

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

RSA-3421-2012 (O&M)

Reserved on: 18.05.2023

Date of pronouncement: 24.05.2023

Bakshish Singh

...Appellant

Versus

Kanwaljit Singh and another

...Respondents

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

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Anirudh Gupta, Advocate and
Mr. Vipin Mahajan, Advocate for the appellant.

Mr. Hemant Bassi, Advocate for respondent No.1.

Mr. Sunil Chadha, Sr. Advocate with
Mr. N.K. Vadehra, Advocate;
Mr. Akshay Chadha, Advocate and
Ms. Kashish Aggarwal, Advocate for respondent No.2.

H.S. MADAAN, J.

In nutshell the facts of the case are that plaintiff Bakshish Singh had filed a suit against defendants Kanwaljit Singh and Dayal Singh seeking possession as owner by means of specific performance of agreement to sell dated 29.11.2003 regarding the land measuring 31K-12.5-M out of land measuring 63K-5M being 1/2 share comprised in HB No.627, khewat No.162, khatauni No.339, killa No.61R, 4(7-19), 5(6-18), 7(8-0), 14(8-0), 15(8-0), 16(7-17), 17 (8-0), 24 (3-4), 62R 11(5-7) besides craving for grant of permanent injunction restraining the defendants from alienating the suit land in any manner to any third person

except the plaintiff and from creating charge over the suit property and changing its nature by forcibly super structuring over it; in alternative, the plaintiff sought recovery of Rs.33 lacs i.e. Rs.5 lacs as refund of the earnest money and Rs.28 lacs as damages for breach of contract with interest @ 12% p.a., from the date of cause of action till actual realization.

2. As per version of the plaintiff, defendant No.1 Kanwaljit Singh had entered into an agreement to sell land measuring 31K-12.5M with him on 29.11.2003 for Rs.33 lacs receiving Rs.5 lacs as earnest money; the date for execution of sale deed was fixed as on or before 30.04.2004; the plaintiff has always been ready and willing to perform his part of the agreement; on 03.04.2003, a notice was sent to defendant No.1 as per registered AD post to appear in the office of Sub Registrar on 05.04.2004 to execute the sale deed and to inform the plaintiff whether he intended to receive the amount in cash or through bank draft; the notice was received by defendant No.1 but he sent a vague reply thereto asking for supply of copy of the agreement from counsel for the plaintiff; on 30.04.2004, the plaintiff remained present in the office of Sub Registrar, Gurdaspur with the balance sale consideration amount and expenses for registration of the sale deed but defendant No.1 did not come there; the plaintiff got his presence marked by furnishing an affidavit getting it attested from Sub Registrar, Gurdaspur; the plaintiff had submitted original demand drafts in favour of defendant No.1 for an amount of Rs.9,50,000/- bearing No.018578, Rs.9,50,000/- bearing No.018979 and

Rs.9 lacs bearing No.018580 dated 28.04.2004 but defendant No.1 wrongly executed the sale deed in favour of defendant No.2 Dayal Singh in order to defeat lawful claim of the plaintiff; according to the plaintiff, the sale deed is illegal, null and void not binding upon his rights; it is anti-dated and result of fraud and misrepresentation. Earlier the suit was filed against defendant No.1.

3. On notice, defendant No.1 appeared and filed written statements. In the written statement filed by such defendant, he denied having entered into any agreement to sell qua the agricultural land belonging to him with the plaintiff or receiving any amount as earnest money from him. According to the answering defendant, the agreement to sell set up by the plaintiff is a forged and fabricated document and notice dated 03.04.2004 sent on behalf of the plaintiff was received by him but he had given reply to the same through his counsel, requesting the plaintiff through his counsel to supply copy of agreement to sell but it was not so done. Defendant No.1 has sold the land to defendant No.2, vide sale deed dated 09.02.2004 on the basis of agreement to sell dated 30.06.2003 executed by defendant No.1 in favour of Dayal Singh. Dayal Singh has been put in possession of the suit land. The plaintiff is not entitled to any recovery and his suit be dismissed.

4. Subsequently on disclosure of sale deed in favour of defendant No.2 Dayal Singh, the plaintiff got the plaint amended and impleaded Dayal Singh as defendant No.2 On getting notice, defendant No.2 had appeared and filed written statement contesting the assertions

in the plaint, contending that after execution of the sale deed by defendant No.1 in favour of defendant No.2, the plaintiff has no right or title in the suit land and the agreement relied upon by the plaintiff is a forged and fabricated document to defeat rights of defendant No.2, acquired vide sale deed dated 09.02.2004. According to such defendant, the plaintiff is a property dealer and is in habit of grabbing the property of others by creating such kind of disputes. Defendant No.2 claimed himself to be a bona fide purchaser for consideration without notice of the agreement in favour of the plaintiff. Defendant No.2 is a Non -Resident Indian and has purchased the suit land by spending his earnings by paying huge amount of Rs.32 lacs, getting possession of the land from defendant No.1. The plaintiff had even threatened to kill defendant No.2 and defendant No.1 has join hands with the plaintiff for success of the plaintiff. In the end such defendant prayed for dismissal of the suit.

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

1. Whether the plaintiff is entitled for possession of the suit property by way of specific performance of the agreement of sale dated 29.11.2003? OPP.
2. Whether in the alternative, the plaintiff is entitled to recover Rs.33 lacs with interest from the defendants? OPP.
3. Whether the suit is not maintainable ? OPP.
4. Whether the defendant No.2 is bona fide purchaser of the suit property, if so its effect? OPD.
5. Relief.

6. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

7. After hearing arguments, the trial Court of Civil Judge (Sr. Divn.) Gurdaspur, vide judgment and decree dated 14.03.2011 decreed the suit with costs with regard to relief of specific performance.

8. Feeling aggrieved by the judgment and decree passed by the trial Court, defendant No.2 Dayal Singh had preferred an appeal before District Judge, Gurdaspur, that appeal was assigned to Addl. District Judge, Gurdaspur, who vide judgment and decree dated 17.05.2012 accepted the appeal, set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiff.

9. Feeling dissatisfied, the plaintiff has knocked at the door of this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondents, who have put in appearance through counsel.

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

11. In this case, in the written statement filed by him, defendant No.1 Kanwaljit Singh had denied having entered into an agreement to sell with the plaintiff or receipt of any earnest money whereas he submitted that on the basis of agreement to sell dated 30.06.2003 entered into by him with Dayal Singh, he has executed sale deed dated 09.02.2004 in his favour. To prove the execution of the agreement to sell by defendant No.1 in his favour, the plaintiff had examined PW-2 Narinder Singh, Scribe who had stated that agreement Ex.P1 was scribed by him and in his presence, Rs.5 lacs were received by defendant No.1 Kanwaljit Singh and he had duly signed the agreement; the agreement was entered in his

register at Sr. No.418 dated 29.11.2005. PW-3 Parminder Singh had identified signatures of his father Manjit Singh son of Inder Singh who was attesting witness of Ex.P1 on such document stating that Manjit Singh had died on 29.07.2004. PW-4 Joga Singh, the other attesting witness of the agreement had deposed regarding Kanwaljit Singh having executed agreement in favour of Bakshish Singh and putting his signatures thereon and the agreement having been witnessed by such witness Joga Singh as well as Manjit Singh.

12. Now it is to be seen is as to whether such evidence was sufficient to prove its execution but considering the fact that Kanwaljit Singh had denied having executed this document, some more evidence was required to be adduced by the plaintiff to establish that signatures on agreement to sell Ex.P1 were those of Kanwaljit Singh and he was wrongly denying the same. The best course open to the plaintiff to prove that fact was by examining hand writing expert. No doubt science of comparison of hand writing is not perfect but then it is fairly accurate. When the case was posted for evidence of the plaintiff by that time, written statement of Kanwaljit Singh had been filed denying the execution of agreement Ex.P1 set up by the plaintiff claiming that such agreement was a forged and fabricated document then it was incumbent upon the plaintiff to get the disputed signatures of Kanwaljit Singh on the agreement Ex.P1 compared with his specimen/admitted signatures. Though, on behalf of learned counsel for the appellant, an attempt was made to show that Kanwaljit Singh had been acting smart because on the

written statement and at various other places, he had put his signatures in English and it was only when he had appeared as his witness in the Court and during his cross-examination he offered to give signatures in Punjabi, then an application in that regard was moved by the plaintiff which was dismissed by the trial Court. The plaintiff had filed a revision petition against that order before the High Court but was unsuccessful, as such, he could not be blamed for not examining hand writing expert.

13. Whereas learned counsel for the respondents has contended that the plaintiff had availed of several opportunities to conclude his evidence. He should have examined such hand writing expert during the course of his evidence rather than keeping quiet and then suddenly moving an application for permission to examine the hand writing expert which was declined by the trial Court, giving valid reasons and that order was upheld by the High Court in revision also.

14. After considering the rival contentions, I find that the plaintiff indeed omitted examining hand writing expert. If such expert after examining disputed signatures of Kanwaljit Singh with his specimen/admitted signatures had arrived at the conclusion that those were by the same person, that would have strengthened the case of the plaintiff to a considerable extent but without such examination, the case of the plaintiff suffered a big jolt. The Ist Appellate Court has relied upon judgment by this Court titled **Shiv Charan Vs. Siri Ram & Anr.**, 2008 (3) RCR 454, wherein it was observed that if party to the contract denies his signatures on the agreement to sell, the plaintiff cannot be granted

specific performance thereof, unless he proves the signatures of the parties on the agreement.

15. In this case, the plaintiff has failed to establish signatures of Kanwaljit Singh on the agreement to sell, therefore, execution of that agreement was not established. If execution was not established, the question of plaintiff being ready and willing to perform his part of the contract does not arise. The judgment by the trial Court shows that the officer was unable to understand the facts of the case properly and did not apply the law to the given facts in an proper and appropriate manner. The trial Court fell in error in coming to the conclusion that Kanwaljit Singh had entered into an agreement to sell Ex.P1 with Bakshish Singh or that the agreement between Kanwaljit Singh and Dayal Singh was anti-dated to defeat rights of the plaintiff, therefore, the said agreement and sale deed by Kanwaljit Singh in favour of Dayal Singh were held to be sham transactions and waste piece of papers.

16. The Ist Appellate Court by proper understanding of the factual position and due application of law has rightly come to the conclusion that the agreement to sell set up by the plaintiff Ex.P1 has not been proved on the record and agreement to sell by defendant No.1 in favour of defendant No.2 was legal and valid and so is the sale deed executed by defendant No.1 in favour of defendant No.2 on the basis thereof. Detailed reasons have been given in the judgment for arriving at such conclusion, which I find to be cogent and convincing.

17. Learned counsel for the appellant had submitted that

permission to examine hand writing expert could not be taken to conclude that execution of agreement Ex.P1 is not proved when an attesting witness of the agreement its scribe and son of the deceased attesting witness had appeared to depose in that regard. In support of his contentions, learned counsel had referred to a judgment by a Single Judge of this Court in case **Vijay Kumar Vs. Bishan Singh** in RSA-2184-2018 decided on 01.05.2018. That judgment is not applicable due to different facts and circumstances. In the present case, defendant No.1 Kanwaljit Singh had not only denied execution of agreement in favour of the plaintiff but claimed it to be a forged and fabricated document. Thus, keeping in view the totality of circumstances, it was incumbent upon the plaintiff to examine the hand writing expert, which he omitted to do. The judgment referred to by learned counsel for the appellant does not help him in any manner. Whereas, the Ist Appellate Court has rightly followed the judgment by a Single Judge of this Court in case **Shiv Charan** (supra).

18. Whereas learned counsel appearing for the respondent has further referred to another judgment **Mohinder Singh Vs. Balbir Singh & Ors.** 2011 (2) PLR 390 by a single Judge of this Court on this very lines to the effect that onus to prove the execution of agreement by the defendant in favour of the plaintiff was on the plaintiff and they were to adduce the evidence in affirmative including examination of hand writing expert to discharge the said onus.

19. Learned counsel for the appellant had further referred to

certain judgments **Gulwant Singh Vs. Gurbakshish Singh & Ors.,** 2012

(4) PLR 412, **Harjinder Singh @ Rajinder Singh Vs. Karam Chand &**

Anr., 2012 (3) PLR 723, **Jora Singh Vs. Lakhwinder Kumar & Ors.,**

2011 (1) RCR (Civil) 130, **Asha Pandey & Ors. Vs. D.K. Dubey,** 2010

(42) RCR (Civil) 103 and **Veena Tuli Vs. Ram Snehi,** 2015 (2) PLJ 191,

in support of his contentions that since execution of agreement has been duly proved by the plaintiff by enough cogent and convincing evidence and there was no necessity of examining hand writing expert and further the agreement to sell by defendant No.1 in favour of defendant No.2 was ante-dated, as has been rightly observed by the trial Court. Therefore, judgment of trial Court be restored and Ist Appellate Court be set aside.

The judgments referred to by learned counsel for the appellant are not applicable due to different facts and circumstances and the context in which such observations have been made.

20. Furthermore, in view of detailed discussion above, the execution of agreement Ex.P1 is not established on the record, therefore, there is no question of any specific performance thereof being granted in favour of the appellant/plaintiff. Furthermore, there is nothing to show that agreement is ante-dated or such agreement and sale deed by defendant No.1 in favour of defendant No.2 are sham transactions, as has already been observed, the judgment and decree passed by the trial Court are not sustainable, therefore, any observations made therein are not of any help to the appellant.

21. There is no ground to upset the detailed well reasoned

judgment passed by learned Addl. District Judge, Gurdaspur and to restore the judgment of the trial Court. No substantial question of law arises in this appeal. There is no merit in the present Regular Second Appeal. The same stands dismissed accordingly.

24.05.2023
sumit.k

(H.S. MADAAN)
JUDGE

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