

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-2319-1992 (O&M)
Date of decision: 05.03.2024

BALBIR KAURAppellant

VERSUS

JANG SINGH & OTHERSRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Anurag Chopra, Advocate with
Ms. Sanjana, Advocate and
Ms. Jaskaran, Advocate
for the appellant.

Mr. Sandeep Punchhi, Advocate
for the respondent.

VINOD S. BHARDWAJ, J. (Oral)

1. The appellant-defendant is in an appeal against the judgment and decree dated 23.02.1991 passed by the Court of Sub Judge, First Class, Fazilka as well as the subsequent dismissal of her appeal by the Additional Sessions Judge, Ferozepur in Civil Appeal No. 73 of 1991 vide judgment and decree dated 09.09.1992.
2. Briefly summarized the facts of the present case are that the respondent-plaintiff alongwith one Bikar Singh had filed the suit for specific performance of the agreement dated 04.02.1987 which was endorsed on 27.02.1987 for the sale of land measuring 37 kanals 05 marlas i.e. ½ share of

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of land measuring 74 kanals 10 marlas as detailed in the head note of the plaint for a sale consideration of Rs. 34,000/- and alongwith an alternative prayer for recovery of Rs. 34,000/- from the appellant-defendant. It had been averred in the plaint that the appellant-defendant was owner of the land measuring 45 kanals 05 marlas being $\frac{1}{2}$ share in the land, described in head note, situated in the village Usmankhera, Tehsil Abohar. It is stated that the appellant-defendant agreed to sell the above said land in favour of respondent-plaintiff for a total sale consideration of Rs. 40,000/-. A sum of Rs. 10,000/- was received as earnest money. An agreement was executed on 04.02.1987 as per which the respondent-plaintiff was to pay an additional Rs. 15,000/- more towards earnest money on or before 20.02.1987. The appellant-defendant had undertaken to execute the sale deed on or before 14.01.1988. It was also contended that the respondent-plaintiff was already in possession of the suit land as tenants and the symbolic possession was also given to the respondent-plaintiff at the time of execution of the agreement itself. The said agreement was stated to have been executed with mutual consent of the parties which was free and voluntary. It is further stated that 08 kanals of the land was sold to Sardara Singh and Gurmel Singh sons of Dan Singh for a sum of Rs. 6,000/- by the appellant-defendant. The respondent-plaintiff is also entitled to adjustment of the above amount and a sum of Rs. 6,000/- paid the appellant-defendant. In this manner, a total sum of Rs. 12,000/- was paid to the appellant-defendant by the plaintiff on 27.02.1987 and an endorsement to this effect was made at the back of the agreement dated 04.02.1987. The terms and conditions of the agreement thus were reaffirmed and renewed. The respondent-plaintiff

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claimed to be ready and willing to perform his part of the contract. They kept waiting for the appellant-defendant in the office of the Sub Registrar on the date fixed for execution of the sale deed, however, the appellant did not turn up. A request was made to the appellant for execution of the sale deed, however, the same was denied. Since the original agreement was for an area measuring 45 kanals 05 marlas and since the land measuring 08 kanals was sold by the appellant-defendant, with the consent of the respondent-plaintiff on 27.02.1987, hence, the appellant was left with the ownership of land measuring 37 kanals 05 marlas i.e. one half share in the land measuring 74 kanal 10 marlas as detailed in the head note and therefore, the suit was filed only for the execution of the sale deed by way of specific performance of the remaining land as agreed upon between the parties.

3. The appellant filed a written statement wherein she admitted the execution of the agreement dated 04.02.1987 but denied the other averments and allegations leveled in the plaint. It was alleged that the respondent-plaintiff are related to her and the Paramjit daughter of Jagdev Singh was brought up by her alongwith her husband and her marriage was also performed by them. She had taken loan for the said purpose. The respondent-plaintiff were giving rent to the appellant-defendant regarding the disputed land, however, after about 2-3 months of solemnization of the marriage of Paramjit, the husband of appellant-defendant died. Being under immense financial hardship and pressure she entered into the said agreement for sale of the disputed land at a much lower value. Further, the respondent-plaintiffs were required to pay a sum of Rs. 15000/- towards further earnest

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money to her on 20.02.1987 (wrongly mentioned as 20.07.1987), however, they could not arrange the funds. The appellant approached the respondent-plaintiff for payment of the balance consideration money but they expressed their inability for paucity of funds. The agreement was, thus, stated to have been cancelled with mutual consent of the parties and that the appellant-defendant had to sell one acre of land, which was also agreed to be sold by the respondent –plaintiffs, to Sardar Singh and Gurmel Singh for a sale consideration of Rs. 6,000/-. It is alleged that the said purchasers were also in league with the respondent-plaintiff and that during the course of such execution of sale deed in favour of the said persons, thumb impressions of the appellant-defendant were obtained on the back side of the agreement which is now being converted into an endorsement dated 27.02.1987. The said endorsement was alleged to be fabricated and not binding upon the rights of the appellant-defendant. It was thus held that the relief of specific performance, being discretionary, and be not awarded in such circumstances and a specific performance ought not to be directed. It was also denied that a sum of Rs.12,000/- was paid to her by the respondent-plaintiff on 27.02.1987.

4. Upon Consideration of the respective pleadings, the following issues were framed :-

1. Whether the endorsement dated 27.02.87 on the agreement dated 04.02.87 was duly executed by the defendant in favour of the plaintiffs go give over riding effect to the terms of original agreement of it merged in the original agreement ? If so its effect? OPP

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2. Whether plaintiff always had been and are ready and willing to perform their part of contract? OPP

3. Whether the plaintiffs are entitled to specific performance of the contract? OPP

4. Whether the agreement in question stands rescinded as per para no. 4 of preliminary objections of the defendant?

5. Whether the endorsement of the agreement, dated 4.2.87 was fabricated on 27.2.87 by the plaintiff by practicing fraud, misrepresentation and undue influence? OPD

6. Whether plaintiffs are estopped by their act and conduct to file the suit? OPD

7. Relief.

5. Evidence was led by the respective parties and upon consideration thereof, the trial Court did not accept the plea of the appellant/defendant and recorded that even though the respondent-plaintiff contended that the parties had come together only at one time to the Tehsil, however, the sale deed Ex.D1 proved by Sardara Singh was typed on 25.02.1987 and was got registered on 27.02.1987. A sum of Rs. 6,000/- was also paid to the plaintiff on 27.02.1987 before the Sub Registrar. Hence, the sale deed was attested on 27.02.1987 and the endorsement Ex.P2 on agreement to sell dated 04.02.1987 was also made on the same date. The said sale deed attested by Baldev Singh who appeared as PW-5 and Bikar Singh-one of the respondent-plaintiffs. Hence, the presence of the parties in the Tehsil complex on 27.02.1987 stood established.

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6. Reliance was also placed on the testimony of the witnesses to hold that the said endorsement was made on 27.02.1987 after receiving Rs. 6000/- from the respondent-plaintiff and adjusting Rs. 6000/- towards price of one acre of land sold out of the land already agreed to be sold in favour of the respondent-plaintiff, vide agreement Ex. P3.

7. As per the endorsement, appellant/defendants sold 08 kanals of land, with the consent of the respondent-plaintiff, and she also acknowledged receipt of an additional a sum of Rs. 12,000/- towards the sale considerations as mentioned in the agreement Ex. P2. Hence, an amount of Rs. 22,000/- was thus received by her in total. The balance amount was to be paid at the time of execution of the sale deed, in terms of the agreement to sell. The endorsement having already been made on the agreement dated 04.02.1987, there was thus a novation of the agreement and it could not be said that the respondent-plaintiff was not ready and willing to perform his part of the obligation. No valid justification had been put forth by the appellant-defendant for failing to execute the sale deed and it could also not be established that the agreement in question was executed as a result of any fraud or coercion/pressure. The suit of the respondent was accordingly decreed by the Sub Judge, Ist Class for specific performance of the agreement dated 04.02.1987 (Ex. P3) and endorsement of 27.02.1987 (Ex. P2) for sale of the balance land measuring 37 kanals 05 marlas i.e. $\frac{1}{2}$ share of land measuring 74 kanals 10 marlas as detailed in the head note of the plaint. The respondent-plaintiff was held liable to pay and deposit the payment due to the appellant/defendant to the tune of Rs. 18,000/- within a

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period of 45 days. The decree sheet was to be prepared and the file to be consigned.

8. Aggrieved of the same, a Civil Appeal No. 73 of 1991 was preferred by the appellant-defendant before the District Judge, Ferozepur. The said appeal was dismissed by the Additional District Judge, Ferozepur vide judgment and decree dated 09.09.1992 after recording as under:-

“7. It is common case of the parties that the defendant entered into an agreement of sale dated 4.2.1987 to sell agricultural land measuring 45 kanals 5 marlas and the defendant received a sum of Rs.10,000/- as earnest money on 4.2.1987. The case set up by the plaintiff is that the defendant affirmed the agreement of sale dated 4.2.1987 by making an endorsement on the back of the same on 27.2.1987, whereas, the case set up by the defendant is that the thumb impression of the defendant were obtained on the back side of the agreement of sale on 4.2.1987 through fraud when she executed the sale deed EXD-1 in favour of Sardara Singh and Gurmel Singh who were in league with plaintiffs. The learned counsel appearing for the appellant has taken me through the agreement of sale dated 4.2.1987 which has been admitted into evidence as Ex.P.3. The learned counsel for the appellant has contended that it was agreed between the parties that the plaintiffs will pay Rs.15000/- on or before 20.2.1987 or further earnest money to the defendant but the plaintiffs were not having enough cash with them to make payment of Rs.15,000/- on or before 20.2.1987. As the plaintiffs failed to make payment of Rs.15,000/- as mere earnest money on 20.2.1987. So the agreement of sale dated 4.2.1987 was cancelled by the mutual consent of the parties. The learned counsel for the appellant has further contended that the defendant sold agricultural land

measuring 8 kanals to Sardara Singh and Gurmel Singh vide sale deed ex.D1 which was registered on 27.2.1987. The plaintiffs in connivance with the vendees Sardara Singh and Gurmel Singh obtained the thumb impression of the defendant on the endorsement dated 27.2.1987 which was later on fabricated by the plaintiffs in connivance with the Vendees Sardara Singh and Gurmel Singh. It is common case of the parties that the defendant sold agricultural land measuring 8 kanals to Sardara Singh and Gurmel Singh vide sale deed dated 27.2.1987 and the execution of sale deed by the defendant in favour of Sardara Singh and Gurmel Singh indicates that the agreement of sale dated 4.2.1987 was cancelled by the parties. At the end, the learned counsel appearing for the appellant has assailed the get the sale deed registred in favour of Sardara Singh etc. which was executed by the defendant in their favour. The endorsement Ex.P.2 has been witnessed by Baldev Singh Sarpanch of village Usman Khera to which both the parties belong. Baldev Singh has appeared as PWS and he has stated that on 27.2.1987. Balbir Kaur sold agricultural land measuring 8 kanals and a sum of Rs.12,000/- were paid to Balbir Kaur as further earnest money by the plaintiffs. He has also further stated that the endorsement Ex.P.2 affirming the agreement of sale dated 4.2.1987 was read over to Balbir Kaur in his presence and she thumb marked the endorsement dated 27.2.1987 in token of its correctness and he has further stated that thumb impression of Balbir Kaur on the endorsement dated 27.2.1987 was not obtained through fraud or misrepresetnation. Baldev Singh is Sarpanch of the village and he is an independent witness having no special interest in any of the parties. The statement made by Baldev Singh cannot be ignored because he is responsible person of the village being Sarpanch and his testimony is also of independent nature. Defendant Balbir Kaur when appeared in the witness box has stated that

she was not willing to execute the sale deed in favour of the plaintiffs because prices of land have increased many-fold. It is well settled principle of law that specific performance of agreement of sale cannot be declined simply on the ground of inadequacy of consideration. Land measuring 9 kanals was sold by the defendant with the consent of the plaintiffs and thereafter endorsement Ex.P.2 dated 27.2.1987 was made on the back of the agreement of sale dated 4.2.1987. So it cannot be said that agreement of sale dated 4.2.1987 was cancelled when the plaintiffs failed to make payment on 20.2.1987 of Rs. 15,000/- as more earnest money, rather the terms and conditions contained in the agreement of sale dated 4.2.1987 were confirmed vide endorsement dated 27.2.1987 made by the parties at the back of the agreement of sale dated 4.2.1987.

8 The plaintiffs have gone on 14.1.1988 to the courts complex alongwith the money to meet the costs of balance of consideration and cost of consideration of the sale deed but the defendant did not tune up to get the sale deed executed. Rather the defendant has taken the stand that she was not willing to execute the sale deed because prices of the land have increased many fold. Jang Singh one of the plaintiffs when appeared in the witness Box has stated that the plaintiffs were always ready and willing and are still ready and willing to perform their part of agreement of sale namely he get the sale deed executed by making payment of the balance of consideration and by making payment to meet the cost of registration of the sale deed. So I am of the view that the defendant confirmed the terms and conditions contained in the agreement of sale dated 4.2.1987 by making endorsement dated 27.2.1987 and the parties did not cancel the agreement of sale dated 4.2.1987 by mutual consent as alleged by the defendant. I am further of the view that the plaintiffs have always remained ready and willing to perform

their part of agreement of sale and they are still ready and willing to perform their part of agreement of sale and it is the defendant who has backed out from the terms and conditions contained in the agreement of sale dated 4.2.1987. I am further of the view that the plaintiffs are not estopped by their act and conduct simple on the ground that they failed to make payment of Rs.15,000/- on 20.2.1987 because the terms and conditions of the agreement of sale were later on affirmed by the defendant vide endorsement dated 27.2.1987. Findings of the trial court on all the issues are based on correct appreciation of evidence produced by the parties and the Law laid down by various High Courts and the Apex court of the country. Hence the findings of the trial court on all the issues are affirmed.

9. In the light of the foregoing discussion, there is no merit in the appeal and the same is therefore dismissed with costs, throughout. Judgment and decree of the trial court are affirmed. The plaintiffs are further directed to make payment of the balance of consideration namely Rs.18,000/- to the defendant within two months of the pronouncement of the order or to deposit the same in the court within two months of the pronouncement of the order. Decree sheet be prepared accordingly. Lower court record be returned and the appeal file be consigned to the record room.

9. Aggrieved thereof, the present Regular Second Appeal had been filed.

10. Counsel appearing on behalf of the appellant-defendant has reiterated his arguments as raised before the First Appellate Court and has contended that the respondent-plaintiff was never ready and willing to perform his part of the agreement. Resultantly, the appellant was not obligated to execute the sale deed. Since the balance earnest money to the

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tune of Rs. 15,000/- was not paid to the appellant-defendant on or before 20.02.1987, hence, the respondent-plaintiff cannot seek specific performance of the said agreement, being in default of the terms and conditions of the agreement itself. It is also argued that the appellant-defendant was in dire need of money and due to inability of the respondent-plaintiff to pay the balance sale consideration, she was compelled to execute the sale deed in favour of Sardara Singh and Gurmel Singh with respect to one acre of land at a lower rate. Hence, her consent for selling the land could not be deemed to be without any coercion or undue influence. He vehemently argues that the agreement of 04.02.1987 cannot be enforced since the respondent-plaintiff himself was in breach of a terms and conditions contained in the agreement to sell. It was reasserted that the thumb expression mark on the endorsement (Ex. P2) was a forged impression and that the appellant-defendant never executed said endorsement at the back of the agreement to sell dated 04.02.1987 and the appellant-defendant being old, illiterate widow was induced and defrauded into affixation of her thumb impression. It was also denied that any earnest money was received by the appellant-defendant as claimed.

11. Counsel for the respondent-plaintiff however contends that the case of the appellant-defendant has already been considered by two Courts alongwith appreciation of the entire evidence that had been led on record. It has been specifically recorded by both the Courts concurrently that the appellant-defendant had appeared in the Tehsil Complex on the date fixed i.e. 27.02.1987 and endorsement in question was recorded on the said date.

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The appellant-defendant is now concealing the true factum with a dishonest intent. The very fact that she claimed having never ever having met the parties after the execution of the agreement to sell on 04.02.1987 stands belied and a specific finding has been recorded. That she appeared before the Sub Registrar on 27.02.1987. He further submits that the circumstances personal to the appellant-defendant cannot be perceived as any coercion or undue influence exercised by the respondent-plaintiff and that her consent to execute the sale deed for the settled sale price was voluntary. It is also evident that the price offered by the respondent-plaintiff was higher than the price of the land. The endorsement having been ratified, the agreement in question stands modified and novated to the said extent and the respondent-plaintiff cannot be held to be in default of performance on his part of stipulations contained in the agreement to sell. The suit has rightly been decreed in his favour and the subsequent appeal has been rightly dismissed by the Additional District Judge, Ferozepur.

12. I have heard learned counsel appearing on behalf of the respective parties and have gone through the impugned judgments appended alongwith the present Regular Second Appeal.

13. The dispute in question pertains only to the extent that the appellant-defendant denies the endorsement dated 27.02.1987 (Ex. P2) on the agreement to sell dated 04.02.1987. While the specific case of the appellant-defendant was to the effect that she had not appeared in the Tehsil Complex or ever met the respondent-plaintiff after execution of the agreement to sell on 04.02.1987.

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14. It is evident from a perusal of the record that the appellant-defendant has not denied the execution of the agreement to sell dated 04.02.1987. Even though an explanation has been offered that the agreement was executed under financial complication, however, it is not the case that the financial complication had anything to do with the respondents-plaintiffs. The appellant-defendant borrowed money for performance of marriage of Paramjit Kaur, however, it is not the pleaded case that the money was borrowed from the respondents-plaintiff or some other persons or that the agreement was executed as a security document.

15. Further, the financial hardship escalated after demise of her husband and she agreed to sell land with the respondent-plaintiff. This cannot be termed as an 'undue influence' which rather refers to a situation where one party exerts influence on the other in a way that it overcome the will and ability of the other party to decide independently. It also stipulates a confidential relationship amongst the parties and the beneficiary being in a position of dominance certain circumstantial aspects such as the nature of transaction or unfair valuation of property may be looked upon as ancillary evidence to substantiate the allegation.

16. The relationship thus has to amongst the parties on account whereof the undue influence can be pleaded as a defence. Since no evidence has been led by the applicant to show the position of dominance of the respondent-plaintiff, undue influence cannot be presumed. Even otherwise, as per the erstwhile rural economy, a tenant would generally be of a lower economic condition and had no position of dominance on the landlord.

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17. Circumstantially 45 kanal 05 marla of land was agreed to be sold for Rs. 40,000/-. The appellant-defendant has not disputed that she executed a sale deed @ 6000 per acre in favour of Sardara Singh on 27.02.1987. The rate at which the respondent-plaintiff agreed to purchase the land was more than Rs. 7,000 per acre. Hence, the price at which the respondent-plaintiff agreed to purchase the land, despite being tenants, was more than the price at which she sold the land to another party. No challenge was raised to the said sale deed at any point in time. The rate was thus a prevalent rate. Thus even the circumstances does not show any undue influence. It was held by the High Court in the matter of Balkar Singh versus Narinder Singh (2004-3) PLR 155 that adequacy or inadequacy of price cannot be the sole determinant to set aside an agreement which is otherwise established.

18. The agreement to sell dated 04.02.1987 cannot thus be said to be on account of undue influence.

19. The next aspect relates to whether there was a novation of the contract or not. A novation generally happens when the contracting parties agree to a change of terms and conditions of a contract. The respondent-plaintiff has relied on the endorsement Ex. P3 dated 27.02.1987 as a novation. The same was denied by the appellant-defendant on the ground that she never met the plaintiff's after 04.02.1987. It was noticed that in the undisputed sale deed of 27.02.1987, one of the attesting witness happened to be the plaintiff himself and that the endorsement happens to be of the same

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date. Thus the stand of the appellant stood falsified from the circumstances itself.

20. The specific finding has been recorded to the contrary since one of the respondent-plaintiff was attesting witness to the execution of the sale deed in favour of Gurmel Singh and Sardara Singh. A sum of Rs. 6,000/- towards the sale consideration of the land measuring 08 kanals alongwith a sum of Rs. 6,000/- paid by plaintiff-respondents were endorsed to have been received by the appellant/defendant on 27.02.1987. She has further not denied the fact that she had executed the Agreement to Sell on 04.02.1987 and had received an earnest money of Rs. 10,000/- as recorded in the said Agreement to Sell itself. Hence, a total sale consideration of Rs.22,000/- has been received by her. The plea that she had affixed her thumb impressions on account of a fraud has not been established. Her presence in the Tehsil Complex thus stands dual established. Similarly, there is no denial of the fact that she had entered into the Agreement to Sell with the respondent-plaintiff on 04.02.1987. The circumstances that were personal to the appellant and having arisen on account of death of her husband may be a reasons for her executing a sale deed, however, the same cannot be construed as an act of coercion, pressure or undue influence exerted by the respondent-plaintiff for execution of the Agreement to Sell. It is also worthwhile to take into consideration that the appellant-defendant never raised any challenge to the above said Agreement to Sell dated 04.02.1987 as having been got executed by way of exercising fraud.

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21. The next defence taken by the appellant-defendant is that the respondents were not ready and willing to perform their part of the obligation and did not have resources. However, the circumstances available on record do not support her contention and do not establish that the respondent-plaintiff had no means or ability to fulfill their obligations.

22. The respondent-plaintiff have undisputedly paid a sum of Rs. 16,000/- and alongwith the additional Rs. 6,000/- as sale price of 08 kanal of land, a total amount of Rs. 22,000/- showed paid. Balance Rs. 18,000/- was to be paid at the time of execution of sale deed, for which the appellant never appeared. The plaintiff specifically deposed in the witness Box that they were ready and willing to pay the balance sale consideration.

23. The evidence as well as the contentions have already been considered by both the Courts and a concurrent finding of fact has been recorded against them. In the absence of any evidence to suggest that the above said findings recorded by the Courts suffer from any misappreciation, the same cannot be held to be bad. The Hon'ble Supreme Court held in the matter of "*G. Mahalingappa versus G.M. Savitha*" reported as (2005) 6 SCC 441 that concurrent findings may be interfered with by the High Court when the same are based on non-consideration of essential evidence. No such evidence has been referred to by the appellant during the course of arguments.

24. The instant appeal is accordingly dismissed. The judgment and decree dated 23.02.1991 passed by the Sub Judge, First Class, Fazilka as

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well as the order of appeal passed by the Additional District Judge, Ferozepur in Civil Appeal No. 73 of 1991 are affirmed.

25. All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 05, 2024
Vishal Sharma

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