

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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RSA-1984-2019(O&M)
Date of Decision: 15.09.2023

Amrik Singh

....Appellant

Versus

Gurdip Singh

....Respondent

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ramneek Vasudeva, Advocate for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Present regular second appeal has been filed by the appellant/plaintiff against the concurrent findings of dismissal of civil suit.

2. Appellant/plaintiff-Amrik Singh filed a suit for possession by way of specific performance of agreement to sell dated 20.07.2009 executed by the defendant/respondent in favour of plaintiff, in respect of land measuring 9 Bigha 18 Biswa out of land comprising of khewat/khatuani no. 248/376, 377, 378, 379, 380, and 381 bearing Khasra no. 245(2-0), 181(9-10), 180 (3-5), 247 (1-18), 246 min (2-15), 246 min (0-5), 248(6-17), situated in the area of village Oind HB No. 294, Tehsil Chamkaur Sahib, District Rupnagar as entered in the jamabandi for the year 2002-03.

The pleaded facts by the plaintiff are that defendant/respondent-Gurdip Singh entered into an agreement to sell dated 20.07.2009 with plaintiff/appellant-Amrik Singh for the purpose

of selling land measuring 9 Bigha 18 Biswa at the rate of Rs.7,50,000/- per acre. An amount of Rs.9,20,000/- was paid as earnest money by the plaintiff to defendant at the time of execution of agreement in the presence of witnesses. Defendant agreed to execute and register the sale deed in favour of plaintiff on or before 30.06.2010, after receiving balance sale consideration. However, on request made by the defendant, date of execution and registration of sale deed was extended upto 20.06.2011. In that regard, one separate endorsement was also made on the back side of the agreement to sell dated 20.07.2009. Again on 16.04.2010, another set of part payment of Rs.1,80,000/- was paid by the plaintiff to the defendant in the presence of witnesses, which was recorded vide a separate endorsement on the back side of the agreement to sell in question, duly signed by the parties and other witnesses. Thus, out of total sale consideration, an amount of Rs.11,00,000/- was paid by the plaintiff to the defendant as earnest money.

3. Finally, on 20.06.2011 (i.e. the last stipulated date), plaintiff visited the Office of Sub Registrar, Morinda alongwith balance sale consideration and other expenses for executing the sale deed and its registration, but despite waiting there till 5:00 p.m., defendant did not turn up for performing his part of contract/agreement. After getting the presence marked through a duly attested affidavit, plaintiff returned back and resultantly, present civil suit No.20 was instituted on 01.02.2014.

4. In the written statement, defendant took some preliminary objections and also pleaded on merits that he never entered into any agreement to sell with the plaintiff as alleged by plaintiff. Thus, agreement to sell in question is a forged and fabricated document only prepared as an afterthought with a motive to cheat and grab his property. In fact, defendant is a simple ignorant villager and farmer by occupation. Moreover, land being fertile in nature, there was no reason with the defendant/farmer to sell his fertile land for such a meagre amount.

Further pleaded that defendant was having friendly relations and on visiting terms with plaintiff since, 2009 and at the time of the need, plaintiff had been advancing him friendly loan. Further pleads that in reality, plaintiff advanced him a friendly loan of Rs.6,00,000/- and in lieu of that obtained his signatures on some blank papers under the pretext of fulfilling some formalities despite returning of the loan amount by defendant, plaintiff never returned the said documents, which were ultimately used by plaintiff for the purpose of committing forgery in connivance with the witnesses.

5. Defendant has transferred the amount of Rs.2,00,000/- on 07.01.2013 from his own saving account to the account of plaintiff. Another set of amount of Rs.1,00,000/- was paid by the defendant to plaintiff vide cheque No.295911 dated 16.05.2011, Rs.2,50,000/- vide cheque No.295912 dated 16.06.2011 and another set of amount of Rs.1,50,000/- vide cheque No.295918 dated 01.03.2012 . However,

with a *malafide* intention of grabbing the property of the defendant, the plaintiff has filed the suit in question.

6. After filing of the replication by the plaintiff, from the pleadings of the parties, vide order dated 15.04.2014, learned Trial Court framed following nine issues:

- ‘1. Whether the plaintiff remained ready and willing to perform his part of agreement in question? OPP*
- 2. In case, issue no. 1 is decided in favour of the plaintiff, whether plaintiff is further held entitled to possession by way of specific performance of agreement to sell in question? OPP*
- 3. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP*
- 4. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 5. Whether the suit is not maintainable in the present form? OPD*
- 6. Whether the plaintiff has concealed the material facts from the Court? OPD*
- 7. Whether the plaintiff is estoppel to file the present suit by his own act and conduct? OPD*
- 8. Whether the agreement in question is forged and fabricated document? OPD*
- 9. Relief.’*

7. After conclusion of the evidence from both the sides and evaluating the evidence, learned trial Court found that the parties to the suit were known to each other even prior to the agreement to sell and agreement to sell dated 20.07.2009 (Ex.P1) bears the signature of defendant-Gurdip Singh. Learned Trial Court also found that the endorsement dated 16.04.2010 (Ex.P2) regarding further payment of Rs.1,80,000/- and endorsement dated 28.06.2010 (Ex.P3) regarding extension of stipulated date, also bears the signatures and thumb impression of defendant-Gurdip Singh.

8. By making mindful efforts, as expected also, learned trial Court realized that there was another agreement dated 22.09.2009 (Ex.P5) executed between the parties, which was later on cancelled, but nowhere in the plaint said fact was disclosed by the plaintiff. However, while filing replication to the written statement in which the said agreement to sell was disclosed, plaintiff admitted the execution of another agreement dated 22.08.2009 (Ex.P5), which was executed and cancelled after the agreement dated 20.07.2009, which is in dispute, between the parties to the present suit.

9. However, strangely, there was no recital of the first agreement to sell dated 20.07.2009 (Ex.1), in the second agreement to sell dated 22.08.2009 (Ex.P5), though, same was executed only after one month and eight days from the first agreement to sell. Both the abovesaid agreements were pertaining to different properties of defendant-Gurdip Singh. Once second agreement dated 22.08.2009 (Ex.P5) has been cancelled after receiving of the complete amount, in all likelihood, it appears that the first agreement was also executed only for security purpose in lieu of the borrowed amount by the defendant.

To reach to this conclusion, there is another perspective to think over that despite return of the complete amount by defendant, which was subject matter of the second agreement, original agreement is still retained by the plaintiff and has still not been returned to the defendant. All this clearly shows that the intention of the defendant

was never to sell the property mentioned in it, rather, it was only executed by plaintiff-Amrik Singh with an idea to secure the money advanced by him to the defendant.

10. Another reason to reach to such conclusion is that for the purpose of proving the return of the amount, which is subject matter of the second agreement, Assistant Bank Manager-Avneet Pal (DW4) of State Bank of India, Morinda Branch appeared and filed his affidavit Ex.DW4/A. As per said affidavit, defendant-Gurdip Singh paid total amount of Rs.5,00,000/- vide three separate cheques dated 18.05.2011, 21.06.2011 and 07.03.2012 respectively, meaning thereby qua the loan under agreement to sell dated 22.08.2009 (Ex.P5) substantial borrowed amount had been paid back by the defendant, resulting into the cancellation of the said second agreement to sell. During the course of argument before this Court, learned counsel for the appellant/plaintiff read over the complete cross examination of the defendant-Gurdip Singh, because his evidence has been appended with the appeal for the purpose of its reference.

The said cross examination dated 12.10.2016 is reproduced hereunder:

‘Recalled for cross examination

Xxxxxx By the counsel for defendant.

I know English and Punjabi language. I am literate. I am 10th class pass. I can understand the question which is being asked to me. Now I am giving my statement in full senses. I am retired from Air force department. I worked 21 years in Air force. I can identify my signatures on documents. I used to sign in English. I have seen documents Agreement to sell Ex.P-1, Ex.P-2 Endorsement dated 16.4.2010 and endorsement dated 28.6.2010 Ex.P-3 which are signed by me and I identify the same. But I

cannot tell about the thumb impressions. I have put my thumb impressions but I have not read anything on the said document. I do not remember that the documents Ex. P-1, Ex. P-2, Ex. P-3 on which signatures have been done the same have been prepared as agreement to sell and endorsement for the same. Till today I have not read Ex.P-1. I have not told my counsel about Ex. P-1. Volt. Stated that when the case was filed then I came to know about the same and then I told my counsel about Ex. P-1. I only know about Agreement to sell dated 20.7.2009 and not aware about other writing. The dates on Ex. P-1 and Endorsement are extended by plaintiff himself and plaintiff did not told me about this. Volt. Stated that I kept on returning the money to the plaintiff and also gave 3 cheques to him. It is correct that a sum of Rs. 9,20,000/- was mentioned on the agreement to sell dated 20.7.2009. Volt. Stated that the same was written by plaintiff by mentioning double the amount. The plaintiff has not given any money to me on 20.7.2009. I received a sum of Rs. 4,60,000/- from the plaintiff on interest on dated 20.7.2009. I know Sher Singh Namberdar who is my neighbourer. Sher Singh Namberdar is a liar Volt. Stated that Sher Singh has given false statement against me. Till today I never gave any complaint against Nambardar or plaintiff to any Panchayat or any police station or in any court that they made false agreement to sell and gave false evidence I have seen agreement to sell Ex. P-5 dated 22.8.2009 I identify and verify my signatures on this. It is correct that on dated 22.8.2009 I had taken other amount of Rs. 4 lacs from the plaintiff. Volt. Stated that except this I have not taken any money It is correct that the money which I have taken on 22.8.2009 from plaintiff, the same I am returning in the shape of cash and cheque. Amrik Singh never told me for executing the sale deed I am not ready to execute the sale deed on the basis of agreement to sell dated 20.7.2009. Volt. Stated that I have returned the money of plaintiff. I have one receipt regarding returning the money of agreement dated 20.7.2009 and I also gave cheques regarding the same .That I have given the said receipt to my advocate. It is correct that the said receipt is not part of court file. I do not remember the date of the said receipt I do not know as to whether I have written regarding the said receipt in my written statement or not and in the similar manner my reply is with regard to Ex. DW-2/AIt is correct that the amount of Rs. 4 lacs which I have taken on 22.8.2009, the writing of the same is Ex.PW-5. It is correct that ExPw-5 which was written the payment of same was made by me through cheque and through receipt and the plaintiff after receiving the payment canceled Ex.

P-5 Agreement to sell dated 22.8.2009, I gave the money till the last I kept on giving the money after the canceling of the writing even. I do not know Gurjeet Singh S/o Harpal Singh resident of Dholan Majra. I know Avtar Singh resident of village oind but I have no taking terms with him. I also do not know Kesar Singh resident of Dholan Majra. I do not know Rakesh Kumar document writer also. Ex. PW-4/A does not bear my signatures. I have seen the Power of Attorney (Vakalatnama) the same does not bears my signatures. I have seen ExPW-4/A on which I identify my signatures. On the request made by the witness again the documents Ex. PW-4/A vakalatnama was again shown to him on which he identifies his signatures that the same are his signatures. It is correct that regarding the amount and cheque as mentioned in the affidavit and written statement the said amount is regarding agreement to sell dated 22.8.2009 the same is canceled and regarding return of the said amount, again stated that it is not there. It is correct that the agreement to sell of Rs. 4 lacs which was cancelled by me the amount of the same has been returned. It is wrong say that I intentionally want to grab the money of agreement to sell dated 20.7.2009 and it is also wrong to say that I have backed out from the agreement to sell. And it is also wrong that I am intentionally not executing the sale deed. It is also wrong that the plaintiff is always ready and willing to execute the sale deed It is also wrong to say that I am deposing falsely.'

11. Though, plaintiff wants to create an impression from the said cross-examination that there is a clear admission of execution of the agreement to sell dated 20.07.2009 and same has been signed by defendant. This Court has also perused the copy of the agreement in question, as the same is referred by the plaintiff counsel during the course of arguments. There is no answer with the plaintiff that for what necessity, thumb impressions of the defendant were obtained by the plaintiff on the agreement to sell dated 20.07.2009 (Ex.P1) when already defendant had affixed his signatures in English. From the cross examination, a fact emerged that the defendant has retired from

Airforce and nothing has emerged from the set of evidences led by the plaintiff that under what emergency situation or necessity, the defendant was required to sell his land which is otherwise explained to be fertile natured land. Thus, doubting the basic document/evidence i.e. agreement to sell dated 20.07.2009 (Ex.P1) learned Court refused to accept the reason of sale as genuine one or truthful and considered the same to be a document of security prepared in lieu of the amount borrowed by the defendant and dismissed the suit for possession by way of specific performance of contract. In such circumstances, going in depth of readiness and willingness on the part of the either side is completely meaningless in view of the nature of the agreement to sell which is prepared merely for the purpose of securing the loan amount by the plaintiff.

Relevant findings recorded by learned First Appellate Court in its paragraph Nos. 12 and 13 are reproduced hereunder:

'12. Evaluating the evidence led by parties, it has come on record that admittedly Ex.P1 agreement to sell dated 20.7.2009 bears the signature of defendant Gurdeep Singh. It is admitted that endorsement dated 16.4.2010 Ex.P2 regarding further payment of Rs.1,80,000/- and endorsement dated 28.6.2010 regarding extension of last stipulated date Ex. P3 bears the signature and thumb impression of defendant Gurdeep Singh. There is no doubt that parties to the suit were known to each other and were having cordial relations. Though at the time of filing the suit, it was not disclosed by the plaintiff that one more agreement to sell dated 22.8.2009 Ex.P5 was also executed between the parties, which was later on cancelled, but the same fact has been admitted by him in his replication, after the filing of written statement by the defendant. Defendant revealed this fact in his pleadings. It is strange to note that in the agreement to sell Ex.P5 dated 22.8.2009,

executed after one month and 8 days, no recital has been made qua the previous agreement to sell Ex.P1 between same parties. Both the above said agreements to sell are pertaining to different properties of defendant Gurdeep Singh. If for the sake of arguments, contention of the plaintiff is to be believed that agreements were executed by defendant in his favour with the intention of defendant to sell it, then it is hard to digest, why the agreement Ex.PS was cancelled after the return of money by defendant Gurdeep Singh to plaintiff Amrik Singh. There is no dispute that the subsequent agreement dated 22.8.2009 has been cancelled between the parties, but despite that the original agreement is still in the possession of plaintiff and has not been returned to defendant. Thus, it goes to show that the intention of the parties at the time of execution of disputed agreement to sell was not to sell the property mentioned in it rather it was got executed by plaintiff Amrik Singh from defendant Gurdeep Singh for security purpose in lieu of money advanced to him Plaintiff himself as PW1 has deposed that agreement Ex.P5 was cancelled on the return of amount by defendant to him. If the said contention of the plaintiff is to be believed that initially, intention of the parties was to get executed and registered the sale deed pertaining to agreement dated 22.8.2009, but it was cancelled later on, then also it does not bear any such endorsement Rather it shows that the intention of the parties while entering into both the agreements Ex.P1 and Ex.P5 was not to sell or purchase the property, but it was a mere paper transaction in order to secure the amount advanced by plaintiff as loan to the defendant. It is settled law that intention of the parties is the basic essence for execution of any document. In Vijay Malik Vs. Dhanpati & ors.. RSA No.4622 of 2011 (O&M) decided on 5.3.2014, the Hon'ble High Court of Punjab & Haryana has pleased to observe that agreement to sell was not executed with the intention of the parties to get executed and registered the sale deed but it clearly indicates that it was a case of collateral security and not the agreement to sell. In spite of the major payment out of the total sale consideration, plaintiff did not get possession of the land and continued to extend the date for execution and registration of sale deed. Ratio decidendi of above said law is fully applicable to the facts and circumstances of the present case where questioned agreement to sell Ex.P1 was executed on 20.7.2009 and later on extended upto 20.6.2011 i.e. almost for the period of two years for the execution of sale deed. Thereafter, even

one more agreement to sell Ex.P5 dated 22.8.2009 was executed between the same parties, however, pertaining to the different properties. The said agreement to sell was also not complied with as no sale deed was executed and registered, rather, it was admittedly cancelled by the plaintiff after receiving the payment. So intention of the parties was not to execute any sale deed. Moreover, there is no mention qua the possession of the suit property in the above said agreement to sell. Thus, it is crystal clear that agreement to sell in question was not executed with the intention to get the sale deed registered, but just for advancing loan and securing its return by the plaintiff. So, the question of remaining ready and willing for the execution and registration of the sale deed at Tehsil Complex does not arise. Affidavit Ex. P4 dated 20.6.2011 regarding presence by the plaintiff in Tehsil Complex, Morinda is not of any help for the case of plaintiff. However, the contention of the defendant of the above said agreement being forged and fabricated also does not arise as he himself appended his thumb impression and signatures on it along with two endorsements of different dates Exp2 and Ex.P3. Apart from that, it is pertinent to discuss here that Assistant bank manager Avneet Pal DW4 of State Bank of India Branch Morinda vide his affidavit ExDW 4/A proved the payment of Rs.5.00 lakhs in favour of plaintiff Amrik Singh by defendant Gurdeep Singh from his account running in their branch vide three separate cheques dated 18.5.2011, 21.6.2011 and 7.3.2012. Cash payment was also made. Meaning thereby, defendant after obtaining loan from the plaintiff returned it to him vide various installments.

13. Therefore, in the light of above said discussion, I am of the considered view that plaintiff has failed to prove his case. Accordingly, all these issues are decided against the plaintiff and in favour of defendant.'

12. After, considering all the relevant facts and circumstances, hearing the learned counsel for the appellant (plaintiff), this Court does not find any infirmity, illegality or perversity in the judgment and decree passed by learned Courts below, thus, the same are hereby affirmed. No question of law much less any

substantial question of law arises in the present appeal for the consideration of the Court, thus, appeal *sans* merit and is hereby dismissed.

13. As the appeal has been dealt with on merits, there is no need to pass any separate order in the pending applications, thus, same also stands disposed of.

September 15,2023	[SANJAY VASHISTH]
<i>rashmi</i>	JUDGE
Whether speaking/reasoned	yes/no
Whether reportable?	yes/no