after it had been returned by Subhash Sharma to him.

11. It would also be most pertinent to point out here that other than his bald assertions no evidence much less cogent at all was led by the defendant No.1 to substantiate his plea qua the Agreement to Sell and other

documents executed by him having been procured fraudulently, more so, when he has not denied his signatures on all these documents. The plaintiff on the other hand however, to prove the validity of the Agreement to Sell examined one attesting witness Subhash Sharma. Therefore, the courts below rightly held that the Agreement to Sell was duly proved and further they could not be faulted with for attracting a presumption qua the genuineness of registered documents i.e. Will dated 20.11.2003 and General Power of Attorney dated 20.11.2003 in absence of any evidence to the contrary.

12. Further more, admittedly no police complaint was moved by defendant No.1 against Subhash Sharma even after such a huge fraud as alleged by him, had been played. On appreciation of all the above facts and circumstances when seen in totality, it is apparent that defendant No.1 was trying to wriggle out of the Agreement to Sell dated 20.11.2003. As far as plea of the defendant No.1 qua the non-payment of balance sale consideration of ₹14,75,000/- is concerned, the same is devoid of any merit as the defendant No.1 himself had executed registered Will, Power of Attorney and an affidavit regarding full and final payment in favour of the plaintiff.

13. On a pointed query, the learned counsel for the defendant-appellant was unable to refer to anything on record to show if the conclusions arrived at by both the courts below were contrary to the record or suffered from any material illegality.

14. This court has no hesitation in observing that the findings recorded by the courts below are based on sound appreciation of facts and evidence led by the parties and does not in any manner suffer from

perversity. Accordingly, the instant appeal being devoid of merit is dismissed.

01.12.2022
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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned	Yes / No
Whether Reportable:	Yes / No