

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-247-2023 (O&M)
Reserved on: 09.07.2024
Date of decision: 25.07.2024

MUKHTIAR SINGH (DECEASED) THROUGH LRS. ..Appellant

Versus

KESAR SINGH AND ANOTHER ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L. Saggar, Sr. Advocate
with Ms. Armaan Saggar, Advocate
for the appellant.

Mr. Arshit Goel, Advocate
and Mr. Sarthak Mehta, Advocate
for respondent No.1 and 2.

ANIL KSHETARPAL, J.

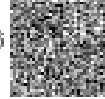
1. Brief facts of the case:-

1.1 In this regular second appeal, the defendants assail the correctness of the concurrent findings of fact arrived at by the Courts below while decreeing the plaintiffs suit for possession by way of specific performance of agreement to sell.

1.2 In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

1.3 Sh. Mukhtiar Singh being owner of the land measuring 22 kanal and 8 marlas, entered into an agreement to sell on 10.04.2013 on receipt of earnest money of Rs.19,50,000/- out of total sale consideration of Rs.35,00,000/- in favour of the plaintiffs. As per the agreement to sell, the sale deed was to be executed on or before 09.02.2014. The plaintiff claim

that he along with the entire sale consideration and expenses went to Sub-



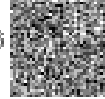
Registrar's office on 10.02.2014 because on 09.02.2014 was Sunday, however, Sh. Mukhtiar Singh did not come. Thereafter, they filed the suit on 14.08.2014. In the beginning Sh. Mukhtiar Singh did not contest the case and ex parte decree dated 07.10.2015, was passed in favour of the plaintiffs. Sh. Mukhtiar Singh died on 26.09.2017. Ultimately, the ex parte decree was set aside. Widow, mother and two minor children of Sh. Mukhtiar Singh were brought on record as the legal representatives. They contested the case while asserting that Sh. Mukhtiar Singh was in fact a drug addict and he had only taken a loan of Rs.2,00,000/- for fulfilling his requirement of intoxicants but the plaintiffs had obtained his thumb impressions on blank papers. It was asserted that Sh. Mukhtiar Singh never purchased any stamp paper on 28.03.2013. It was also asserted that the suit property was ancestral property and after the death of Sh. Mukhtiar Singh, they are left with no other property except the property in dispute. The defendants claimed that neither any agreement to sell was entered nor Rs.19,50,000/- was paid. It was also specifically asserted that plaintiffs lacked the wherewithal to pay the amount.

1.4 Both the Courts decreed the suit after recording findings that the agreement to sell has been proved and the plaintiffs were always ready and willing to perform their part of the contract of the agreement to sell.

2. Evidence produced by the respective parties:-

2.1 The plaintiffs examined Sh. Kesar Singh (plaintiff No.1) as PW-1 and Sh. Charanjit Lal, marginal witness of the agreement to sell was also examined as PW-2, Sh. Hari Krishan, scribe was also examined as PW-3.

2.2 On the other hand, the defendants examined DW-1 Sh. Kulwinder Singh and DW-2 Smt. Manpreet Kaur, widow of Sh. Mukhtiar Singh.



3. **Arguments put forth by the learned counsel representing the parties:-**

3.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record of the Courts below and synopsis submitted by the learned counsel representing the parties.

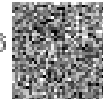
3.2 The learned Senior counsel representing the appellant has made the following submissions:-

- “i. That the learned Addl. District Judge has observed in para 18 that Mukhtiar Singh was held guilty for keeping in his possession 25gm of Heroine and was sentenced thereunder. However, mere producing on record one judgment would not show that Mukhtiar Singh was habitual of taking drugs as claimed by the appellants.*
- ii. That it was also brought to the notice of the learned Addl. District Judge that the stamp papers of the alleged agreement to sell dated 10.04.2013 were allegedly purchased on 28.03.2013 at Tehsil Banga District Nawanshahr. There was no occasion for Mukhtiar Singh to purchase the stamp papers from Tehsil Banga. It has been observed that thumb impressions of Mukhtiar Singh are on agreement to sell Ex.P2 and the receipt Ex.P3 and the photographs has also been affixed in the register of deed writer i.e. Ex.P6 & Ex.P7. It was also observed that the plaintiffs are ready and willing to perform their part of the agreement. It was also observed that there no suspicious circumstances in the agreement to sell Ex.P2.*
- iii. That the learned Addl. District Judge did not at all referred to the cross examination of PW1 Kesar Singh and PW2 Charanji Lal and PW3 Hari Kishan scribe and that of the evidence lead by the appellants.*
- iv. That PW2 Charanji Lal is nephew of Harbans Lal and was not known to Mukhtiar Singh deceased. PW3 Hari Kishan scribe is very close to the plaintiffs.*

SUBMISSIONS :-

That the appellants submit the submissions to the effect-

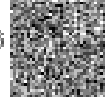
- A. That the agreement to sell dated 10.04.2013 is surrounded by suspicious circumstances.*
- B. That the source of amount of payment of rs.19,50,000/- by the plaintiffs remains unknown.*



- c. That whether the plaintiffs –respondents were ready and willing to perform their part of the agreement to sell.
- D. That the learned courts below failed to exercise the description in view of Section 20 of the Specific Relief Act, 1963 hereinafter referred to as the Act.
- A. **Suspicious Circumstances Regarding the alleged agreement to Sell dated 10.04.2013:-**

- i) That the undisputed facts are that Mukhtiar Singh deceased was handicapped and used to move with the help crèches. The plea of his being addicted to drugs was taken in the written statement which was not denied by filing replication. Even PW1 Kesar Singh was known to Mukhtiar Singh as his first cousin married in his family and has not denied these facts.
- ii) That Mukhtiar Singh deceased was held in possession of 25gms of Heroin and FIR No.254 dated 11.12.2011 under Section 21 of the NDPS Act, P.S. Adampur District Jalandhar was lodged against him. He had made a confessional statement and was convicted by the court of Sh.Gurjant Singh, Special Court Jalandhar and sentenced vide judgment dated 13.12.2012 Ex.D1 at page 378 of the record of the learned trial court. The small quantity of Haroine establishes that he was addicted to drugs and as such he died at the age of 40 years on 26.09.2017 leaving behind a widow mother Manjit Kaur and the appellants Manpreet Kaur a young widow and two minor children.
- iii) That in **Pollock & Mulla's The Specific Relief Act, 1963, 14th edn, pg. 184**, it has been said-
"Specific performance may be inequitable where the position or mental state of the party against whom specific performance is sought is such that the Court would not force him to perform his contract."

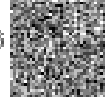
It has been further elaborated by citing **Halsbury's Laws of England, Vol. 44(1), 4th edn. Reissue, 1 September 1995, SPECIFIC PERFORMANCE, para 866-** "These circumstances, it has been stated: include intoxication, intimidating and pressurising conduct which need not amount to duress or undue influence, mental weakness not amounting to incapacity to contract (such as senility), distress, illiteracy, lack of education, want of advice or similar circumstances appearing inconsistent with intelligent consent. The Court will certainly not



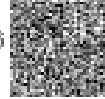
grant specific performance if the plaintiff knew of the defendant's incapacity. However it need not be shown that the plaintiff was guilty of intentional unfairness; it is enough that he has contributed, albeit unintentionally, to the defendant's state of mind. False allegations in the plaint disentitle the plaintiff to get relief by way of specific performance."

- iv) That the plaintiff-respondent no.1 Kesar Singh belongs to Village Raspa, Tehsil Banga, District Nawanshahr. Plaintiff-respondent no.2 Harbans Lal belongs to village Ballawal, Tehsil Banga District Nawanshahr.*
- v) That the land measuring 22K 8M having a 10HP electric tubewell connection and a residential house in khasra no.947 measuring 1K 8M is situated at village Bansian, Sub Tehsil Goraya, Tehsil Phillaur District Jalandhar as per jamabandi Ex. P1 (Pg 133 of the lower court records).*
- vi) That regular deed writers and stamp vendors are functioning in Sub Tehsil Goraya which at distance of about 7kms from village Bansian and Tehsil Banga is at distance of about 40kms from the village.*
- vii) That according to PW1 Kesar Singh the deal regarding the sale of land of Mukhtiar Singh had taken place on 09.04.2013 regarding the agreement. The translation of the statement of PW1 Kesar Singh is attached as Annexure A-2 of the paper book. The relevant cross examination on 07.08.2019 is at page 124 of the paper book and is reproduced for the kind perusal of this Hon'ble Court.*

"On S.A. I am eighth fail. I know only Punjabi. I cannot read and write English. I have not submitted any affidavit in the court. I know Mukhtiar Singh for the last 10 years. He is our relative. My maternal uncle's daughter is married in his family and his daughter in law. We are on visiting terms to each other's houses. Mukhtiar Singh has ancestral land. His father's name is Resham Singh and name of grandfather is Karnail Singh. I have not submitted any affidavit in English in the court. I have neither seen the original agreement and the receipt nor shown to me. I had a talk with Mukhtiar Singh on 09.04.13 regarding agreement." Then he again stated that the bargain was made in the village 4 days earlier. Nothing was written in the village.



- viii) That according to PW1 the bargain was settled on 09.04.2013 or 4-5 days prior to the agreement to sell dated 10.04.2013 then there was no occasion for Mukhtiar Singh deceased to go to Tehsil Banga District Nawanshahr and purchase the stamp papers on from Manohar Lal Stamp Vendor on 28.03.2013 and do not disclose that Mukhtiar Singh had purchased the stamp papers of the agreement and had signed in his register and on the back of stamp papers. The stamp vendor Manohar Lal was not examined by the plaintiffs-respondents. The observation of the learned Additional District Judge in para no.21 that the appellants-defendants should have examined the stamp vendor to prove that the stamp papers were not purchased by deceased Mukhtiar Singh as alleged by him(Page 103). This approach is not legally sustainable. The onus to prove the genuineness and validity of the alleged agreement to sell dated 10.04.2013 was on the plaintiffs-respondents.
- ix) That it is appropriate to mention that the State of Punjab has notified the Punjab Stamp Rules,1934 regarding the procedure and purchase and sale of stamp papers and court fee by the stamp vendors. Rule 28(XIII) as applicable to Punjab is attached. Rule 28 (XIII)is also applicable to the State of Haryana. The same was the subject matter of consideration by the Hon'ble Court in the judgment titled **Mangat Singh Vs. Rakesh Kumar Gupta & others** reported in **2014 (4) RCR (Civil) 387**. The Hon'ble Court was pleased to referred to Rule 28 (XIII) in para no.19 and further observed in para no.20 as under:-
"20. Perusal of agreement to sell (Ex.P1) indicates that it does not bear signatures of defendant no.1 on its backside, who allegedly entered into agreement and does not indicate who actually purchased the stamps. Thus as required by aforesaid Rule, the particulars of purchaser have not been indicated on the backside of paper whereon stamps have been affixed. The register of stamp vendor wherein corresponding entries would have been made and attested by the purchaser, has not been proved on record. If the Ex.P-1 would have been written at the instance of defendant no.1, then he must have purchased the stamp paper and his signatures should have been on the stamp paper and in the register of stamp vendor. This clearly



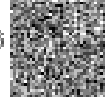
indicates that Ex.P1 is clouded with suspicious circumstances."

That the agreement does not bears signatures of defendant no.1 on its backside who allegedly entered into an agreement.

- x) That in the plaint the land measuring 22K 8M has been mentioned by the plaintiffs-respondents. According to the jamabandi for the year 2010-2011 Ex.P1 at page 133 in khasra no.947 there is abadi in land measuring 1K 8M. It is appropriate to mention that there is a residential house in the land itself. The appellants have annexed a photograph as **Annexure A-4** at page 138 to 143 of the paper book.*
- xi) That the land is situated at village Bansian Sub Tehsil Goraya Tehsil Phillaur District Jalandhar. The plaintiffs do not own any land in the village.*
- xii) That according to the appellants the thumb impressions of Mukhtiar Singh deceased were secured on blank papers and on the already purchased stamp paper on 28.03.2013 from Tehsil Banga District Nawanshahr. The appellants have examined DW1 Kulwinder Singh alias Kulwant Singh the attesting witness of the alleged agreement to sell dated 10.04.2013. He had stated that Mukhtiar Singh did not enter into any deal with Kesar Singh to sell his land because he has only this land. Kesar Singh had come in 2013 and got signatures and thumb impressions of Mukhtiar Singh on blank stamp papers and other papers and he had also thumb marked the same. The learned Addl. District Judge had brushed aside his evidence without any plausible reason.*

B. Source of Amount of Payment of Rs.19,50,000/- by the Plaintiffs:-

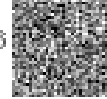
- i) PW1 Kesar Singh was cross examined in this respect. He had stated at the end of his cross examination on 07.08.2019 at page 126 as under:-
" I have J-forms for the year 2012-13. I can produce the same in the court." And his cross examination was deferred.*
- ii) On 22.08.2019 he was cross examined and stated as under:-"I am not in possession of the J-Forms for the year 2012-13. I cannot tell the name of the Arhtia but there are many. I have bank accounts in OBC Bank Mukandpur. I have the pass books of these accounts which have not been filed in the court. The J-Forms have not been produced. I have not made any mention of J-Form and pass books. I*



do not remember how much amount was lying in my account in January, 2013. I do not know how much amount was there in the year 2014. I cannot examine the other partner Harbans Lal in the court because he is not feeling well."

- iii) *Thus it is also appropriate to mention that in the agreement to sell dated 10.04.2013 it is mention that the land is under mortgage for a sum of Rs.13 lacs in the State Bank of India Branch Rurka Kalan. It is further stated that before execution of the sale deed the bank loan will be cleared by the vendor and the land will be redeemed and clearance certificate will be obtained from the bank.*
- iv) *That PW1 has further admitted that at the time of filing the suit the entry of the mortgage in favour of the bank was there, it is further stated that it is correct that at the time of registration, the condition regarding loan clearance was not completed. I do not know when Mukhtiar Singh died. It is a matter of fact that in the agreement to sell the age of Mukhtiar Singh is mentioned as 36 years and he died on 26.09.2017 at the age of 40 years leaving behind a widow mother and young widow and two minor children. It does not appeal to logic that any same person would sell even the residential house situated in the land forcing the legal heirs on the road.*
- v) *That the alleged amount of Rs.19,50,000/- in such circumstances being Mukhtiar Singh an addict the plaintiffs would have paid the amount through cheque or draft and would have themselves cleared the bank loan before claiming specific performance of the agreement to sell. Therefore, the alleged agreement to sell dated 10.04.2013 is without consideration.*
- vi) *That before filing the suit no notice was given by the plaintiffs to Mukhtiar Singh deceased to keep the agreement a secret document.*
- vii) *That this Hon'ble Court in case law reported in 2024(2) RCR (Civil) 193 titled Pargat Singh Vs M/s Kakkar Bricks has observed in para 14 of the judgement that "Once redemption of mortgage not done, further part of agreement cannot performed till redemption of mortgage deed executed between vendor and Banker and agreement to sell became unenforceable despite readiness and willingness of both parties."*

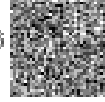
c. **Readiness&Willingness:-**



- i) That so far as the readiness and willingness is concerned it has been stated by the PW1 Kesar Singh that they have submitted an application dated 10.04.2013 in the office of Joint Sub Registrar, Goraya a bare perusal of Ex.P4 at page 149 of the record shows that they had brought the remaining amount in cash. There is no mention of any amount having been brought for the purchase of stamp papers and registration charges. However, in his cross examination he had stated at page 129 of the translation of his cross examination of the paper book as under:- "However, we went together. There was some cash and some cheque. I do not remember how much cash I was having and cheque amount. We have not submitted that cheque in the court till date. It is not mentioned in the affidavit that how much cash we were having and the cheque amount." Thus there is hardly any evidence to prove the readiness and willingness of the plaintiff-respondents.

D. **Discretion under Section 20 of the Specific Relief Act:-**

- i) That the learned courts below failed to exercise the Judicial description as provided under Section 20 of the Specific Relief Act, 1963 in the facts and circumstances of the present case. It has been held time and again by the Hon'ble Court and the Hon'ble Supreme Court that merely because an agreement to sell is proved the courts are justified in declining the specific performance if the conduct of the parties at the time of entering into contract or other circumstances provide that the plaintiff had unfair advantage over the defendant. It is also provided that if the agreement to sell involved some hardship to the owner. It is also provided that specific performance should not be granted where the contract makes it inequitable to enforce specific performance.
- ii) There is a residential house in khasra no.947 in land measuring 1K 8M in the land subject matter of the agreement to sell.
- iii) That the plaintiffs-respondents have mentioned in the plaint only that the agreement to sell is regarding land measuring 22K 8M and have concealed the facts that there is a residential house in khasra no.947 measuring 1K 8M.
- iv) That in **Fry: A Treatise on Specific Performance of Contracts**, 6thedn, p. 155, it is said- "The Court



will not enforce the specific performance of a contract the result of which would be to impose great hardship on either of the parties to it; and this, although the party seeking specific performance may be free from the least impropriety of conduct."

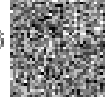
The same was reiterated in the of the **Hon'ble Karnataka High Court** in case law reported in **1982 AIR (Karnataka) 264** titled **Smt. Ranganayakamma Vs N. Govinda Narayan** and it was observed by the Hon'ble Court that it would be unjust to decree specific performance on the suit property as it would be unjust upon the appellant (a widow) upon whom the hardship would ensue rather than that of the respondent (a businessman). It was further observed in para 16-
"... One cannot ignore the hard fact in these days that the appellant cannot buy a similar or other house in Mysore city out of the balance of consideration payable under the suit agreement. She is a widow with no children. She is getting a rent of Rs. 50/- from the tenant who is occupying a portion of the house. That is her only means of income for sustenance. If we decree the suit, she will be deprived of that income too, for the rest of her life with no shelter to cover her head. There can, therefore, be no justification for us to tell her that she should sell the house and go on pilgrimage never to return."

v.) That the Hon'ble Supreme Court in case law reported in **2024(3) SCC 489** titled as **Major Gen. Darshan Singh deceased by legal representatives & another Vs. Brij Bhushan Chaudhary through his legal representatives** was pleased to observed in para no.12 as under:-

"under section 20 of the 1963 Act, the grant of a decree for specific performance is always discretionary. The exercise of discretion depends on several factors. One of the factors is the conduct of the plaintiff. The reason is that relief of a decree of specific performance is an equitable relief. A person who seeks equity must do equity."

It was further observed in para no.18 as under:-

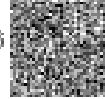
"As observed earlier the relief of specific performance is discretionary equitable. Considering the plaintiffs conduct of making false and or incorrect statements in the plaint, which were very material, we hold that the plaintiffs are disentitled to the relief of specific performance...."



vi.) *That in the light of the abovementioned facts and legal position the alleged agreement to sell dated 10.04.2013 is not only surrounded by suspicious circumstances but is also without consideration. The plaintiffs have failed to prove the source of money of Rs.19.5 lacs alleged to have paid at the time of the alleged agreement to sell dated 10.04.2013. The plaintiffs-respondents even did not have the remaining amount of Rs.15,50,000/- at the time of submitting the application dated 10.02.2014 in the office of the Joint Sub-Registrar Goraya. Thus the judgments and decrees of the learned courts below may kindly be set aside and the suit may kindly be ordered to be dismissed.”*

3.3 Per contra, the operative part of the written note of submissions filed by the learned counsel representing the respondents reads as under:-

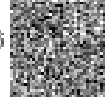
“1. That in order to prove plaintiff’s readiness and willingness to perform his part of the agreement to sell till the date of filing of suit or thereafter and till its trial is culminated and concluded, it is submitted that respondents/plaintiffs had placed on record application Ex.P4 whereby they got themselves marked present in the office of Joint Sub-Registrar, Goraya on 10.02.2014 claiming that they were ready to get the sale deed executed on payment of remaining sale consideration. It is pertinent to mention here that in order to prove readiness and willingness to perform his part of agreement, vendee is not required to prove that he was in actual possessions of funds required for execution and registration of sale deed, but he is only required to show that he was ready and willing to perform his part of agreement. Moreover, once agreement to sell in question was denied by executant Mukhtiar Singh or his legal heirs i.e appellants, then the respondents/plaintiffs were not required to prove that they were ready and willing to perform their part of the agreement. It is further germane to mention here that earlier, one suit was filed by the plaintiffs/respondents, which was decreed ex-parte vide judgment and decree dated 07.10.2015, wherein, the respondents/plaintiffs had deposited the remaining sale consideration in the court to get executed the sale deed in their favour in accordance with law. Even, the said fact was not disputed by the appellants. Therefore, this fact alone is sufficient to prove on record that respondents/plaintiffs were always ready and willing to perform their part of the agreement and the suit filed by them was rightly decreed by the Learned Civil Judge (Junior Division), Phillaur and thereafter upheld by the



Learned Additional District Judge, Jalandhar. Reliance is placed on the judgment passed by the Hon'ble Supreme Court of India in case titled as "N.P. Thirugnanam Versus Dr. R Jagan Roa", [1996 (1) Civil Court Cases 27 (SC)] and M/s J.P. Builders & Another Versus Ramdas Rao and Another", [2011 (1) Apex Court Judgments 307 (SC)].

2. That it is germane to mention here that the defendant/appellants have taken specific stand that the agreement to sell is forged and fabricated. In other words, appellants have challenged the validity of agreement to sell dated 10.04.2013 (Ex. P2). In this regard it is submitted that as per Order 6 Rule 4 of Civil Procedure Code, 1908, when any document has been challenged on the ground of fraud etc. then it is the burden duty of the person to plead the manner of fraud in the pleadings as per the requirement of Order 6 Rule 4 of CPC and to prove the same by way of cogent evidence in trial of the case. Mere words stated in the plaint that the document is a fraudulent document is not sufficient to hold the document as a fraudulent. Presumption of genuineness is attached to a written document. Although, it is a rebuttable presumption, but it is for a party to rebut this presumption. The plea of fraud and deception if any can very well be explained by the person with whom it has been played. To prove any kind of forgery in the present case, the defendant/appellants have not examined any handwriting expert. Therefore, the stand taken by the defendant/appellants remain confined to his oral averments only and same has not been substantiated by him by way of leading cogent and convincing piece of evidence.

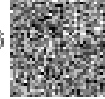
3. That it is submitted that the thumb impressions of deceased Mukhtiar Singh on agreement to sell were admitted by legal heirs/appellants. Once those thumb impressions of Mukhtiar Singh on agreement to sell Ex. P2 and receipt Ex.P3 were admitted, onus was upon appellants to prove that no such agreement to sell was ever executed by deceased Mukhtiar Singh, but they failed to prove the same. Appellants who are legal heirs of Mukhtiar Singh, did not examine any witness to prove that no such agreement to sell was executed by deceased Mukhtiar Singh. In case, agreement to sell is a forged and fabricated document, then the thumb impression of deceased Mukhtiar Singh could not have obtained on so many papers/documents, as mere execution of agreement to sell was sufficient. Similarly, thumb impressions of deceased Mukhtiar Singh were on six places on receipt Ex.P3. Mukhtiar Singh had also put his thumb impression and affixed his photograph in register of deed writer, copies of which are Ex. P6 & Ex. P7 on record. Moreover,



defendant Mukhtiar Singh did not bother to contest the suit and earlier the suit filed by the respondents/plaintiffs was decreed ex parte. Reliance is placed upon “**Hodil Singh (deceased) represented by Legal Heirs Versus Bhagwant Singh (Deceased) represented by Legal Heirs**”, [2010 (2) CCC 608], wherein it was held that there is a general tendency amongst the members of society to dispute execution of agreement after executing an agreement to sell to absolve themselves from liability to execute sale deed in consequence of said agreement.

4. That the appellants have alleged that the deceased Mukhtiar Singh was a drug addict and respondents/plaintiffs had obtained his thumb impressions on blank stamp papers, taking advantage of his ill-health due to intoxication and reliance has been placed upon the judgment dated 13.12.2012 passed by the Learned Special Court, Jalandhar, whereby, Mukhtiar Singh was held guilty for keeping in his possession 25 grams of Heorin and was sentenced there under. In this regard it is submitted that mere producing on record one judgment would not show that Mukhtiar Singh was habitual of taking drugs as claimed by appellants/defendants. From the facts and circumstances narrated in said judgment Ex. D1, at the most it can be said that Mukhtiar Singh was once apprehended by the police when he was found in possession of 25 grams of Heorin. Apart from this, respondents have duly proved on record through oral as well as documentary evidence that the deceased Mukhtiar Singh being owner in possession of the suit property has executed an agreement to sell dated 10.04.2013 (Ex. P2) in favour of plaintiff in the presence of marginal witnesses and in their presence, defendant had received a sum of Rs. 19,50,000/- as earnest money from the plaintiff but failed to execute the registered sale deed.

5. That the appellants had further alleged that PW-2 Charanji Lal was not an attesting witness to agreement to sell and receipt and he is a close relative of respondent no.2/Harbans Lal being his nephew and his signatures were obtained on agreement to sell, receipt and register of deed writer, subsequently to prove the documents. In this regard it is submitted that upon perusal of the agreement to sell, receipt and register of deed writer will show that signatures of marginal witness Charanjit Lal were obtained at relevant places on those documents and it does not mean that his signatures were obtained subsequently to show him as a witness. Mere fact that Charanji Lal is close relative of respondent no.2/Harbans Lal does not mean that he was not a witness to the agreement to sell. Rather such a person is kept as marginal witness, who can support the case of Vendee in case a Civil suit is filed in the Court so that he can depose



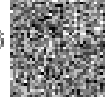
in the Court. As far as remaining marginal witness on agreement to sell and receipt are concerned, they were from the Village of deceased Mukhtiar Singh.

6. That the appellants have got examined Kulwinder Singh as DW-1, who claimed that he was known as Kulwant Singh and his thumb impressions had been obtained on agreement to sell and receipt along with those of deceased Mukhtiar Singh. However, he could not produce any document on record to show that he was also known as Kulwant Singh as claimed by him in his affidavit Ex. DW1/A. It is pertinent to mention here that marginal witness Kulwant Singh was from Village Bansian whereas DW-1 Kulwinder Singh is belonging to Village Bir Bansian. It was admitted by DW1 Kulwinder Singh in his cross examination that Village Bir Bansian and Village Bansian are two separate Villages though said villages are quite close to each other. Therefore, appellants had failed to disprove the evidence adduced by the respondents regarding execution of agreement to sell in question. Moreover, in case agreement to sell in question and receipt had been forged and fabricated documents as claimed by the appellants, they must have filed a complaint against respondents for fabricating the documents, but admittedly neither deceased Mukhtiar Singh himself nor his legal heirs i.e appellant/defendants, filed any complaint against respondents/plaintiffs for fabrication of agreement to sell in question.

7. That it is submitted that the respondents have paid the entire sale consideration i.e Rs. 19,50,000/- as earnest money to defendant/Mukhtiar Singh and the balance sale consideration was paid in the Learned Court for getting the sale deed executed through Court. Apart from this, respondents/plaintiffs have proved on record that the deceased Mukhtiar Singh being owner in possession of the suit property has executed an agreement to sell dated 10.04.2013 (Ex. P2) in favour of plaintiff in the presence of marginal witnesses and in their presence, defendant had received a sum of Rs. 19,50,000/- as earnest money from the plaintiff but failed to execute the registered sale deed. Thus, on the basis of afore-mentioned submissions the present regular second appeal filed by the appellants being devoid of merits, may kindly be dismissed with exemplary cost.”

4. Analysis of arguments put forth by the learned counsel representing the parties:-

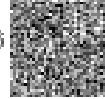
4.1 This Court now proceeds to analyze the arguments of the learned counsel representing the plaintiffs.



4.2 The first submission is with regard to the fact that the plaintiffs were always ready and willing to perform their part of contract, however, as already noticed, the plaintiffs have failed to produce any evidence that on the date when the sale deed was to be executed, they were carrying the balance sale consideration of Rs.15,50,000/- along with stamp duty and registration charges when they visited the office of Sub-Registrar on 10.02.2014. The defendants have specifically asserted that the plaintiffs do not possess the sufficient means. When plaintiff appeared in evidence, he was cross-examined at length, however, he did not produce any evidence to prove his financial resources. He has neither produced J-Forms, which are issued when the crop is sold or his bank accounts to prove the bank balance. In the cross-examination, when suggestion was given to him, he stated that on 10.02.2024, he went with some amount in cash, whereas, remaining amount was intended to be paid in the form of cheque, however, neither the cheque was produced, nor the bank details were given. The plaintiff Sh. Harbans Lal has not been examined. Hence, there is sufficient material to doubt about the plaintiffs wherewithal to complete the deal.

4.3 With regard to the second submission, it may be noted that though there is no sufficient evidence to prove that the agreement to sell is forged and fabricated, however, there is suspicion with respect to the circumstances in which the agreement to sell was entered, particularly when it was scribed in Village Banga, which is at a distance of 40km, on a stamp paper, which was purchased on 28.03.2013.

4.4 With respect to third submission, this Court has already observed that though the defendants have failed to prove that the agreement



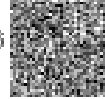
to sell was scribed on blank papers with thumb impression of Sh. Mukhtiar Singh, however, the agreement appears to be suspicious.

4.5 With respect to fourth submission, it may be noted that apart from the judgment, both the witnesses examined by the defendants have corroborated the documentary evidence. Hence, it is not correct on the part of the plaintiffs counsel to assert that there is no other evidence except judgment Ex.D-1.

4.6 Submission number fifth and sixth put forth by the learned counsel lacks substance.

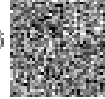
4.7 With regard to the seventh submission, it may be noted that the plaintiffs were required to prove that when they visited the office of the Sub-Registrar on 10.02.2014, they carried the amount of balance sale consideration of Rs.15,50,000/- and the amount of stamp duty and registration charges. It is not the case of the plaintiffs that the defendants had agreed to receive the payment through cheque. Moreover, the aforesaid cheque has never been produced.

4.8 This Court is of the view that though the agreement to sell is doubtful, however, there is no sufficient evidence to conclude that the agreement to sell was not entered without exchange of some amount. Sh. Mukhtiar Singh had appended his thumb impression on each page of the agreement to sell, which is scribed on as many as four stamp papers of Rs.500/- each. His photograph is also pasted. He has also separately executed a receipt admitting the payment. He has signed in 'Punjabi' across the revenue stamp, which has been pasted on the receipt. His thumb impression and photograph is also in the scribe's register.



5. **Discussion by this Court:-**

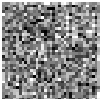
5.1 It shall be noted here that while filing the written statement, the defendants have asserted that the plaintiffs neither paid the amount of Rs.19,50,000/- at the time of entering into agreement to sell nor they have capacity to pay the huge amount. When plaintiff No.1 appeared in evidence as 'PW-1', he was cross-examined at length with respect to various aspects including his financial resources. He stated that he is owner of 10 acres of land. He also stated that he shall bring the J-Form to show the sale of his agricultural produce with respect to year 2012-2013. On 07.08.2019, the cross-examination was deferred as he sought time to produce the J-Forms, however, when he appeared before the Court on 22.09.2019, he stated that he does not have J-Forms of the year 2012-2013. He also mentioned about holding bank accounts in Oriental Bank of Commerce, Mukandarpur and Punjab National Bank, Mukandarpur and State Bank of India, Mukandarpur. On being questioned about the balance amount lying in the accounts or its details in January, 2013, he stated that he does not remember how much amount is lying. On being questioned about second plaintiff namely Sh. Harbans Lal, the PW-1 cited about ill-health and that he cannot give any evidence as to how much amount Sh. Harbans Lal possesses. He stated that he is not working anywhere but doing domestic work, however, both the Courts have overlooked these aspects. Moreover, it has come in evidence that the village where the property is located falls in the area of Tehsil Goraya, which is 4-5km from the village, however, the agreement to sell is alleged to have been scribed at village Banga, which is at distance of 20-30km from the village.



5.2 There is another aspect of the matter. On a bare perusal of four non-judicial stamp papers total worth of Rs.2,000/-, on which the agreement to sell has been scribed, it becomes evident that these stamp papers were purchased on 28.03.2013 at Banga, which is stated to be 40 kms away from the village Bansian, where the suit property is located. As per the plaintiff, the talks with respect to the sale of land took place on 09.04.2013 at Village Bansian. On the reverse side of the first page, thumb impressions or signatures of Sh. Mukhtiar Singh have not been appended/obtained. There is no explanation for purchase of the stamp paper on 28.03.2013, particularly when the talk of selling the land for the first time took place in the village on 09.04.2013. Moreover, there is no explanation why the agreement to sell was scribed at Banga, whereas, the Tehsil Goraya is at a distance of 4.5 km.

5.3 Moreover, there is another aspect of the matter. The defendants have asserted that Sh. Mukhtiar Singh was a drug addict. In order to prove that fact, the defendants produced a certified copy of judgment passed by the Special Court in December, 2012, convicting him for possessing 25 gram heroin. The trial Court did not refer to the judgment, however, the First Appellate Court stated that mere production of judgment would not show that Sh. Mukhtiar Singh was habitual of taking drugs. When widow of Sh. Mukhtiar Singh came forward to testify, she also reiterated the aforesaid facts. In these circumstances, the Court was required to properly analyze the argument.

5.4 As already noticed, both the Courts have decided the case without properly appreciating the defendants defence. It has been contended by the defendants that as per jamabandi for the year 2010-2011, there existed a residential house constructed over an area of 1 kanal and 8 marlas in the



suit property, but there is no reference to the constructed house in the agreement to sell. When the plaintiff appeared in evidence, he did not dispute this fact. Both the Courts have also erred in failing to examining the suit in the context of unamended Section 20 of the Specific Relief Act, 1963 (hereinafter referred to as the ‘1963 Act’), which makes the relief of specific performance of the agreement to sell discretionary based on equity. It is also the defendants case that if the decree is granted, they will not be left with any parcel of agricultural land and also they will lose their only roof. Sh. Mukhtiar Singh left behind two minor children apart from his mother and widow.

5.5 Keeping in view the aforesaid position, the Court was required to examine the case in the context of discretionary relief as provided by the 1963 Act.

6. **Decision:-**

6.1 Keeping in view the aforesaid facts and discussion, this Court is of the considered view that interest of justice would be met, if the plaintiffs are granted alternative relief of refund of earnest money along with interest at the rate of 9% per annum. Hence, the judgments passed by the Courts below are modified accordingly.

6.2 With these observations, the appeal is disposed of.

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

July 25th, 2024

(ANIL KSHETARPAL)
JUDGE

By

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No