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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1032-2018 (O&M)

Date of decision : 01.04.2025

Lekh Ram

..... Appellant

versus

Shiv Dyal since deceased through his LRs.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Vijay Lath, Advocate
for the appellant.

Mr. Rahul Garg, Advocate for
Mr. Naveen Batra, Advocate
for respondent No.1 (ii).

PANKAJ JAIN, J. (ORAL)

1 Appellant is in second appeal. For convenience, parties hereinafter are referred to by their original position before the Court of the First instance i.e. the appellant as plaintiff and respondent as defendant.

2 Plaintiff filed suit for possession by way of specific performance propounded in agreement to sell dated 11.06.2009 claiming to have been executed in his favour by defendant *qua* suit land measuring 16 K-11 M as detailed out in the head note in the plaint. Suit was contested by the defendant denying execution of agreement to sell propounded by the plaintiff. Defendant claimed that the same was a forged and fabricated document which was prepared by the plaintiff mis-utilizing the blank stamp papers dated 23.01.2002. Defendant further claimed that not even a single

penny was paid by the plaintiff. Suit filed by the plaintiff was put to trial by the Court of the First instance framing following issues :-

- “1. Whether the defendant entered into an agreement to sell dated 11.06.2009 with the plaintiff? OPP*
- 2. Whether the plaintiff paid earnest money to the defendant on different dates, if so, to what extent? OPP*
- 3. Whether the plaintiff has been ready and willing to perform his part of the agreement? OPP*
- 4. Whether the plaintiff is entitled to get relief of possession by way of specific performance of agreement to sell dated 11.06.2009, as prayed for? OPP*
- 5. Whether the plaintiff is entitled to alternative relief of recovery of Rs. 12,22,500/-, as prayed for? OPP*
- 6. Whether the suit is not maintainable in the present form? OPD*
- 7. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*
- 8. Relief.”*

3 While deciding issue nos. 1 to 4 the Court of the first instance found that the plaintiff miserably failed to prove execution of agreement to sell. They being closely related to each other misuse of blank stamp papers cannot be ruled out. Trial Court holding that the document Ex.P1 was surrounded by suspicious circumstance dismissed the suit. The aforesaid findings have been affirmed by the Lower Appellate Court observing as under :-

“9. Agreement Ex.P1 dated 11.6.2009 is on two stamps papers; one of the denomination of rupee twenty and second of the denomination of rupee five. Such stamp papers are shown to have been purchased in the name of plaintiff Lekh Ram on 23.1.2002

and these are shown to have been purchased for the purpose of bank limit (loan). Hence, evidence of the plaintiff regarding execution of such agreement of sale by the defendant in his favour is to be scrutinized and appreciated in the light of such most suspicious circumstance. It is nowhere explained by the plaintiff in his pleadings as to under which circumstances, agreement to sell was scribed on old stamp papers which were purchased by the plaintiff for a different purpose and that too in his name. In usual practice such stamp papers are always purchased in the name of the proposed vendor. The plaintiff has further failed to prove as to why such stamp papers were purchased by him in his name instead of in the name of defendant. Once, such suspicious circumstances, surrounding the authenticity and genuineness of such agreement, have not been explained and it is the case of the defendant that his signatures were received fraudulently on the pretext of getting revenue record corrected in his name, their being fiduciary relationship between him and the plaintiff, the court has to scrutinize the entire evidence of the plaintiff with more care and caution and also with more circumspection. It is admitted by the plaintiff that the defendant is his real maternal uncle and thus, the parties were in fiduciary relationship. Therefore the defendant could not doubt the integrity of the plaintiff when the plaintiff asked him to sign such document for correction of revenue record on his behalf. During his cross examination, it was admitted by the plaintiff that the revenue record of the land situated at village Pirthipur was not in order and he came to know about it from the village Patwari in the year 2009. So, in such circumstances, the defence propounded by the defendant about obtaining his signatures on such pretext is most probable because it was further admitted by the plaintiff that in the revenue record the name of the defendant was incorrectly recorded and the defendant was to move an application for correction of such record. Although, the plaintiff has examined two attesting witnesses i.e. PW-2 Som Dutt and PW-4 Sita Ram,

who deposed that such agreement of sale was executed by the defendant in favour of plaintiff in their presence, but both these witnesses are proved to be most interested and thus, their testimony is not believable. During his cross examination PW-2 Som Dutt admitted that the plaintiff is son of sister of his father. He also admitted that defendant is 90/95 years old and he is also suffering from a urinary disease. According to this witness the agreement was scribed on an ordinary paper, but agreement Ex.P1 is on stamp papers. Once, this witness even does not know nature of the paper on which agreement was scribed, he cannot be termed to be a natural witness. According to this witness sum of Rs.1 Lac was paid by the plaintiff to the defendant on 30.7.2009 in his (PW-2's) house whereas PW-3 Rakesh Kumar scribe of the agreement to sell Ex.P1 deposed that such amount was paid to the defendant in the house of defendant itself. Such material contradiction cannot be reconciled and therefore, execution of such agreement by the defendant and receipt of earnest money cannot be said to have been proved from the side of the plaintiff. It was rightly observed by the learned trial court that the signatures of Shiv Dayal at page No.2 at point-A are appearing at the bottom of the page and there is sufficient space above the signatures of Shiv Dayal at point-Y and it appears that signatures of Shiv Dayal were taken on blank stamp papers. PW-4 Sita Ram is also proved to be most interested witness as he is real brother of plaintiff and PW-3 Rakesh Kumar scribe of the agreement is nephew of the plaintiff. The learned trial court was also absolutely right in observing that the plaintiff was in fiduciary relationship with the defendant being his nephew. It is well established fact that the persons standing in a confidential relation towards others cannot entitle themselves to hold benefits conferred on them by those others unless they can show to the satisfaction of the court that they had competent and independent advice in conferring the benefits. Where there is a relation of confidentiality between the parties and the person, who was in a position to dominate the will

of the other, it is essential for the party benefited to excuse themselves from what would otherwise with necessary implication arising on those facts. Where it is established by evidence that the person was in a position to dominate the will of the other and that the transaction was unconscionable, the burden of proof of absence of undue influence rest upon the plaintiff. In this case, it is the defence of the defendant that the plaintiff obtained his signatures on previously purchased blank stamp papers and thereafter converted it into an agreement of sale and such defence has been established from the preponderance of circumstances stated above. Even the description of the property is not mentioned in the agreement.”

4 Mr. Vijay Lath, Advocate for the plaintiff has not been able show any perversity in the findings recorded by the Courts below. He could not point out any evidence which has been ignored or misread by the Courts below.

5 Pure findings of fact have been recorded dismissing the suit filed by the plaintiff. In view of above, this Court does not find any reason to interfere in the well reasoned judgments passed by the Courts below.

6 Resultantly the present appeal is dismissed.

7 Pending miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

01.04.2025
Pooja Sharma-I

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