

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.515 of 2020

Date of Decision : 25.03.2022

Prem Chand

....Appellant

VERSUS

Kanta Rani

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Jhanji, Senior Advocate with
Ms. Priyanka Kansal, Advocate for the appellant.

ALKA SARIN, J.

Heard in physical mode.

CM-1506-C-2020

This is an application for exemption from filing certified copies of Annexures A-1 to A-15 and true typed copy of Grounds of Appeal before the Additional District Judge and for placing on record true typed copies of Annexures A-1 to A-15 and photocopy of Grounds of Appeals before the Additional District Judge in the present appeal.

For the reasons stated in the application the same is allowed as prayed for. The documents (Annexures A-1 to A-15), as mentioned in the application, are taken on record, subject to all just exceptions.

RSA-515-2020 (O&M)

The present Regular Second Appeal has been preferred by the plaintiff against the judgments and decrees passed by the Courts below dismissing his suit for specific performance.

The brief facts relevant to present *lis* are that the plaintiff-appellant filed a suit for possession by way of specific performance of

agreement to sell dated 10.06.2008 alleged to have been executed by the defendant-respondent in favour of the plaintiff *qua* shop measuring 0.80 marlas bearing No.112 (P) situated at Bazar No.7, Ferozepur Cantt., measuring 7 X 31.2 and 218 square feet, in the alternative relief for decree of ₹8 lakhs (₹4 lakhs received as earnest money and ₹4 lakhs as damages) along with future interest. The suit was filed on the ground that the defendant-respondent being owner in possession of shop measuring 0.80 marlas had executed an agreement to sell dated 10.06.2008 in favour of the plaintiff-appellant for a total sale consideration of ₹8 lakhs out of which she had received ₹4 lakhs as earnest money in the presence of the marginal witnesses to the agreement to sell. It was averred in the plaint that the agreement to sell was scribed by a regular deed writer and after scribing he had entered the same in his register. The stipulated date for execution and registration of the sale deed in favour of plaintiff-appellant was fixed as 20.07.2009 on payment of the balance sale consideration. It is further the case that the defendant-respondent did not turn up to execute the sale deed in favour of the plaintiff-appellant despite the fact that the plaintiff-appellant remained present in the office of Sub-Registrar, Ferozepur along with the balance sale consideration and other requisite expenses to get the sale deed executed in his favour. Thereafter, the plaintiff-appellant got his presence marked by way of an affidavit duly attested at the Suvidha Centre. It is further averred that the plaintiff-appellant was and has always been ready and willing to perform his part of the agreement but the defendant-respondent was intentionally evading to execute the sale deed in favour of the plaintiff-appellant. A legal notice was also alleged to have been sent which was not responded to by the defendant-respondent.

The defendant-respondent in her written statement, while controverting the pleadings of the plaintiff-appellant, had raised a preliminary objection that the entire plaint was based on a concocted version. The agreement to sell itself was stated to be false and fabricated and prepared by the plaintiff-appellant in order to grab the property of the defendant-respondent. The alleged signatures of the defendant-respondent on the agreement to sell dated 10.06.2008 were stated to be forged and fabricated. It was further stated in the written statement that the suit property was originally owned by Leela Wanti, mother-in-law of the defendant-respondent, who vide registered sale deed sold half share in favour of the defendant-respondent while the other half share was sold by Leela Wanti in favour of her second son - Subhash Chander. It was further pleaded that Subhash Chander *qua* his half share entered into an agreement to sell dated 05.09.2002 with his real sister Usha Rani. However, he is later stated to have retracted from the agreement to sell and Usha Rani was compelled to file a suit for permanent injunction which was decided on 16.12.2005. Usha Rani had thereafter filed a suit for specific performance against Subhash Chander which suit was stated to be still pending. It is also stated in the written statement that the defendant-respondent had immediately through her counsel sent a detailed reply to the legal notice vide registered post. Replication was filed by the plaintiff-appellant reiterating the stand taken in the plaint.

On the basis of pleadings, the following issues were framed :

1. Whether the plaintiff is entitled for possession by way of specific performance of the agreement to sell dated 10.06.2008 *qua* the suit land ? OPP

2. Whether the plaintiff was and is still ready and willing to perform his part of the contract ? OPP
3. Relief.

Detailed evidence was led by both the parties. The Trial Court vide judgment and decree dated 17.12.2015, on the basis of the pleadings and evidence led by the parties, held the agreement to sell dated 10.06.2008 (Ex.P-2) could not be considered to be a genuine document and the same was clearly forged and fabricated. The suit was accordingly dismissed. Aggrieved by the said judgment and decree, the plaintiff-appellant preferred an appeal before the Additional District Judge, Ferozepur. Vide judgment and decree dated 25.11.2019 the lower Appellate Court confirmed the findings recorded by the Trial Court and dismissed the appeal. Aggrieved by the said judgments and decrees passed by both the Courts below, the plaintiff-appellant has preferred the present regular second appeal.

Learned senior counsel on behalf of the plaintiff-appellant has vehemently argued that both the Courts below erred in dismissing the suit of the plaintiff-appellant inasmuch as the agreement to sell in the present case stood proved by way of cogent evidence as well as the payment of earnest money as also the fact that the plaintiff-appellant was ready and willing to perform his part of the contract. Learned counsel further contended that the testimony of the attesting witnesses has wrongly been disbelieved holding them to be stock witnesses merely on the ground that they had witnessed other documents/agreements entered into by the plaintiff-appellant. It was further argued that the plaintiff-appellant was always ready and willing to perform his part of the contract and also had the capacity to pay inasmuch as the adjoining land had been sold to Asha Rani for an amount of ₹12 lakhs. It

is further the argument that fraud and forgery has not been proved in the present case as all the cases referred to by the Courts below while rejecting the testimony of the witnesses were cases for recovery and further that no issue was framed. Learned senior counsel appearing on behalf of the plaintiff-appellant has further contended that besides himself, the plaintiff-appellant had examined PW2-Narinder Singh and PW3-Kartar Singh, the attesting witnesses of the agreement to sell dated 10.06.2008 and both the witnesses had deposed that the defendant-respondent being the owner of the shop in question had executed an agreement to sell dated 10.06.2008 in favour of the plaintiff-appellant in their presence. They had also deposed that the defendant-respondent had received ₹4 lakhs as earnest money out of the total sale consideration of ₹8 lakhs. Both the witnesses further identified their respective signatures on the agreement to sell dated 10.06.2008 (Ex. P-2). Further, Sukhwinder Singh Handa, Scribe of the agreement to sell, had also been examined who deposed that he had scribed the agreement to sell (Ex.P-2) at the instance of the defendant-respondent and after admitting the contents of the agreement to sell (Ex.P-2) as correct the defendant-respondent had put her signatures thereupon in his presence and thereafter the marginal witnesses and the plaintiff-appellant had put their signatures on the said agreement to sell. PW5-Amit Kumar Gupta was produced as the Handwriting and Fingerprint Expert who stated that it was the defendant-respondent who had appended her signatures on the agreement to sell (Ex. P-2). Learned counsel has further contended that in order to prove his readiness and willingness the plaintiff-appellant had relied upon the fact that he remained present in the Office of the Sub Registrar, Ferozepur the whole day along with the balance sale consideration but the defendant-respondent

did not show up to execute the sale deed in his favour. In order to show his presence in the Office of the Sub Registrar, Ferozepur the plaintiff-appellant relied heavily upon the affidavit (Ex.P-3) which was got attested by him at the Suvidha Centre on 20.07.2009. Learned senior counsel has relied upon the following decisions :

- (i) **2018 (3) PLR 410 [Smt. Kishno Bai vs. Gian Singh & Ors.]** to contend that a defendant cannot take a plea *qua* readiness and willingness since such a plea was available to the defendant only in a case where the agreement to sell was admitted;
- (ii) **2011 (52) RCR (Civil) 790 [Jamaluddin vs. Ram Avtar & Anr.]** to contend that minor contradictions in the statements of witnesses would be natural when the testimonies are recorded after a lapse of time;
- (iii) **1988 (1) HLR 342 [Karmu & Ors. vs. Mohinder Singh]** again on the point that minor discrepancies and contradictions pointed out in oral statements of witnesses owing to time gap would not be fatal to a case;
- (iv) **2005 (7) RCR (Civil) 393 [Central Bank of India (a Nationalised Bank) vs. Antony Hardware Mart]** to contend that where the defendant denies all signatures and attempts to defeat the plaintiff's claim, the Court is empowered to compare the disputed signatures with the admitted signatures and give a finding.

I have heard learned senior counsel for the plaintiff-appellant and perused the paper-book with which the material record of the Trial Court has been annexed.

In the present case both the Courts below have concurrently found that the agreement to sell dated 10.06.2008 (Ex.P-2) is a forged and fabricated document and in order to arrive at this finding the Courts below have considered the entire evidence on the record and arrived at their finding.

The suit property in the present case was sold by way of registered sale deed dated 08.08.2003 (Ex.D-3) in favour of the defendant-respondent by her mother-in-law, namely, Leela Wanti and the defendant-respondent is further alleged to have agreed to sell the very same property vide the agreement to sell dated 10.06.2008 (Ex.P-2). However, strangely the boundaries mentioned in Ex.D-3 i.e. sale deed dated 08.08.2003 and agreement to sell dated 10.06.2008 (Ex.P-2) do not tally. Learned counsel for the plaintiff-appellant has not been able to explain as to how and why the said boundaries differed in both the sale deed (Ex.D-3) and the agreement to sell (Ex.P-2).

Further, though both the marginal witnesses of the agreement to sell dated 10.06.2008 (Ex.P-2) were produced and they supported the case of the plaintiff-appellant, however, they failed to identify the photograph of the defendant-respondent on the sale deed during their cross-examination. The defendant-respondent had taken a specific stand that both the attesting witnesses of the alleged agreement to sell dated 10.06.2008 (Ex.P-2) were habitual litigants which fact was denied by the plaintiff-appellant initially in his cross-examination. However, during further cross-examination, when the

relevant documents were put to him, the plaintiff-appellant admitted that the two marginal witnesses i.e. PW-2 Narinder Kumar and PW-3 Kartar Singh stood as witnesses in most of the cases filed by him on the basis of pronote and receipt pronote. It was on the said basis that both the Courts below held that the testimonies of the marginal witnesses could not be relied upon. Besides this there were material contradictions in the statements of the witnesses which have been discussed in detail by both the Courts below.

Further, the alleged agreement to sell dated 10.06.2008 (Ex. P-2) was scribed by PW-4 Sukhwinder Singh Handa. The said witness in his examination-in-chief had stated that the agreement to sell in question had been scribed at the instance of the defendant-respondent and that after admitting the contents of the agreement she had put her signatures thereupon. In his cross-examination the said witness had denied scribing any other document in favour of the plaintiff-appellant except for the agreement to sell dated 10.06.2008 (Ex.P-2). When confronted with the relevant documents, he admitted that he had scribed various documents in favour of the plaintiff-appellant at his instance. Further, it has been noticed by the Trial Court that the stamp-paper on which the agreement to sell in question was scribed was purchased from Surinder Kumar, Stamp Vendor, Ferozepur. However, the relevant entry of the register of Surinder Kumar, Stamp Vendor showed that there was cutting in the serial number of the stamp-papers. The agreement to sell was scribed on three stamp papers of ₹100/- each bearing serial Nos.B728950, B728951 and B728952. The said Surinder Kumar, Stamp Vendor, in his statement recorded before the *Tehsildar*, Ferozepur (Ex. DW-4/G), admitted that he had not sold the said stamp-papers to the defendant-respondent and he had sold a stamp-paper with serial

no.429548. A criminal case was also got registered against the deed writer and the stamp vendor *qua* which at a later point of time a cancellation report is stated to have been filed. Be that as it may, from the evidence on record the alleged agreement to sell dated 10.06.2008 (Ex.P-2) cannot be considered to be a genuine document. The judgments relied upon by learned senior counsel would be of no avail inasmuch as in the present case the agreement to sell (Ex. P-2) has been held to be a forged and fabricated document and I do not see any reason to differ from the said finding recorded. There is no quarrel with the proposition of law laid down in the judgments relied upon by learned counsel, however, in the present case, the question is not of minor discrepancies or contradictions in the oral statements of the witnesses. It is the conduct of the witnesses as well as major contradictions in their statements which led both the Courts below to return a finding that the agreement to sell dated 10.06.2008 (Ex.P-2) is a forged and fabricated document.

It may be mentioned here that during the pendency of the suit for permanent injunction filed by Usha Rani against her brother Subhash Chander, on 03.10.2004 Subhash Chander sold his half share in the property in favour of Roop Rani (wife of the present plaintiff-appellant). Roop Rani is stated to have further sold the property to one Asha Rani on 18.03.2009. On 25.09.2014 the suit for specific performance filed by Usha Rani against Subhash Chander was decreed in her favour and appeal *qua* the same was dismissed on 08.03.2017 and now RSA No.3118 of 2017 is pending *qua* the said proceedings. Keeping in view the previous history, it becomes all the more unlikely that the parties would have entered into another agreement to sell.

The findings recorded by both the courts below are pure findings of fact borne out from the pleadings of the parties and the evidence available on the record. No question of law, much less a substantial question of law, arises in the present case. I do not find any merit in the present regular second appeal which is accordingly dismissed. Pending applications, if any, also stand disposed off.

25th March, 2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO