



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

RSA-60-1993
Reserved on : 16.09.2024
Pronounced on : 04.11.2024

Gurbachan Singh and others Appellants

versus

Swaran Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Swarn S. Tiwana, Advocate
for appellants No.2 and 3.

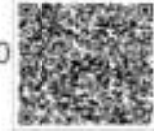
Mr. Vivek K. Thakur, Advocate
for appellant No.4.

Mr. Chanderhas Yadav, Advocate
for appellants No.5 and 6.

Mr. A.K. Garg, Advocate for
Mr. H.S. Jugait, Advocate
for respondent No.2.

PANKAJ JAIN, J.

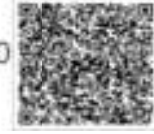
1. Defendants are in appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellants as defendants and respondents as plaintiffs.
2. Plaintiffs filed suit for possession by way of specific performance of oral agreement to sell dated 06.07.1986. Further prayer was for declaring sale deeds dated 15.09.1986 executed in favour of defendants No.2 to 6 as null and void.
3. Plaintiffs claimed that defendant No.1 is the owner of the suit land as described in the head note of the plaint. The land is situated in the revenue estate of village Naggal Faizgarh, Tehsil Kharar, whereas



defendant No.1 was residing at village Manakpur, Tehsil Kharar for last 40 years with one Gurdial Singh s/o Beant Singh being unmarried and issueless. It was further pleaded that defendant No.1 agreed to sell land in favour of plaintiffs on 06.07.1986, when the plaintiffs alongwith their father visited house of Gurdial Singh. It was an oral agreement to sell. The total sale consideration of land was agreed to be Rs.15,000/-. Pursuant to the aforesaid agreement, sale deed was executed by defendant No.1 in favour of the plaintiffs on 17.07.1986 on the stamp papers purchased by defendant No.1 with money paid by the plaintiffs. Defendant No.1 and the witnesses thumb marked the sale deed. While plaintiff-Swaran Singh and his father Gian Singh were presenting the sale deed before the Sub-Registrar, defendant No.1 went missing. They came to know that Gurbachan Singh s/o Raunaq Singh and Sher Singh s/o Waryam Singh nephews of defendant No.1 have enticed defendant No.1 away from the Tehsil premises. Defendant No.1 did not appear before the Sub-Registrar and the sale deed could not be registered.

4. It was pleaded that the plaintiffs remained ready and willing with the consideration amount to get the sale deed executed and are still ready and willing to perform their part of the agreement. Thus are entitled for decree of specific performance. Defendants No.2 to 6 despite having notice of the agreement to sell in favour of the plaintiffs, purchased the suit land from defendant No.1 vide two sale deeds dated 15.09.1986. Both the sale deeds being hit by the doctrine of *lis pendence* have no bearing on the rights of the plaintiffs.

5. Suit was resisted by the defendants. Defendant No.1 in his written statement denied agreement to sell dated 06.07.1986. It was

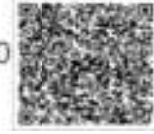


claimed that defendant No.1, being issueless was residing with Gurdial Singh and was under his undue influence. On 17.07.1986, he was brought to the office of Sub-Registrar by Gurdial Singh. On the asking of Gurdial Singh, he thumb marked certain papers. On inquiry, Gurdial Singh told him that the same were to execute chakotanama (lease deed) of the suit land in favour of father of the plaintiffs. In the meantime, nephews of defendant No.1 Gurbachan Singh and Shamsheer Singh came on the spot. They apprised defendant No.1 that on the pretext of executing lease deed, Gurdial Singh was being made to sell his land. Hearing this, defendant No.1 came back with them. He never wanted to sell his land.

6. Separate written statement was filed by defendants No.2 to 6 claiming that they were never in the knowledge of any transaction with respect to the land between plaintiffs and defendant No.1 and are bonafide purchasers.

7. On the basis of the pleadings with the parties, suit filed by the plaintiffs was put to trial by the Court framing following issues:-

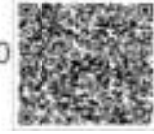
- “1. Whether the defendant No.1 entered into an oral agreement dated 6.7.1986 with the plaintiffs? OPP.
2. Whether defendant executed sale deed dated 17.7.1986 under the oral agreement dated 6.7.1986, if so its effect? OPP.
3. Whether the plaintiffs were ready and willing to perform their part of the contract? OPP.
4. Whether plaintiffs in the alternative are entitled to recovery of 15,000/- from the defendant by way of damages? OPP.
5. Whether the sale deeds dated 15.9.1986 are illegal, null and void, as alleged, if so, its effect? OPD.
6. Whether the sale deed dated 17.7.1986 is result of fraud and misrepresentation as alleged, if so its effect? OPD.
7. Whether suit has not been properly valued for the purposes of court fee and jurisdiction OPR.



8. Whether the suit in the present form is not maintainable? OPD.
9. Whether defendant Nos. 2 to 6 are bonafide transferees for consideration without notice, as alleged, if so to what effect? OPD.
10. Relief.”

8. Trial Court believed Gurdial Singh holding that he is the most trustworthy witness. Referring to advance age of vendor Nirnanjan Singh, Trial Court opined that may be he thought of selling his land. The plaintiffs being tenants were the obvious choice for defendant No.1 to sell the land. Trial Court decreed the suit filed by the plaintiffs. Appellate Court affirmed the findings of the Trial Court holding that generally it is found that it is not easy to eject the tenants, so the owners do sell land to the tenant and thus the agreement to sell stands proved.

9. Learned counsel appearing for the appellants have attacked the judgment and decree passed by the Courts below. It has been argued that the civil suit for specific performance has been filed without spelling out any terms and conditions of the oral agreement propounded by the plaintiffs. Pleadings as well as evidence are totally bereft of any terms and conditions of oral agreement. Head note of the plaint shows that the same is with respect to land measuring 7 kanal, 17 marlas. Draft sale deed is for 8 kanals of land. When the plaintiffs appeared in witness box, they stated that the bargain was for 3.5 acres of land belonging to Narinder Singh in his possession being chakotedar. In the entire transaction, be it alleged oral agreement to sell or the written sale deed thumb marked by defendant No.1 not even a single penny has exchanged the hands, yet the Courts below have decreed the suit filed

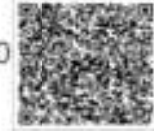


by the plaintiffs. Defendant No.1 in his written statement specifically pleaded his ignorance about the contents of the document. Specific case of defendant No.1 is that he was made to thumb mark the document by Gurdial Singh on the pretext of the same being a lease deed. Undue influence of Gurdial Singh has been proved on record as the plaintiff themselves admit that defendant No.1 was residing with Gurdial Singh for last 40 years being issueless and unmarried.

10. It is further argued that just within two months, the same land was sold vide two sale deeds for consideration of Rs.48,000/- + Rs.33,500/- i.e. for an amount of Rs.81,500/- whereas the plaintiffs wanted to usurp the land for Rs.15,000/- only.

11. Attention of this Court has been drawn towards testimony of PW-1 Swaran Singh-plaintiff who admitted that they had gone to the house of Gurdial Singh with the chakota money of Rs.1,200/- but claimed that the bargain was struck for the sale of land. Even that story projected by the plaintiff has been put in dock by their own witness PW-2 Gurdial Singh who stated that Gian Singh and Swaran Singh never paid any chakota money to Niranjana Singh in his presence. He further stated that Gain Singh and Swaran Singh might have gone to Niranjana Singh for payment of chakota money prior to the date of bargain. Reference is being made to admission on his part that he was not witness to the bargain. The bargain had already finalized between the parties when he arrived.

12. Counsel for the appellants further submits that the version of defendant No.1 was further corroborated by the testimony of DW-3 Gurbachan Singh which has been totally ignored by the Court below.



13. *Per contra*, counsel for the plaintiffs-respondents submits that the issue of there being agreement to sell between the parties stands sealed after execution of sale deed by Niranjana Singh-defendant No.1. Unregistered sale deed was executed by vendor in favour of vendee. Later on, he refused to get the same registered and thus the Courts below have rightly held that the plaintiffs are entitled to get decree of possession by way of specific performance. Reliance is being placed upon '*S. Kaladevi vs. V.R. Somasundaram and others*' reported as **2010 (5) SCC 401**.

14. I have heard counsel for the parties and have carefully gone through the records of the case.

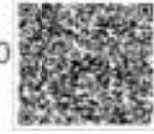
15. The plaintiffs seek suit for specific performance of an oral agreement to sell dated 06.07.1986. It is claimed to have been executed by defendant No.1 in favour of plaintiffs. Further claim is that agreement to sell is corroborated by unregistered sale deed dated 17.07.1986 executed pursuant thereto. Unregistered sale deed is Ex.P-1. Thus, plaintiffs want to prove agreement to sell by way of unregistered sale deed claimed to have been executed by defendant No.1. Surprisingly, the oral agreement to sell propounded by the plaintiffs does not find mention in the sale deed alleged to have been executed by defendant No.1.

16. Plaintiff-Swaran Singh appeared as PW-1 to support his case. He claimed that Niranjana Singh the vendor was residing with Gurdial Singh for last 40 years. He was looked after by Gurdial Singh. Swaran Singh-plaintiff alongwith his father met Niranjana Singh at the house of Gurdial Singh on 06.07.1986 when they entered into



agreement to sell. The land agreed to be sold was 3.5 acres. It was owned by Niranjana Singh which was in their cultivating possession as lessees. Dial Singh was present when the bargain was struck. As per plaintiff's statement Niranjana Singh demanded Rs.15,000/- at the first instance and the plaintiff-Swaran Singh along with his father agreed for the same. On the said date, they paid him Rs.1200/- which was lease money. No writing was prepared. Nothing was recorded regarding the agreed rate. He claims that there was another boy sitting while parties agreed qua the purchase of land. He further states that the sale deed was scribed at around 11 a.m. He feigned ignorance about the amount withdrawn by him.

17. PW-2 Gurdial Singh who is claimed to be witness to agreement to sell stated that on 06.07.1986 Gian Singh and Swaran Singh-the plaintiff came to his village. He is clear in admitting that no lease money was paid in his presence by the plaintiff-Swaran Singh to Niranjana Singh. He is not a witness to agreement between parties. The same is evident from his statement. His version is that Gian Singh and Swaran Singh might have gone to Niranjana Singh for payment of chakota money prior to day of bargain and may have had word with him for purchase of land on that date i.e. 06.07.1986. He testifies that so far as he remembers, the bargain was already struck before his arrival for an amount of Rs.15,000/-. Though, PW-1 does not state anything about the target date for execution of sale deed but Gurdial Singh claims that Gian Singh and Swaran Singh told Niranjana Singh that he should come on 17 of 6th or 7th month for sale of the land. He states that apart from him, Niranjana Singh, Gian Singh and Swaran Singh, no one else was



present at that time. He further claims that on the date of execution of the sale deed, he as well as Niranjana Singh reached tehsil premises at 09/10 a.m. Rs.1875/- was paid in his presence by the plaintiff-Swaran Singh for purchase of stamp paper.

18. Scribe of the sale deed Sarja Singh appeared as PW-4. He claimed that entry regarding the sale deed exists at Sr. No.735 dated 17.07.1986 in his register. He claims to have scribed the sale deed on the asking of Niranjana Singh but states that he did not know Niranjana Singh or Gurdial Singh prior to scribing the sale deed.

19. Sarja Singh was also examined by defendants as DW-1. He brought his register. It came to the light that on 17.07.1986. Entry at Sr. No.734 was with respect to execution of a pronote executed by one Vadhawa Singh with respect to loan of Rs.5500/- obtained from Niranjana Singh s/o Chet Singh, resident of village Shampur. The entry at Sr.No. 735 was with respect to sale deed in question executed by Niranjana Singh s/o Hira Singh in favour of Swaran Singh, Kaka Singh and Nirmal Singh.

20. The aforesaid Vadhawa Singh was examined by the defendants as DW-2. Vadhawa Singh claimed that he was sitting on the spot while Sarja Singh scribed sale deed in question. The document was executed with respect to lease. Thumb impression of Niranjana Singh was taken by a person accompanying him by saying Niranjana need not worry as he was responsible. It is at that point of time that Gurbachan Singh came and asked Niranjana Singh as to why he has sold the land. Though Niranjana Singh claimed that he has leased the land, but his nephew apprised him of the sale deed.



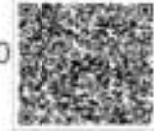
21. Gurcharan Singh was identified by Vadhawa Singh in Court. Gurbachan Singh nephew of Niranjn Singh appeared as DW-4. He testified on the lines of the written statement filed by defendant No.1. He stated that on 17.07.1986, when he went to village Naggal to see his uncle, he met Kehar Singh on the road who told him that Niranjn Singh had gone to tehsil alongwith Dial Singh @ Gurdial Singh. When he reached tehsil premise Kharar, the fraud being played upon Niranjn Singh was discovered. Niranjn Singh accompanied him and went back from Tehsil.

22. During the course of the trial, Niranjn Singh died.

23. In view of the aforesaid facts that have come on record, the pivotal issue that falls for consideration of this Court is:

(i) Whether the plaintiffs successfully proved oral agreement to sell dated 06.07.1986?

24. Plaintiff propounded oral agreement to sell claiming that the same was agreed in the presence of Gurdial Singh. Plaintiff-Swaran Singh claims that his father Gian Singh also accompanied him. Gain Singh never appeared in the witness box. Gurdial Singh also attested the sale deed. Though, he testified defendant No.1 agreed to sell land in favour of plaintiffs for Rs.15,000/-, however in the same breath, he testified that the deal was not finalized in his presence. It was finalized before he reached the spot. There is no term and condition coming forth with respect to the oral agreement to sell claimed by the plaintiffs. Parties did not even agree regarding the date of execution of sale deed. So much so, the unregistered sale deed Ex.P-1 alleged to have been executed pursuant to the aforesaid oral agreement to sell, does not

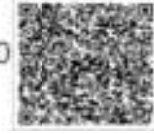


mention about the oral agreement to sell dated 06.07.1986.

25. Counsel for the plaintiffs argues that in these circumstances, the unregistered sale deed can be admitted and read in evidence to prove the agreement to sell. Unregistered Sale Deed itself has attained the status of agreement to sell. The argument raised is misconceived. Suit is qua specific performance of agreement dated 06.07.1986 and not for that of unregistered sale deed. He relies upon *Kaladevi's case (supra)*. It was a case wherein the question was whether unregistered sale deed is admissible in evidence. Answering the aforesaid issue the Apex Court held that where unregistered sale deed is tendered in evidence, not to prove a completed sale, but as a proof of an agreement to sell, the same can be received in evidence. Moreover, it was a case of payment of full consideration received by vendor. In the present case not even a single penny has exchanged the hands. In Kaladevi's case (supra), the oral agreement to sell and unregistered sale deed were of the same date. Thus reliance by the counsel for the plaintiffs on the case of Kaladevi's ratio is misplaced.

26. Defence of defendant No.1 in the written statement was that he was made to thumb mark the document on the pretext of executing chakotanama. Defendant No.1 was an illiterate, indigent person. He was living with Gurdial Singh for last 40 years. He thumb marked unregistered sale deed believing Gurdial Singh. The same has been so proved by the testimony of Vadhawa Singh. Register of petition writer proves presence of Vadhawa Singh on the spot.

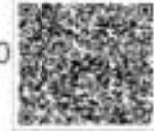
27. Trite it is that where an illiterate person is induced by a false statement of another to thumb mark a written document which is



fundamentally different in character from the one which he envisaged, he can avoid the same claiming not to be his. This has developed as doctrine of 'non-est factum'. Supreme Court while considering in *Ningawwa v. Byrappa Hireknraba, AIR 1968 Supreme Court 956*, concluded on the facts that where a husband obtained the signature of his wife to a gift-deed of land without making any misrepresentation as to its character but subsequently included two more plots in the deed, the transaction was voidable. Their Lordships of the Supreme Court observed as under:

"The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document, and fraudulent misrepresentation as to the contents thereof. With reference to former, it has been held that the transaction is void while in the case of her latter it is merely voidable".

The above distinction drawn by various Courts in England before the judgment rendered in the case of Saunders (supra) and of the Supreme Court in the case of Ningawwa (supra) was approved by the Supreme Court in the case of *Smt. Bismillah v. Janeshwar Prasad, AIR 1990 Supreme Court 540*. The distinction between the character of a document and the contents of the document stands elaborated in Bismillah's case (supra). Smt. Bismillah challenged the validity of sale-deeds concerning agricultural land executed by her agent. The ground of invalidation of the sale-deed was that the agents were not authorised to do so. In the suit filed by her it was asserted that a clause in the instrument of agency drafted in Hindi had been incorporated by the agent which she never authorised nor she knew Hindu language. As a



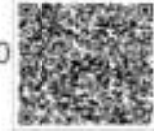
consequence of declaration concerning invalidation of sale-deeds possession of the agricultural land was claimed. The Supreme Court reversing the view taken by the High Court. Supreme Court observed as under (at pp. 542 and 543 of AIR):

"The common law defence of non est factum to actions on specialties in its origin was available where an illiterate person to whom the contents of a deed had been wrongly read executed it under a mistake as to its nature and contents, he could say that it was not his deed at all. In its modern application, the doctrine has been extended to cases other than those of illiteracy and to other contracts in writing. In most of the cases in which this defence was pleaded the mistake was induced by fraud; but that was not perhaps, a necessary factor, as the transaction is "invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signor did not accompany the signature; in other words, that he never intended to sign, and therefore, in contemplation of law never did sign, the contract to which his name is appended".

Law recognizes distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. Mistake to the very nature of character of the transaction constitutes valid defence.

28. In the present case, there are number of issues which remained unanswered:-

- (a) No term and condition with respect to oral agreement propounded by the plaintiffs is forthcoming. Parties are even unaware of target date.
- (b) Plaintiff-Swaran Singh claims that oral



agreement to sell was executed in presence of his father Gian Singh and Gurdial Singh. Gain Singh did not enter into witness box. Gurdial Singh testified that he was not present while parties agreed for deal.

(c) There are serious discrepancies between testimony of PW-1 plaintiff-Swaran Singh and PW-2-Gurdial Singh with respect to presence of 5th person on the spot. PW-1 states that another boy was present on spot. Gurdial Singh denies presence of any person apart from plaintiffs, defendant No.1 and he himself.

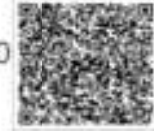
(d) The contradiction between the testimony of plaintiff-Swaran Singh and Gurdial Singh with respect to payment of chakota money remains unexplained.

(e) There is no whisper regarding appointed date of execution of sale deed.

(f) In the unregistered sale deed Ex.P-1, there is no reference of the agreement to sell, propounded by the plaintiffs.

(g) As per the covenant contained in the sale deed possession is with the plaintiffs whereas plaintiff-PW1 while appearing in the witness box admitted that the possession of the land is with defendants No.2 to 5 i.e. the subsequent purchasers.

29. The Courts below failed to analyze the evidence to find answers to aforesaid questions. They have merely recorded conjectural findings that the plaintiffs being tenants over the suit land, were the obvious choice for sale of land. No finding as to whether the agreement to sell propounded by the plaintiff was proved or not has been recorded.



30. As per settled law, construction of a document which is foundation of the suit raises question of law and this Court while entertaining second appeal under Section 41 of the Punjab Courts Act, 1913 is within its jurisdiction to interfere. Reference can be made to ratio of law laid down by Supreme Court in ***Chaman Lal vs. Kamlawati*** reported as ***(2020) 11 SCC 693***, wherein it has been held as under:-

“9. On consideration of the matter, we find that the High Court cannot be said to have exceeded its jurisdiction, as has to be exercised within the ambit of Section 41 of the Punjab Court Act. We say so as the fulcrum of the dispute was the gift deed itself being the document in question. The document was originally penned down in Urdu with the Persian dialect and was thereafter translated to the Punjabi language. The next translation was done in English as also the transliteration. Thus there would be a reliance on an inaccurate document if the translation and the transliteration was not accurate. This is the objective which was sought to be subserved by getting an authenticated translation done in the High Court and the concession/submission of the appellants herein recorded in order dated 02.04.2002 [*Kamla Wati v. Chaman Lal*, RSA No.3888 of 1999, order dated 2-4-2002 (P&H)] in respect of the translation, albeit the order being set aside. The acknowledgment of both the parties to the accuracy of the translation and the transliteration could not be doubted thereafter. If the substratum being the document has been inaccurately translated then there would be a fundamental legal infirmity in the interpretation to be given and in determining the controversy in question. We are thus not inclined to accept this preliminary objection sought to be raised by learned senior counsel for the appellant on the right of the High Court to look into the question on merits.

10. We are fortified in our aforesaid view by earlier judicial pronouncements. We may note that these judgments are in the context of the provisions for second appeal under Section 100 of the said Code as it existed prior to the amendment of 1976,



which is almost pari materia to the existing provision which applies to Punjab (as noticed in *Pankajakshi* [*Pankajakshi v. Chandrika*, (2016) 6 SCC 157 : (2016) 3 SCC (Civ) 105] in para 24]. Per se construction of documents (unless documents of title) to prove a question of fact do not involve an issue of law unless it can be shown that the material evidence contained in that was misunderstood by the court of fact. [*Nedunuri Kameswaramma v. Sampati Subba Rao*, (1963) 2 SCR 208 : AIR 1963 SC 884] In the facts of the present case we are, in fact, dealing with a document of title, i.e., the Gift Deed. Thus, there can be little doubt that if the translation of the document itself is not correctly done, an aspect which was addressed to by the High Court by getting the translation done, which was accepted, then the correct translation would have to be re-construed. It is this principle, which was recognized in *Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.*, 1962 Supp (3) SCR SCR 549 : AIR 1962 SC 1314] 3 while observing in para 2 as under: (*Chunilal V. Mehta case* [*Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.*, 1962 Supp (3) SCR SCR 549 : AIR 1962 SC 1314] AIR . 1316)

“2.Indeed it is well settled that the construction of a document of title or of a document which is the foundation of the rights of parties necessarily raises a question of law.”

31. In view of above, the findings recorded by the Courts below are hereby set aside. The appeal is allowed. Suit filed by the plaintiffs is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

04.11.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes