

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

RSA-4062-2017 (O&M)
Date of decision: 12.07.2023

SARWAN SINGH

..Appellant

Versus

HARDYAL SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amaninder Preet, Advocate
for the appellant.

Mr. Suresh Kumar Aneja, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. Defendant No.6 in a suit for possession by way of specific performance of the agreement to sell has filed a Regular Second Appeal against the concurrent findings of facts arrived at by the Courts below while decreeing the suit.

2. The relevant facts, in brief, that are important to be noticed in order to comprehend the issues which require adjudication, are as follows:-

3. Sh. Hardyal Singh (the plaintiff) filed a suit on 07.01.2008 while claiming that late Sh. Gurdeep Singh entered into an agreement to sell on 18.08.2007 for the sale of a land measuring 78 kanal and 19 marlas at the rate of Rs.10,00,000/- per acre while receiving Rs.20,00,000/- in cash as earnest money. The sale deed was decided to be executed and registered on 17.12.2007. Sh. Gurdeep Singh died on 02.12.2007 and, thereafter, Sh. Hardyal Singh after sending notice on 13.12.2007, filed the suit. In order to prove the agreement to sell, Sh. Hardyal Singh appeared as PW-1, whereas,

both the marginal witnesses of the agreement to sell were examined as PW-2 (Sh. Rattan Amolakh Singh) and PW-4 (Sh. Ranjit Singh). The stamp vendor Smt. Sneha Lata was examined as PW-5. The defendants while contesting the suit claimed that the agreement to sell was a forged and fabricated document. It may be noted here that the original agreement to sell is stated to have been snatched away by Sh. Rajinder Singh Bhullar and Sh. Balwinder Singh Bhullar both sons of late Sh. Gurdeep Singh along with the other co-accused that resulted in the registration of a criminal case in which they were convicted.

4. Both the Courts on appreciation of evidence have concurrently found that not only the agreement to sell has been proved but even the plaintiff was always ready and willing to perform his part of the contract.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the judgments passed by the Courts below along with the requisitioned record.

6. The learned counsel representing the appellant contends that the appellant Sarwan Singh son of late Sh. Gurdeep Singh was impleaded as a defendant vide order dated 30.03.2015 and hence suit qua him was time barred. He further submits that the original agreement to sell has not been produced and the name of the scribe or the typist has not been disclosed. While drawing the attention of the Court to agreement to sell (Ex.P-1), he submits that the signatures of late Sh. Gurdeep Singh on the various pages do not match with each other and, therefore, the Court must dismiss the suit. He further submits that the payment of the earnest money is not proved because Sh. Hardy Singh after deposit of Rs.10,00,000/- in his bank

account on 18.08.2007 withdrew Rs.16,00,000/- and the same amount was redeposited on 29.08.2007.

7. On the other hand, the learned counsel representing the plaintiff (Sh. Hardyal Singh) contends that the agreement to sell has been proved by examining both the marginal witnesses apart from the opinion of the handwriting and fingerprint expert. He submits that late Sh. Gurdeep Singh died on 02.12.2007 and the suit was filed by impleading the widow, daughter and three sons of Sh. Gurdeep Singh. As and when the plaintiff came to know that Late Sh. Gurdeep Singh left behind another son namely Sarwan Singh, an application was filed, which was allowed and, thereafter, the appellant was allowed to contest the suit. He further submits that the signatures of late Sh. Gurdeep Singh have been proved by the direct evidence namely the deposition of both the marginal witnesses and the plaintiff was always ready and willing to perform his part of the contract.

8. This Court has considered the submissions while analyzing the arguments of the learned counsel representing the parties.

9. It is evident that the suit was filed on 07.01.2008 by impleading three sons, the widow and three daughters of late Sh. Gurdeep Singh. Proviso to Section 21(1) of the Limitation Act, 1963, enables the Court to implead such plaintiff or defendant who could not be impleaded due to a mistake in good faith from the date of filing of the suit. The newly impleaded plaintiff or defendant are then considered to be the parties to suit, from the date of its institution. In the present case, the failure to implead Sarwan Singh as defendant was a mistake in a good faith, which was permitted to be rectified by the Court. In such circumstances, the Courts

have not committed any error in treating the suit to have been instituted against defendant No.6 on 07.01.2008. Moreover, remaining defendants never disclosed that Sh. Gurdeep Singh has left behind another son namely Sarwan Singh (appellant).

10. As regards the next argument of the variation in the signatures of late Sh. Gurdeep Singh on different pages of the agreement to sell, it may be noted that late Sh. Gurdeep Singh signed the agreement to sell on all the six pages in *gurmukhi* (vernacular language). He had been able to barely write his name, as he was a semi-literate person. The agreement to sell has been scribed on the first three pages of the agreement to sell. Late Sh. Gurdeep Singh has signed even on page 4, 5 and 6. The agreement has been signed with a free flow of pen. Both the marginal witnesses have deposed and late Sh. Gurdeep Singh signed the agreement to sell in their presence. Contradictory reports of the respective fingerprint and handwriting expert are in the nature of opinions which have been considered by both the Courts below. Moreover, both the Courts have concluded that late Sh. Gurdeep Singh appended his signatures on each page of the agreement to sell. Apart from the above mentioned facts, Smt. Sneha Lata, the stamp vendor has appeared as PW-5. She has stated that Sh. Gurdeep Singh while purchasing the non-judicial stamp paper worth Rs.300/- (50 X 6) signed in her notebook against entry at Serial No.1141. In these circumstances, the conclusion arrived at by the Courts below is not required to be interfered with in absence of perversity.

11. The next argument of the learned counsel representing the appellant is with respect to the failure of the plaintiff to disclose the name of

the scribe. Once, both the marginal witnesses have been examined, the scribe of the agreement to sell, which is typed in *gurmukhi* loses its importance. It has been brought to the notice of the Court that the plaintiff with the permission of the Court and without prejudicing the rights withdrew the amount deposited in the trial Court in compliance of the decree. He submits that he may be permitted to re-deposit the same within a period of one month. The request appears to be genuine. The appellant withdrew the amount after getting permission from the High Court as per order dated 02.02.2018. Hence, this Court does not find any reason not to accept the aforesaid prayer.

12. Keeping in view the aforesaid facts, no ground to interfere is made out.

13. Dismissed.

14. All the pending miscellaneous applications, if any, are also disposed of.

July 12th, 2023

(ANIL KSHETARPAL)
JUDGE

Ay

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>