

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

RSA-947-2016(O&M)

Date of decision:-22.11.2022

Swaran Singh

...Appellant

Versus

Gurpreet Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Lakhwinder Singh Mann, Advocate
for the appellant.

Mr.S.S. Rangi, Advocate
for the respondents.

H.S. MADAAN, J.

1. In nutshell, facts of the case are that plaintiff Swaran Singh had brought a civil suit against defendant Rakesh Kaur (since deceased) seeking possession by way of specific performance of the agreement to sell dated 6.1.2009 in respect of the agricultural land measuring 1 kanal 2 marlas being 22/754 share out of total land measuring 37 kanals 14 marlas situated at village Rajpura, Tehsil Nabha, District Patiala; in addition seeking permanent injunction restraining defendant from alienating the said land to anybody else except the plaintiff or in the alternate seeking recovery of Rs.2 lakhs

i.e. Rs.1,80,000/- as as refund of earnest money and Rs.20,000/- as damages along with interest @ 24% per annum.

2. According to the version of the plaintiff, the defendant had entered into an agreement with him on 6.1.2009 so as to sell her land detailed in the head-note of the plaint for total consideration of Rs.2 lakhs, receiving Rs.1,50,000/- as earnest money; the date for execution and registration of the sale deed was fixed as on or before 30.12.2009 on payment of balance sale consideration amount by the plaintiff to the defendant; a written agreement in that regard was executed. It was further agreed that the defendant would deliver the possession of the suit property to the plaintiff at the time of execution and registration of the sale deed; on 30.12.2009, the plaintiff was ready and willing to get the sale deed executed and registered in his favour after making payment of remaining balance sale consideration but the defendant expressed her inability to get the sale deed executed and registered citing some domestic problem, therefore, at her request, the date for execution and registration of sale deed was extended from 30.12.2009 to 30.3.2010 vide writing dated 30.12.2009 on the back of first page of original agreement to sell dated 6.1.2009; on 30.3.2010 the plaintiff remained present in the office of Joint Sub Registrar, Bhadson, having balance sale consideration amount and expenses for the execution and registration of the sale deed but defendant did not come present; the plaintiff got

his presence marked before Joint Sub Registrar, Bhadson by way of duly sworn affidavit dated 30.3.2010 and also got issued legal notice dated 31.3.2010 to the defendant through his counsel calling upon the defendant to come forward to execute the sale deed and get it registered in favour of the plaintiff on 8.4.2010; however, on 8.4.2010, the defendant again showed her inability to get the sale deed executed and registered in favour of the plaintiff, therefore at her request, the date for the purpose was extended from 30.3.2010 to 7.6.2010 vide additional writing dated 8.4.2010 and the plaintiff paid her a further sum of Rs.30,000/-, in that way, the defendant had received total earnest money of Rs.1,80,000/- from the plaintiff; however on 7.6.2010 the defendant again expressed her inability to get the sale deed executed and registered in favour of the plaintiff, therefore, at her request the date for that purpose was extended from 7.6.2010 to 9.8.2010 vide agreement/writing dated 7.6.2010 in presence of the marginal witnesses; however, the defendant delivered the possession of the suit property to the plaintiff on 7.6.2010 but in fact she had retained the same with her on the pretext that she would pay the batai share in agriculture produce to the plaintiff; but the defendant did not pay any amount or share of the agricultural produce; on 9.8.2010 the plaintiff after informing the defendant went to the office of Joint Sub Registrar, Bhadson and remained present there along with balance sale consideration and expenses for

execution and registration of the sale deed; he remained present there from 9:00 to 5:00 p.m. but defendant did not turn up to perform her part of the contract; then the plaintiff got attested his affidavit regarding his presence from Executive Magistrate, Bhadson. According to the plaintiff, he has always been ready and willing to perform his part of contract but the defendant backed out, giving rise to a cause of action to him to bring the suit.

3. On notice, the defendant appeared and filed written statement denying that she had entered any agreement to sell with the plaintiff on 6.1.2009 or had received total amount of Rs.1,80,000/- as earnest money on different dates. It was further denied that the date for execution and registration of the sale deed in favour of the plaintiff was fixed on or before 30.12.2009 was extended from time to time at her request. As per the version of the defendant, she owed Rs.1,00,000/- from the plaintiff, which she had borrowed from him on 6.1.2009; the plaintiff had obtained her thumb impressions on some blank papers as well as on printed papers; the rate of interest was settled @ 12% per annum and Rs.15,000/- were paid by the defendant to the plaintiff on 30.12.2009; on that day, the plaintiff also obtained thumb impressions of the defendant; the defendant was an illiterate lady and she had only one house, which is standing in the suit property; she had been residing there along with her family; the value of the house was more than Rs.20 lakhs; the plaintiff had

obtained thumb impressions of the defendant by misrepresenting her on the day of loan; the agreement to sell is illegal, null and void and is result of fraud and misrepresentation besides being without consideration. The defendant also took various legal pleas challenging the maintainability of the suit in the present form; locus standi of the plaintiff to bring the suit contending that no cause of action arose to the plaintiff to bring the suit and agreement in question was full of additions and alterations besides being without consideration, therefore it was not enforceable. In the end, the defendant prayed for dismissal of the suit.

4. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

5. On the pleadings of the parties, following issues were framed:

- 1. Whether the defendant has executed an agreement to sell dated 6.1.2009 in favour of the plaintiff? OPP.*
- 2. Whether the plaintiff is ready and willing to perform his part of the contract? OPP.*
- 3. Whether the plaintiff is entitled for specific performance of the agreement to sell dated 6.1.2009? OPP.*
- 4. Whether the plaintiff is entitled for recovery of Rs.2,00,000/- along with interest, if so, then at what rate? OPP.*

5. *Whether the present suit is not maintainable? OPD.*
6. *Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD.*
7. *Whether any fraud has been committed with the defendant? OPD.*
8. *Relief.*

6. The parties were afforded adequate opportunities to lead their evidence.

7. In order to prove his case, the plaintiff got his statement recorded as PW1 besides examining Sh.Sukhvir Singh as PW2, Smt.Parminder Kaur, Registry Clerk as PW3, Sh.Harinder Singh, Deed Writer as PW4, Sh.Manjit Singh as PW5, Sh.Rakesh Kumar, Deed Writer, Nabha as PW6 and Sh.Ujaggar Singh, Clerk as PW7. The plaintiff relied upon various documents also.

8. However, defendant Smt.Rakesh Kaur had expired during the course of the suit and on an application having been filed, her legal representatives were brought on record. During their evidence, Gurpreet Singh, one of the legal representative of defendant got his statement recorded as DW1 and in his affidavit Ex.DW1/A, he deposed as per the lines of the written statement. Since the defendant failed to conclude evidence, it was closed vide order of the Court passed on 30.3.2015.

9. After hearing the learned counsel for the parties, the trial

Court had decided issues No.1 and 3 in favour of the plaintiff and against the defendant; issue No.2 was decided in favour of the plaintiff and against the defendant; issue No.4 was treated as redundant for the reason that main relief of specific performance had been granted to the plaintiff; issues No.5 and 6 were decided against the defendant; issue No.7 was decided against the defendant. As result of findings on all the issues, the suit of the plaintiff for possession by way of specific performance of the agreement to sell question was decreed with costs and defendants being legal heirs of the defendant Smt.Rakesh Kaur were directed to executed the sale deed in favour fo the plaintiff in terms of the agreement to sell after receiving the balance sale consideration within a period of three months from the date of that judgment to the extent of the share inherited by them, failing which, the plaintiff would be at liberty for execution and registration of the sale deed through Court at the costs of defendants and the defendants were restrained from transferring, alienating, mortgaging or disposing the suit property in any manner except to the plaintiff. The said judgment and decree was passed on 17.4.2015.

10. Feeling aggrieved by the said judgment and decree, the LRs of the defendant had filed an appeal in the Court of District Judge, Patiala, which was assigned to learned Additional District Judge, Patiala, who vide judgment and decree dated 24.11.2015

accepted the appeal, set aside the judgment and decree passed by the trial Court and consequently, dismissed the suit of the plaintiff with costs.

11. Now it was turn of the plaintiff to feel aggrieved and he has filed the present regular second appeal before this Court, notice of which was issued and the respondents-defendants have appeared through counsel.

12. I have heard learned counsel for the parties besides going through the record.

13. The trial Court considering the pleadings of the parties, the evidence brought on record by them had come to the conclusion that the parties had entered into a legal and valid agreement to sell dated 6.1.2009 under which the defendant had received a sum of Rs.1,50,000/- from the plaintiff as earnest money on the date of agreement and subsequently another sum of Rs.30,000/- on 8.4.2010 and further the plaintiff has been ready and willing to perform his part of contract but the transaction could not be completed as the defendant backed out and did not come forward to execute and get registered the sale deed after accepting the balance consideration amount of Rs.20,000/-, in that way the plaintiff was entitled to possession of the suit land by way of specific performance of agreement to sell.

14. On the other hand, the First Appellate Court on the basis

of his visual observations exercising the powers under Section 73 of the Indian Evidence Act, 1872 found that the agreement in question was result of fraud practised upon the defendant by the plaintiff. The Court had found that thumb impressions of the appellant/defendant Smt.Rakesh Kaur had been got affixed on the blank stamp paper and print of the body writing had been taken later on and further the last line on page No.1 of the agreement to sell Ex.P1 had been printed later on, on the blank paper duly thumb marked by Rakesh Kaur, deceased. In that way, he set aside the judgment and decree passed by the trial Court and dismissed the suit filed by the plaintiff.

15. After hearing the arguments advanced by learned counsel for the parties and going through the record, I find that the conclusions arrived at by the trial Court as well as the First Appellate Court are not wholly correct and that the actual situation is somewhat midway. Though the agreement to sell set up by the plaintiff is not free from all the suspicious circumstances but at the same time, it cannot be discarded for the reason of being result of fraud and misrepresentation. It transpires that though the agreement was entered into by the defendant with the plaintiff but that was basically a loan transaction and not an agreement to sell in letter and spirit, which was meant to be got enforced by execution of sale deed by defendant in favour of the plaintiff with regard to 1 Kanal 2 Marlas of land being owned by the defendant. If we see the written statement

filed by the defendant, it comes out that though she denies having entered into agreement to sell but she admitted having received Rs.1,00,000/- from the plaintiff on 6.1.2009, which according to her was a loan. She further admits her thumb impressions on the papers though claiming that the plaintiff had obtained the same on some blank papers as well as printed papers. However, this blank paper theory was nullified by none-else but Gurpreet Singh, a son of defendant Smt.Rakesh Kaur, who had been brought on record after death of Rakesh Kumar as one of her legal representatives. He had appeared as a witness for the defendant. During his examination-in-chief, he had tendered his affidavit as Ex.DW1/A. In the said affidavit, he denied his mother Smt.Rakesh Kaur having entered into any agreement to sell with the plaintiff, rather stating that his mother received a sum of Rs.1,00,000/- from the plaintiff, which was to be repaid with interest @ 12% per annum and on 30.12.2009, his mother Rakesh Kaur had returned a sum of Rs.15,000/- to the plaintiff. Although in the affidavit, he had repeated the version of the defendant as taken in the written statement but when he was cross-examined, he admitted his signatures on agreement to sell, which according to him, he had appended to give his consent. He had identified his signatures on the writing dated 7.6.2010 Ex.P6. He identified his signatures at various places on writings of agreement Ex.P1.

16. It is not the case of the defendant or her legal representatives that they have initiated any criminal action against the plaintiff for indulging in any alleged forgery or fabrication. Thus, the defendant indirectly admit her thumb impressions on the agreement and other writings thereon. As already observed the blank paper theory set up by the defendant does not come out to be convincing.

17. At the same time, there are certain factors, which put question mark over the genuineness of claim of the plaintiff. Firstly in the agreement to sell Ex.P1, it is mentioned that defendant is in possession of the plot agreed to be sold when in the revenue record i.e. jamabandi for the year 2004-05, she is not shown to be in possession of any portion of the joint land. It being so, she could not have possibly delivered that portion of that chunk of land to the plaintiff, which according to him she had done on 7.6.2010. However, a perusal of this agreement Ex.P6 goes to show that there is no mention therein. Even otherwise, she was not in possession of the land, which she had agreed to sell with the plaintiff. She could not have possibly put to him in possession thereof.

18. The plaintiff in the affidavit filed by him as Ex.PW1/A in para No.5 had contended that in the agreement dated 7.6.2010 the defendant had agreed to give possession of the land to him on that day but in fact the defendant retained possession with her; she had

orally decided to give share in the crop to him but she did not do so with dishonest intention. This comes out to be a cooked up story to explain the plaintiff being not in possession of the suit land.

19. One more thing to be seen is that if plaintiff had paid a substantial amount of Rs.1,50,000/- out of the total amount of Rs.2 lakhs agreed on 6.1.2009 then why did he not got the sale deed executed and registered in his name at that time and why the date for execution and registration of the sale deed went on being postponed from one day to another repeatedly, when under normal circumstances, it should not have been done. The reason given by the plaintiff that the defendant had expressed her helplessness in the matter is least convincing under the circumstances.

20. One more circumstance, which creates doubt in the mind is that plaintiff claims the property, which is subject matter of agreement to sell is a vacant plot, when according to the defendant her residential house is standing therein. A perusal of the cross-examination of plaintiff Swaran Singh goes to show that he was unable to tell the names of neighbouring owners to the suit land.

21. In view of the situated discussed above, I find that acceptance of the appeal in toto by Additional District Judge, Patiala and dismissal of the suit filed by the plaintiff completely was not justified. Similarly, the judgment passed by the trial Court granting relief of specific performance to the plaintiff is not sustainable.

However, the plaintiff is found entitled to alternative relief of decree for recovery. Therefore, the judgment and decree passed by Additional District Judge, Patiala is set aside and a decree for refund of earnest money of Rs.1,80,000/- with interest @ Rs.9% per annum from the date of filing of the suit till actual realization with costs throughout is passed in favour of the plaintiff and against the defendant.

22. With such modification, the present appeal filed by the plaintiff is partly allowed accordingly.

22.11.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No