

(1993) 08 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Regular Second Appeal No. 1338 of 1987

Arur Singh

APPELLANT

Vs

Kulwant Singh and Another

RESPONDENT

Date of Decision: Aug. 17, 1993**Citation:** (1994) 1 CivCC 621 : (1994) 106 PLR 321**Hon'ble Judges:** S.K. Jain, J**Bench:** Single Bench**Advocate:** M.L. Sarin and Kavita Mankotia, for the Appellant; M.S. Rakkar and A.S. Virk, for the Respondent**Final Decision:** Dismissed

Judgement

S.K. Jain, J.

This Regular Second Appeal is directed against the judgment and decree dated 8.12.1986 of the Additional District Judge, Hoshiarpur by which decree for specific performance of an agreement to sell passed by the Court of first instance was set-aside and the suit of the plaintiff has been dismissed.

2. Arur Singh, plaintiff (appellant herein) filed a suit against Smt. Nasib Kaur wife of Niranjana Singh and Kulwant Singh for specific performance of the agreement dated 6.12.1983, by which she had agreed to sell 9 Kanal - 8 Marlas of agricultural land for a consideration at the rate of Rs. 41000/- per acre. The plaintiff having filed the suit against the defendants in the Court of Sub-Judge 1st Class, Hoshiarpur obtained a decree in his favour on 26.9.1986. That decree was appealed against by the vendee-defendant, Kulwant Singh in the Court of Additional District Judge, Hoshiarpur which was allowed on 8.12.1986, setting-aside the decree of the Court of first instance except that the plaintiff was held entitled to recover, as alternative relief, an amount of Rs. 15,000/- which had been paid by him as earnest money to Nasib Kaur. It is that judgment and decree of the first Appellate Court which has been appealed against in this Regular Second Appeal filed by the plaintiff and which requires my examination of its sustainability.

3. I have seen the pleadings in the suit, the evidence adduced by the parties in the suit and the judgments of the Courts below. Learned Sub Judge has said in his judgment :-

(i) that agreement dated 20.4.1983 finds mention at the end page of the register of the petition writer;

(ii) that the way in which the entry has been made in the register clearly shows that the said entry had been interpolated later on because even the minimum details of the transaction had not been mentioned although such details had been given in other entries regarding such agreements;

(iii) that the licence of the deed-writer had been suspended for one month and he was convicted and sentenced in a criminal complaint case on his having prepared a forged document;

(iv) that the stamp paper had been allegedly purchased on 31.3.1983 and that entry in this regard was the last entry of the register which had been conveniently entered after the close of the financial year i.e. 31.3.1983; and

(v) that the alleged agreement was executed on 20.4.1983 but there is no evidence on record that defendant No. 2 Kulwant Singh had started negotiations for the sale on 31.3.1983.

4. From the above evidence he drew inference to the effect that the stamp paper on which the agreement had been scribed was obtained on 31.3.1983 to suit the last entry in the register otherwise the stamp paper could have been purchased in normal course of events in the month of April 1983. This clearly shows that the stamp paper was obtained after 6.12.1983 but it was shown to have been purchased before the said date. Further, the time gap given for execution of the sale deed from 20.4.1983 to 20.6.1984 i.e. for more than one year was abnormally long and if the agreement to sell had actually been executed on 20.4.1983 then there was no reason to delay the execution of the sale deed upto 10.2.1984. Besides this, the agreed date of execution of sale deed in favour of the plaintiff was 5.6.1984 while the date of execution of sale deed in favour of Kulwant Singh, defendant No. 2 was 20.6.1984 but the sale deed in his favour had been executed in high haste on 10.2.1984 i.e. 4-1/2 months earlier. All this leads to the conclusion that the parties very well knew about the existence of the agreement to sell dated 6.12.1983 in favour of the plaintiff and the agreement dated 20.4.1983 put forth by Kulwant Singh defendant No. 2 was prepared in order to defeat the rights of the plaintiff that accrued to him vide agreement to sell dated 6.12.1983.

5. Above said observations, inferences and conclusions of the learned trial Court did not find favour with the First Appellate Court. He believed the evidence of stamp-vendor Dilbag Singh (DW2), Deed-Writer Subhash Rai (DW1), attesting witnesses Bal Kishan and Hari Darshan Singh, DW 5 and DW4 respectively as also

that of Kulwant Singh (DW) and accepted the appeal, set-aside the judgment and decree appealed against before him and dismissed the suit, except that the plaintiff was held entitled to recover Rs. 15000/- from Nasib Kaur which he had paid to her as earnest money.

6. Firstly, learned counsel for the appellant has vehemently argued that the learned first Appellate Court has misread and misconstrued the evidence on record and has legally erred in setting aside the well reasoned findings of the learned trial Court, inasmuch as, perusal of the entries in the registers of the stamp vendor and the deed writer clearly show that the agreement to sell in favour of Kulwant Singh was forged with a view to defeat the rights of the plaintiff vide agreement to sell dated 6.12.1983 which was earlier in time than the agreement to sell in question. I do not find any force in this argument. Simply because the relevant entries in the registers of the stamp vendor and the deed writer were the last ones on their respective pages, it would not render them suspicious and the relevant documents forged. Close examination of these entries would show that there was no overwriting or interpolation therein. Non-mention of the details in these entries with regard to the document intended to be scribed, would not render the document doubtful. There is no legal requirement of giving very many details of the documents intended to be executed, in such entries.

7. The second submission of the learned counsel for the appellant is that the deed-writer who had scribed the agreement to sell dated 20.4.1983, Ex. D1, in favour of Kulwant Singh was involved in a criminal case for forging a document. He was convicted and sentenced and his licence was suspended for a month and that this fact lends support to the case of the appellant that the said document was forged by him in connivance with the defendants. This submission is devoid of any force. No doubt it has come on record that the scribe, Subhash Rai DW1 had been convicted and sentenced for having allegedly forged a document and his licence was suspended for a month, but it is also true on appeal that he was acquitted and, therefore, his conviction and sentence as also the factum of temporary suspension of his licence pale into in-significance.

8. Thirdly, it has been urged on behalf of the appellant that the time gap i.e. with effect from 20.4.1983 to 20.6.1984, given for the execution of the sale-deed was abnormally long and further that there was no reason to delay the execution of the sale-deed upto 10.2.1984 had the agreement to sell been actually executed on 20.4.1983. This argument is also not tenable. Kulwant Singh appearing in the witness box has explained that vide three agreements to sell of the same date Niranjn Singh and his wife Nasib Kaur had agreed to sell (3 Kanal-4 Marla + 6 Kanal-15 Maria +9 Kanal-8 Maria) 19 Kanal-7 Maria of land in his favour and that of his wife Nasib Kaur (3 Kanal-4 Maria and 6 Kanal-15 Maria vide two separate agreement to sell in favour of Smt. Ravinder Kaur his wife and 9 Kanal - 8 Maria vide the third agreement to sell in his favour), at the rate of Rs. 39000/- per acre. Thus, an

amount of Rs. 97500/- had to be paid and after deduction of earnest money already paid still an amount of Rs. 70,000/- had to be arranged for. Therefore, he wanted sufficiently long time for that purpose. Sale deed could not, therefore, be executed on 31.3.1983 and was instead executed on 20.4.1983. This explanation had rightly been found satisfactory and accepted by the learned first Appellate Court.

9. Fourthly, it has been urged on behalf of the appellant that in view of the admission of Smt. Nasib kaur in her cross-examination to the effect that when she executed an agreement to sell in favour of Kulwant Singh defendant subsequent to the agreement of sale dated 6.12.1983 already executed by her in favour of Arur Singh. Kulwant Singh-defendant had assured her that he would himself deal with Arur Singh plaintiff, it could not be held that agreement to sell in favour of Kulwant Singh was earlier in time than that in favour of the plaintiff. This argument also does not carry conviction with me. No importance could be attached to such evidence, it being beyond pleadings. Therefore, this part of the evidence has rightly been ignored by the first Appellate Court. This piece of evidence does not render the agreement of sale or sale deed in favour of Kulwant Singh doubtful. Nasib Kaur appearing as DW has admitted the factum of the execution of agreement to sell in favour of Kulwant Singh on 20.4.1983. Factum of payment of earnest money has been recited in the relevant document. She was certainly a bona fide purchase for consideration. The agreement of sale dated 20.4.1983 in his favour being earlier in time as compared to the one in favour of Arur-Singh plaintiff the question of his having any notice of the said agreement to sell dated 6.12.1983 did not arise. Otherwise also, it is now well settled that a defendant is not bound by the admissions of his co-defendant. The admission by Smt. Nasib Kaur does not in any way bind her co-defendant Kulwant Singh.

10. Fifthly, it has been submitted on behalf of the appellant that the attesting witnesses of the agreement to sell in favour of Kulwant Singh were from a village other than that of the vendor and, therefore, their evidence could not be believed. This argument also does not cut any ice with me. There is no legal requirement that the attesting witnesses of an agreement to sell should be from the village of the vendor. Otherwise also, both the attesting witnesses, Bal Kishan and Hari Darshan Singh DWs have stated in unambiguous terms that they very well knew Kulwant Singh and Nasib Kaur. Besides what has been stated above, perusal of the sale-deed would show that the agreement to sell dated 20.4.1983 has been specifically referred to therein.

11. Sixthly, learned counsel for the appellant has vehemently argued that in para No. 20 of his judgment, learned Subordinate Judge had held that agreement dated 20.4.1983 was not a valid agreement and defendant Kulwant Singh knew about the earlier agreement in favour of the plaintiff and, therefore, he was not a bona fide purchaser without notice. But the learned first Appellate Court has not dealt with the above said finding. This argument is not tenable because the learned first

Appellate Court in para No. 12 of its judgment has discussed these points in details and came to the conclusion that no doubt, it was stated by Nasib Kaur in her cross-examination that when she executed an agreement to sell in favour of Kulwant Singh-defendant subsequent to the agreement of sale dated 6.12.1983 already executed by her in favour of Arur Singh, Kulwant Singh-defendant had assured her that he would himself deal with him but since no plea had been taken in the written statement, no weight could be attached to it and it cannot be taken as a circumstance rendering the agreement to sell Ex. D1 doubtful. The learned first Appellate Court has further held that Smt, Nasib Kaur in her written statement had admitted the execution of the agreement dated 20.4.1983 in favour of Kulwant Singh. Hari Darshan Singh and Bal Kishan DWS, who knew the parties, had proved the execution of the sale deed. Reference of the agreement of sale dated 20.4.1983 also finds place in the sale deed. I can possibly have no quarrel with the preposition of law propounded by learned counsel for the appellant to the effect that the execution of the sale deed by Smt. Nasib Kaur in favour of Kulwant Singh on 10.2.1984 would not date back to the agreement to sell dated 20.4.1983 in his favour. But it does not, in any way, help the plaintiff because it has been found as a fact by the first Appellate Court that the agreement to sell had been actually and validly executed by Smt. Nasib Kaur in favour of Kulwant Singh on 20.4.1983; that the agreement to sell dated 6.12.1983 in favour of the plaintiff Arur Singh is certainly subsequent to the one in favour of Kulwant Singh, and that with the execution and the registration of the sale deed in favour of Kulwant Singh on 10.2.1984 the title of the property in dispute vested in Kulwant Singh on that day. The judgment, Gurdial Singh and Ors. v. Sewa Singh and Ors. 1972 P.L.J 713 cited at the bar is of no avail to the appellants.

12. In view of the above discussion, I do not find any fault with the well reasoned judgment of the first Appellate Court which is hereby affirmed. Resultantly, this appeal has no merit and is dismissed as such. However, the parties are left to bear their own costs of this appeal.