

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1678-2014 (O&M)

Reserved on 06.02.2024

Date of decision:13.02.2024

Ramesh Chander

....Appellant

Versus

Sajjan Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Baldev Raj Mahajan, Sr. Advocate with
Ms. Prerna Malhotra and
Ms. Nikita Goel, Advocates for the appellant

Mr. O.P.Goyal, Sr. Advocate with
Mr. Yugank Goyal, Advocate for the respondent

ANIL KSHETARPAL, J

1. In this Regular Second Appeal, the plaintiff assails the correctness of the judgment and decree passed by the First Appellate Court, which in turn, has reversed the judgment and decree passed by the trial court.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The respondent (defendant before the trial court) is the plaintiff's real uncle. In other words, the respondent is the plaintiff's father's brother. The plaintiff filed a suit on 14th August, 2006 for the grant of decree for specific performance of the agreement to sell dated 7th December, 2005 executed by the defendant in his favour with respect to the land measuring 113 Kanals 9 Marlas. The agreement to sell was entered into on 7th December, 2005 on receipt of Rs. 4 lacs as earnest

money. It was provided that if the defendant is able to get the possession vacated from Sh.Harkaran, the tenant, within a period of one year, the price of the total land would be Rs. 11 lacs, otherwise, the total price would be Rs. 7 lacs. The sale deed was to be executed within a period of one year from the date of the agreement to sell. While claiming that the plaintiff was always ready and willing to perform his part of the contract, he filed the suit. The defendant, while contesting the case, claimed that the agreement to sell is a result of fraud. In fact, the defendant wanted to partition the land and alienate the same, however, the plaintiff's father did not agree. The plaintiff, who is a property broker, is residing in Bhiwani and he never executed the agreement to sell.

4. In order to prove the agreement to sell, Shri Hari Ram, the third brother of defendant appeared and tendered his affidavit in lieu of the examination in chief. He stated that the agreement to sell was scribed by him on the instructions of the defendant. However, he did not come for cross examination. The plaintiff examined PW4 Rajkumar, marginal witness to the agreement to sell and handwriting and fingerprint expert Shri V.B. Kashyap apart from his own testimony.

5. On the other hand, the defendant appeared in evidence as DW1 and examined Sh.Kamlesh Kumar resident of the village Hetanpura where the land is situated.

6. The trial court, on appreciation of evidence, came to the conclusion that the plaintiff was always ready and willing to perform his part of the contract and the agreement to sell was executed by the

defendant, but he has failed to honour the same. Thus, the suit was decreed. The defendant filed his first. The First Appellate Court has reversed the judgment and decree passed by the trial court with the following observations:-

23. Original agreement is on the file in the shape of Ex.Pl. A perusal of the same reveals that paper used for preparing agreement to sell is yellowish in colour and an old small paper. There is no margin left on any of the side of the document in question. The signature of defendant Sajjan is in blue ink whereas the body writing is with ball pen. There is a setting in the last line and date has been written making the line oblique and in a narrow space. Usually such type of agreement to sell are not prepared. It appears that the alleged writing is written on a blank paper which was already signed by the defendant Sajjan Kumar. Plaintiff and defendant are related to each other. There are three signatures on the alleged agreement to sell but under the signatures it is nowhere mentioned that who is scribe or who is the attesting witness. The size of paper is less than the size of A-4. V.B.Kashyap, Handwriting and Finger Print Expert who has appeared in the Court as PW-3 and in his cross examination admitted that the size of paper is less than A-4 but as per plaintiff's own version the paper was of A-4 size. PW-3 V.B.Kashyap in his cross examination also admitted that the first 17 lines of the paper are angular and the 18th line was written straight horizontally. There is no explanation why the last line was written horizontally. The alleged agreement to sell is neither registered nor stamped. Not even a stamp of single rupee has been affixed.

24. Learned counsel for defendant has argued that Tara Chand, father of the plaintiff-respondent is the real

brother of appellant-defendant and they used to do joint business at Calcutta. Appellant- defendant is younger and his signatures on blank papers were usually obtained by Tara Chand for income tax or for other purposes and may be same has been misused. I found force in the argument advanced by learned counsel for the appellant because admittedly parties to the suit are related to each other. Even from the perusal by necked eye it reveals that document was prepared on the blank signed paper. Even for the sake of arguments, if it is presumed that the document bears the signature of defendant, even then, mere signature on a document would not a proof of execution when a positive evidence has been led by the defendant that body has been fabricated and forged of the agreement Ex.P-1.”

7. Heard the learned senior counsel representing the parties at length and with their able assistance perused the paperbook alongwith requisitioned record.

8. Learned senior counsel representing the appellant submits that as under:-

a) the defendant has not disclosed the particulars of the fraud as required under Order VI Rule 4 of the Code of Civil Procedure, 1908.

b) the First Appellate Court has travel beyond the pleadings and evidence and thus, made out an entirely new case for the defendant.

c) the First Appellate Court has failed to critically appraise the reasons recorded by the trial court before setting aside its judgment.

9. On the other hand, the learned senior counsel representing the respondent submits that identity of Sh.Ram Kumar, marginal witness

is not proved as in his deposition he stated that his father's name is Sh.Deen Dayal whereas at some place he is shown to be son of Sh.Dina Nath. While elaborating he submits that neither the scribe has come forward to face the cross-examination nor any date for execution and registration of the sale deed has been recited in the agreement to sell which was also not scribed from a professional scribe and the agreed price is much less than the market price.

10. At this stage, it is important to analyse the trial court record. In para 2 of the preliminary objection of the written statement filed by the defendant, he stated that he wanted to partition the land and alienate the same. However, Sh.Tara Chand (the plaintiff's father) refused. Thereafter, while replying on merits, in para 2 of the written statement, he states that no agreement to sell was executed by him and the land is in the joint possession of the defendant and Sh.Tara Chand. The agreement to sell is Ex. P1. It is scribed on a small paper of yellow colour. it has been written in Devanagari Script (Hindi). Sh.Sajjan Kumar has signed in English. The agreement to sell is signed by Raj Kumar, marginal witness as well as the plaintiff Ramesh Chander. It was specifically written in the agreement to sell that the suit land is in the possession of tenant Sh. Harkaran and if Sh.Sajjan Kumar is able to get the possession from Sh.Harkaran then the total price would be Rs. 11 lacs, otherwise it will be Rs. 7 lacs. It was provided that the sale deed would be executed within a period of one year.

11. Sh.Hari Ram, another brother of defendant appeared as PW1. He tendered his affidavit. However, he failed to come forward for

the cross examination. The plaintiff, while appearing in evidence, has reiterated his stand in the plaint. It has been stated that the agreement to sell was entered into at his residence and the paper, on which the agreement to sell was scribed, was already available with him. In his cross-examination, learned counsel representing the defendant gave suggestion that the signatures of defendant have been traced from some other document to which the plaintiff denied. PW3 Shri VB Kashyap, handwriting and fingerprint expert was examined, who stated that the disputed signatures and standard signatures have been appended by one and the same person, that is Sh.Sajjan Kumar. PW4 Rajkumar son of Sh.Deen Dayal, marginal witness was examined as PW4. He is an acquaintance of Sh.Sajjan Kumar, the defendant, Sh. Sajjan Kumar lives in Calcutta. He states that he has business transactions with the defendant. The defendant appeared in evidence as DW1. He denied his signature during the cross-examination. He admits that he is working as a broker in Calcutta but on further suggestion, he admitted that though he used to append signatures on blank papers for joint business with the plaintiff's father, but the paper on which the agreement to sell was scribed is not one of those papers. DW2 Kamlesh Kumar is defendant's son. DW3 Mukesh Kumar has appeared and claimed that he is cultivating the disputed land. It is evident that the First Appellate Court has built an entirely new case for the defendant. It is not in dispute that the agreement to sell is scribed on a small yellow paper. In these circumstances, there is no occasion for the scribe to leave margin on the left or the right side. Furthermore, it is not the case of the defendant or

anybody else that he signed with the same pen, which was used by the scribe. This Court has carefully perused the agreement to sell. The last line and the date has been written in normal course. There is no difference in the spacing in between the lines. The First Appellate Court has also erred in observing that the agreement to sell is not typed. The First Appellate Court has also erred in observing that the agreement to sell has been scribed on blank signed paper of the defendant, particularly when the defendant is not alleging the same. It is evident that the learned counsel representing the defendant while cross examining the plaintiff suggested that the signature of Sh.Sajjan Kumar have been traced from some other document. However, the defendant did not lead any evidence to prove the same. In the written statement, the defendant does not allege that the agreement to sell has been scribed on signed blank paper. In the cross-examination, the defendant has already stated that the paper used for scribing the agreement to sell is not the same, which was being used by him and plaintiff's father in the joint business. Even otherwise, the partnership between the defendant and the plaintiff's father came to an end in the year 2005.

12. The First Appellate Court has also erred in observing that the name of the scribe has not been written in the agreement to sell. It may be noted here that though the name of the scribe is not written in the agreement to sell, however, Sh.Hari Ram has stated that he has scribed the Will. In any case, the agreement to sell was executed at the residence of the plaintiff and it was not scribed from a professional scribe.

13. The First Appellate Court has also erred in observing that the alleged agreement to sell is neither registered no stamped. It may be noted here that the registration of the agreement to sell is not required unless it evidences delivery of possession. Moreover, the deficiency in stamp duty would not be sufficient to deny the relief, particularly when such defect, if any, is curable.

14. Furthermore, it is evident that the defendant alongwith his family is settled in Calcutta whereas the property is situated in District Bhiwani. In the written statement, he states that he wants to alienate the same. The land is not is in his possession. The defendant was not a rustic villager. He is working as a broker in Calcutta, which is at a distance of more than 1500 km from his home town. He has failed to prove the fraud, which is his case in the written statement.

15 Keeping in view the aforesaid facts and discussion, the First Appellate Court has erred in reversing the judgment and decree passed by the trial court. Hence, the same is set aside and that of the trial court is restored. The Regular Second Appeal stands allowed.

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

13.02.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE