

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RSA-680-2020 (O&M)
Reserved on: 15.07.2024
Date of decision: 18.07.2024

SUKHJINDER SINGH ..Appellant

Versus

HARJIT SINGH ..Respondent

2. CR-740-2022 (O&M)

SUKHJINDER SINGH ..Petitioner

Versus

HARJIT SINGH ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mansur Ali, Advocate
Mr. Raj Sumer Singh, Advocate
and Mr. Vikas Verma, Advocate
for the appellant (in RSA-680-2020)
for the petitioner (in CR-740-2022).

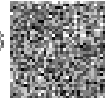
Mr. Kanwar Abhay Singh, Advocate
Mr. Govind Rana, Advocate
and Mr. Karanjeet Singh Brar, Advocate
for respondent (in both cases).

ANIL KSHETARPAL, J.

1. Key facts of the case:-

1.1 With the consent of the learned counsel representing the parties,
two connected cases i.e. RSA-680-2020 and CR-740-2022, shall stand
disposed of by common order.

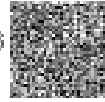
1.2 In substance, the decision in the regular second appeal shall
govern the fate of civil revision petition.



1.3 In this regular second appeal, the defendant assails the correctness of First Appellate Court's judgment, which in turn has reversed the trial Court's judgment.

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

1.5 On 28.05.2012, Sh. Sukhjinder Singh (defendant) agreed to sell the land measuring 32 acres (256 kanals) at the rate of Rs.11,57,000/- per acre on receipt of earnest money of Rs.1,70,00,000/- in favour of the plaintiff. The possession of 10 acres of land was delivered to the plaintiff. As per the agreement to sell, the sale deed was to be executed on 12.10.2012. It is the case of the plaintiff that the defendant received Rs.65,00,000/- on 26.06.2012, whereas, he received Rs.1,35,00,000/- on 12.10.2012. The date for execution of the sale deed was extended to 20.02.2013, as the defendant was unable to redeem the mortgage on payment of the loan. The plaintiff claims that he attended the office of the Sub-Registrar on 20.02.2013, however, the defendant did not appear. Further, the plaintiff asserted that case of the plaintiff is that on 12.10.2012, the defendant sent his father, who was his attorney to execute the sale deed. The plaintiff purchased the stamp papers and draft sale deed was prepared, however, the defendant's father went away claiming that he will come back after taking medicine, however, he did not come back. Thereafter, the defendant came to the plaintiff's place at Malout and received additional amount of Rs.1,35,00,000/- and executed an endorsement extending the date for execution of the sale deed to 20.02.2013.



1.6 The defendant while contesting the case, claimed that no agreement to sell was executed and he did not receive any payment. He also denied delivery of possession of 10 acres of land, however, he stated that there were some money transactions between the parties as the plaintiff's firm required the amount in its account in order to take more credit from the bank. He also claimed that he was busy making his film career and used to reside in Bombay and therefore, there were lot of money transactions on his account with parties and similarly, the money transaction between the plaintiff and defendant has no concern with respect to the sale of the land. He also claimed that the plaintiff and Sh. Gurjit Singh were not in position to purchase the land as they were already drowned in debt.

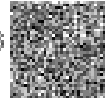
1.7 Replication was filed and issues were culled out.

1.8 The parties lead their evidence. The trial Court dismissed the suit, which was reversed in appeal by the First Appellate Court.

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

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the photocopy of the record, which has been produced by the learned counsel representing the parties. The correctness of the photocopied record has not been disputed.

2.2 The learned counsel representing the appellant has submitted that the plaintiff has failed to prove the source of the amount paid by him to the defendant. He further submitted that defendant on the date of the agreement to sell was at Bombay, hence, the agreement to sell could not be executed. He further submitted that the property is situated in Malout,



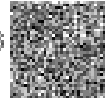
whereas, the agreement to sell has been entered into at Ludhiana. He further referred to the deposition of Sh. Harjit Singh as well as Sh. Sukhjinder Singh.

2.3 Per contra, the learned counsel representing the respondent has submitted that the receipt of the entire sale consideration is admitted by the defendant. While highlighting the statement of Sh. Novel Rebello, he submits that it is proved that the defendant was present at Bombay on the day, the alleged agreement to sell was signed.

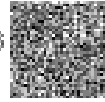
3. Discussion by this Court:-

3.1 This Court has considered the submissions and analysed the arguments of the learned counsel representing the parties.

3.2 While filing the written statement, the defendant has stated that there was neither any agreement to sell nor the amount was paid. However, in para 5 of the written statement, the defendant has asserted that the plaintiff along with his relative Sh. Gurjit Singh runs a business of wax plant in the name of 'M/s Classic Kinnow Waxing and Grading Plant' and the plaintiff used to deal with the defendant and his father regarding the sale and purchase of kinnows. The plaintiff required some money transactions for enhancing their credit limit from the Bank, whereas the defendant was busy making his career in films and the money transaction between the plaintiff and the defendant has no concern with the sale of the land. When, the defendant appeared in evidence, he stated that he received the amount, however, that amount was for waxing of kinnow fruits, which were grown by the defendant. It is evident that there is a difference between the stand taken by the defendant, in his written statement as well as in the evidence. The



defendant has also admitted that he might have purchased the stamp paper for execution of the agreement to sell from Ludhiana. Thus, the statement of defendant is not reliable. The entire sale consideration i.e. Rs.3,70,00,000/- has been paid to the defendant through Real Time Gross Settlement (RTGS) transaction either from the account of the plaintiff or Sh. Gurjant Singh or from the firm. It is the defendant, who has orchards of kinnows and produces the same. If the said amount was transacted to apply wax in order to increase the shelf life of the fruit, then, there is no occasion for the defendant to transfer a huge amount of Rs.3,70,00,000/- to the defendant. Moreover, it is proved on the file that defendant purchased the stamp paper from the stamp vendor in order to execute the agreement to sell. The defendant has appended his signature in the register maintained by the stamp vendor at Serial No.262. Sh. Tejinder Pal, the stamp vendor, has proved the copy of the stamp vendor's register, wherein, at Serial No.262, the defendant has appended his signatures. Even on the reverse side of the first page of the agreement to sell, the signature of the defendant appears. Moreover, on a bare look at the photocopy of the agreement to sell, it becomes evident that the defendant has signed the first page of the agreement to sell twice. He has signed on the left hand margin as well as at the bottom of the first page. At the second page, the defendant has appended three signatures, one on the left hand margin, secondly where the recitals in the agreement to sell come to an end and thirdly after the note appended. On 26.06.2012, he has again appended the signature while receiving Rs.65,00,000/- in addition to the previous payment of Rs.1,75,00,000/-. He has acknowledged the receipt of total amount of Rs.2,35,00,000/-. On the reverse side of the second page, another



endorsement has been executed and signed, which proves that on 12.10.2012, defendant received Rs.1,35,00,000/-. Thus, the entire payment of Rs.3,70,00,000/- stood paid. On the fourth page also, the defendant has signed the same. Once, the money has been paid through bank, there can be no doubt about the plaintiff's wherewithal to pay.

3.3 The defendant has failed to prove that on 28.05.2012, he was at Bombay. Sh. Novel Rebello, has stated that the defendant accompanied by his wife was staying in a resort from 23.05.2012 to 31.05.2012, and he produced invoices Ex.D5/1 to Ex.D5/38. But these invoices do not bear the signature of the defendant. The second part of the argument is based upon the fact that through ATM of the defendant, certain amount at Bombay was withdrawn, however, the said fact does not prove that the defendant was present at Bombay on 28.05.2012, particularly when the defendant signed the register of the stamp vendor at the time of purchasing the stamp papers.

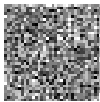
3.4 The last submission of the defendant's counsel also holds no firm ground because the agreement to sell can be scribed at any place. It is wholly dependant on the wish of the parties. The agreement to sell has been scribed on the non-judicial stamp paper worth Rs.2,000/-, which was purchased at Ludhiana by the defendant.

4. Decision:-

4.1 Keeping in view the aforesaid facts and discussion, the appeal lacks merit, hence, dismissed.

CR-740-2022

1. In the civil revision petition, the petitioner challenges the correctness of executing order passed while dismissing defendant's objection
petition.



2. In substance, the defendant claims that his regular second appeal is pending, hence, proceedings in the execution should be stayed. The aforesaid appeal has already been found without merit.
3. Keeping in view the aforesaid discussion, the revision petition is also dismissed.
4. All the pending miscellaneous applications, if any, are also disposed of.

July 18th, 2024

(ANIL KSHETARPAL)

JUDGE

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Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No