

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

RSA-5304-2016

Date of decision: 18.01.2025

DATA RAM THROUGH ATTORNEY SH. RAJNEESH KUMAR

..Appellant

Versus

KULBIR SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Satwant Singh Rangi, Advocate
Mr. Ramanpreet Singh, Advocate
Mr. Didar Singh, Advocate
for the appellant.

Mr. Deepak Gupta, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. Factual Background:-

1.1 The plaintiff assails the correctness of First Appellate Court's judgment, which in turn has reversed the judgment of the trial Court.

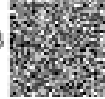
1.2 In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

1.3 Sh. Kulbir Singh, his sister-in-law Smt. Satwant Kaur and Sh. Navreet Singh son of Sh. Baldev Singh entered into an agreement to sell on 09.03.2004, with respect to land measuring 141 kanals and 17 marlas at the rate of Rs.16,00,000/- per acre on receipt of Rs.20,00,000/- as earnest money in favour of Sh. Data Ram (the plaintiff), his brother Sh. Bajrang Lal and Sh. Lakhwinder Singh. Subsequently, on 24.08.2004, Sh. Data Ram and Sh. Kulbir Singh entered into a fresh agreement, while cancelling the agreement to sell executed on 09.03.2004. It was agreed that Sh. Kulbir Singh would



return Rs.20,00,000/- and would further pay premium to Sh. Data Ram at the rate of Rs.2,00,000/- per acre. It was also agreed that a particular parcel of land would be kept as passage for Sh. Data Ram. Pursuant to the aforesaid agreement, Sh. Kulbir Singh returned Rs.20,00,000/- in a staggered manner, however, he failed to pay the premium as agreed at the rate of Rs.2,00,000/- per acre, forcing the plaintiff Sh. Data Ram to file the suit for recovery of Rs.47,16,430/- or in the alternative for possession of 24 kanal land as agreed vide agreement dated 24.08.2004. The trial Court decreed the suit. The First Appellate Court reversed the trial Court's judgment on the following grounds:-

- i. Sh. Data Ram did not depose in the Court. His attorney Sh. Rajnish could not depose on behalf of his principal Sh. Data Ram, hence, adverse inference is required to be drawn against the plaintiff.
- ii. As per the agreement dated 24.08.2004, the earnest money was returned to all the three intended purchasers but Sh. Data Ram has alone filed this suit.
- iii. The agreement dated 24.08.2004 has been scribed on a stamp paper, which was purchased by Sh. Amar Singh but not by the defendant.
- iv. The scribe of the agreement dated 24.08.2004 has not been examined.
- v. The original agreement to sell was executed by Sh. Kulbir Singh, Smt. Satwant Kaur and Sh. Navreet Singh in favour of Sh. Data Ram, Sh. Bajrang Lal and Sh. Lakhwinder Singh, whereas, agreement dated 24.08.2004



is only executed between Sh. Kulbir Singh and Sh. Data Ram. Sh. Kulbir Singh is expected to pay further amount on behalf of other intended vendors only to Sh. Data Ram vi. In this case, the plaintiff appears to have played fraud and the agreement dated 24.08.2004 is forged and fabricated.

2. Discussion and Analysis:-

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with scanned copy of the trial Court record.

2.2 The requirement of the plaintiff's oral deposition is not necessary in every case. If a party to the litigation produces sufficient evidence to prove his case/stand, adverse inference is not required to be drawn unless the Court comes to a conclusion that the party to the litigation has intentionally withheld the best evidence. In this case, the agreement dated 24.08.2004, is drafted on non-judicial stamp paper worth Rs.300/-. Each page is signed by Sh. Kulbir Singh as well as Sh. Data Ram. The last page is signed by two attesting witnesses namely Sh. Sunil Kumar son of late Sh. Bajrang Lal and Navreet Singh son of Sh. Baldev Singh. PW-2 Sh. Sunil Kumar proved the agreement. Sh. Navreet Singh, who is the defendant's nephew has not been examined by the defendant. His signatures on the agreement are also not disputed. It may be noted here that Sh. Navreet Singh was one of the persons, who had entered into an agreement on 09.03.2004. On behalf of the plaintiff, his attorney Sh. Rajnish Kumar appeared in evidence. The case of the plaintiff was based on a written contract. It was for the defendant to prove that this contract was never entered into or it was



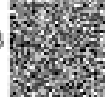
result of forgery or misrepresentation. Hence, the basic onus was on the defendant to prove the aforesaid facts. Consequently, the adverse inference drawn against the plaintiff was incorrect.

2.3 The second reason assigned by the First Appellate Court is also erroneous because Sh. Kulbir Singh, Smt. Satwant Kaur and Sh. Navreet Singh were closely related. Smt. Satwant Kaur is Sh. Kulbir Singh's sister-in-law, whereas, Sh. Navreet Singh is nephew of Sh. Kulbir Singh. If Sh. Kulbir Singh exclusively undertook to pay the additional amount to Sh. Data Ram, the same was not illegal.

2.4 Originally, Sh. Data Ram, his brother Sh. Bajrang Lal and Sh. Lakhwinder Singh had agreed to purchase the property. Sh. Bajrang Lal died. His son Sh. Sunil Kumar signed the agreement on 24.08.2004 as attesting witness. It is not the case of defendant that remaining two intended purchasers namely Sh. Bajrang Lal and Sh. Lakhwinder Singh have claimed any amount or disowned the agreement dated 24.08.2004, hence, the second reason assigned by the First Appellate Court is also incorrect.

2.5 With respect to reason No.3, it may be noted that it is not a mandatory condition that one of the parties entering into an agreement must purchase the stamp paper for scribing agreement. The stamp paper was purchased by Sh. Amar Singh. Validity of agreement is not adversely affected only because the stamp paper was not purchased by Sh. Data Ram or Sh. Kulbir Singh.

2.6 Similarly, deposition of scribe was not necessary, particularly when marginal witness Sh. Sunil Kumar had been examined. He has proved the agreement dated 24.08.2004. In fact, Sh. Kulbir Singh does not dispute that he has returned Rs.20,00,000/- to Sh. Data Ram, Sh. Sunil Kumar son of



Sh. Bajrang Lal and Sh. Lakhwinder Singh in instalments. He has already partially acted upon the agreement dated 24.08.2004, hence, he cannot resile from the aforesaid agreement.

2.7 Reason No.5 of the First Appellate Court is same as reason No.2. In this case, neither Smt. Satwant Kaur or Sh. Navreet Singh nor heirs of Sh. Bajrang Lal or Sh. Lakhwinder Singh have disputed the validity of the agreement. There was subsequent agreement entered into between two persons namely Sh. Data Ram and Sh. Kulbir Singh that was enforceable unless shown to be illegal. The onus to prove that the agreement was un-enforceable lays upon the defendant.

2.8 The defendant examined himself and also examined official from the office of Deputy Commissioner as DW-2 and Sh. Harpal Singh, stamp vendor as DW-3. The onus was upon defendants to prove that agreement is forged and fabricated or result of misrepresentation. He miserably failed to prove the same.

2.9 Reason No.6 assigned by the First Appellate Court lacks substance because defendant failed to prove that he did not append his signatures on all the three pages of the written agreement dated 24.08.2004. He neither pleaded the particulars of the fraud as required in law nor led evidence to that effect. His bald assertion fails to prove that fraud has been committed.

2.10 The First Appellate Court has also erred in overlooking the fact that previous agreement dated 09.03.2004 stood superseded by a subsequent agreement dated 24.08.2004. The same was required to be implemented once it was proved.



2.11. Learned counsel representing Sh. Kulbir Singh contends that on 26.08.2024, there were three entries on the reverse side of page No.1 and page No.3 of agreement to sell dated 09.03.2004, acknowledging the receipt of Rs.20,00,000/-, to all the three purchasers namely Sh. Data Ram, Sh. Sunil Kumar son of Sh. Bajrang Lal and Sh. Lakhwinder Singh. He submitted that if there was an agreement signed on 24.08.2004, the same was required to be reflected or specified on 26.08.2024.

2.12. It is evident that there are two contracts between the parties, which are executed in a series. On 09.03.2004, there is an agreement to sell with respect to land measuring 141 kanals and 17 marlas. On 24.08.2004, there is a subsequent agreement between Sh. Data Ram and Sh. Kulbir Singh. On 26.08.2024, there are only endorsements on the back side of page No.1 and 3 of agreement to sell dated 09.03.2004 evidencing refund of Rs.20,00,000/-. These endorsements signed on 26.08.2024 would not result in superseding the agreement dated 24.08.2004.

2.13. It is the case of Sh. Kulbir Singh (defendant) that Rs.20,00,000/-, the amount of earnest money was refunded through three endorsements on 26.08.2024.

3. **Decision:-**

3.1 Keeping in view the aforesaid facts and discussion, the judgment of the First Appellate Court is set aside and that of the trial Court is restored while accepting this appeal.

January 18th, 2025

(ANIL KSHETARPAL)
JUDGE

By
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No