

(1999) 08 P&H CK 0040

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2018 of 1999

Hakam Singh

APPELLANT

Vs

Gurdev Singh and Others

RESPONDENT

Date of Decision: Aug. 25, 1999

Acts Referred:

- Specific Relief Act, 1963 - Section 20

Citation: (1999) 3 CivCC 547 : (2000) 124 PLR 342 : (1999) 4 RCR(Civil) 210

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Jasbir Rattan, for the Appellant;

Final Decision: Dismissed

Judgement

R.L. Anand, J.

Unsuccessful plaintiff Shri Hakam Singh has filed the present Regular Second Appeal and it has been directed against the judgment and decree dated 6.10.1998 passed by the Court of District Judge, Sangrur who affirmed the judgment and decree of the trial Court dated 3.5.1996, vide which the suit of the plaintiff for specific performance was dismissed.

2. The case set-up by the plaintiff was that he entered into an agreement with Gurdev Singh defendant No. 1 on 20.12.1990 and agreed to purchase the land mentioned in the agreement. Defendant No. 1 committed the breach of the agreement and he executed another agreement to sell dated 15.2.1994 in favour of defendant No. 2 to 5 and the sale deed dated 2.5.1994 was executed in pursuance of the agreement to sell dated 15.2.1994. According to the plaintiff the sale deed executed by defendant No. 1 in favour of his co-defendants is illegal, null and void and does not affect the rights of the plaintiff who is entitled to decree for possession by way of specific performance.

3. The suit was contested by the defendants. They stated that the plaintiff had forged and fabricated the document and it was without consideration. Defendant No. 1 had alienated the land measuring 7 bighas vide sale deed dated 2.5.1994, for a consideration of Rs. 1,89,000/- in favour of Shamsher Singh and Sukhwinder Singh Sons of Shri Surjit Singh. These defendants have denied the agreement dated 20.12.1990 propounded by the plaintiff and also denied that a sum of Rs. 1,00,000/- was ever paid by the plaintiff to defendant No. 1 at the time of the execution of the agreement. It was the further case of the defendants that plaintiff and his father used to cultivate the land of defendant No. 1 on chakota and stamp paper was purchased from Barnala for scribing the chakotanama and defendant No. 1 was asked to thumb mark the same as well as in the register of the stamp vendor and it was kept blank. The said stamp paper was retained by the plaintiff and his father. The defendants also stated that the sale deed dated 2.5.1994 was without consideration and that the same was executed in violation of the injunction order.

4. The stand taken by defendants No. 2, 4 and 5 before the trial Court was that defendant No. 1 was the owner and in possession of the suit land out of which he alienated 7 bighas of land vide sale deed dated 2.5.1994. It was also the stand of these defendants that defendant No. 1 was un-married and issueless. It was further stated that defendants No. 4 and 5 were the bona fide purchasers of the land measuring 7 bighas for consideration and value and the sale deed dated 2.5.1994 was perfectly valid.

5. A rejoinder was filed by the plaintiff in which he reiterated the grounds taken by him in the plaint and controverted the allegations made in the written statements.

6. From the pleadings of the parties, the following issues were framed:-

1. Whether defendant No. 1 entered into an agreement with the plaintiff on 20.12.1990 and he received Rs. 1 lac as earnest money?

2. Whether the plaintiff has been ready and willing and he is still ready and willing to get the sale deed executed in his favour?

3. Whether the agreement dated 15.2.1994 and the sale deed dated 2.5.1994 in favour of defendant No. 4 and 5 are without consideration, illegal, null and void and are liable to be set aside? OPP

4. Whether the defendants No. 4 and 5 are bona fide purchasers of the land measuring 7 bighas mentioned in the sale deed dated 2.5.1994? OPD-4-5.

5. Whether the name of defendant No. 4 has been wrongly mentioned as Shamsher Singh? If so its effect? OPD.

7. In support of their case the parties led oral as well as documentary evidence and on the conclusion of trial issue No. 1, which was most vital issue, was decided against the plaintiff for the reasons given in para No. 12 and 13 of the judgment of

the trial Court, which read as under: -

12. "The agreement Ex.P.I is alleged to have been executed by defendant No. 1 in favour of plaintiff on 20.12.1990 and the sale deed was to be executed by defendant in favour of the plaintiff on 10.11.1991. The plaintiff remained silent from 10.11.1991 the date on which the agreement was to be performed till 11.11.1993 when they served a notice upon defendant No. 1 for the execution of the sale deed. The present suit was filed by the plaintiff on 27.11.1993. The silence on the part of the plaintiff and his father right from 20.12.1990, when the agreement Ex.P.I was executed till the date of filing of the suit dated 27.11.1993 i.e. for a period of almost three years is suggestive of the fact that the agreement Ex.P.I came into existence only a few days prior to the filing of the suit. It is further important to mention here that although the date for execution of the sale deed was 10.11.1991, the plaintiff did not get his presence marked in the office of the Sub-Registrar nor he gave any notice to defendant No. 1 for execution of the sale deed nor he took any step for the execution of the sale deed in his favour. This fact also implies that the agreement Ex.P-1 was not written on 20.12.1990 rather it was scribed at a later date in order to usurp the property of Gurdev Singh.

13. The report Ex.D-1 is also important piece of document which proves the forged and fabricated nature of the agreement. The report was written at the instance of Sarwan Singh father of the plaintiff on 18.10.1992. It is mentioned in the said report by Sarwan Singh that he was cultivating the land of Gurdev Singh on Chakota and Gurdev Singh also used to reside with him. It is further mentioned that on 16.10.1992 Gurdev Singh left his house and the plaintiff suspected that Gurdev Singh might not get a sale deed registered in favour of some person. This report has been written at the instance of Sarwan Singh who is a father of plaintiff. The plaintiff has tried to wriggle out of this report by saying that he was living separately from his father but this plea cannot be accepted. It has come in the statement of the witnesses examined by defendants that the plaintiff used to reside with his father Sarwan Singh at village Tibba. Had there been any agreement in existence on 18.10.1992 then Sarwan Singh father of the plaintiff must have mentioned the execution of the" agreement by Gurdev Singh in favour of his son. The report Ex.D-1 proves the allegations of the defendants that when Gurdev Singh defendant No. 1 left the house of the plaintiff and his father then these persons in order to grab the property of defendant No. 1 forged the agreement Ex.P-1. The stamp paper for the execution of the agreement were purchased from Barnala. This agreement was not got scribed from a regular petition writer although the stamp papers were purchased from the Court premises. Rajinder Kumar who attested the agreement is a resident of Barnala and was working as Typist, whereas the scribe Sardara Ram was working as a stamp vendor. No respectable from the village of the plaintiff or defendant No. 1 was asked to attest the agreement Ex.P-1. The perusal of the agreement Ex.P-1 makes it clear that the thumb impression of Gurdev Singh was already present there before the body writing was scribed and it is clear from the

perusal of the agreement that the thumb impression of Gurdev Singh on Ex.P-1 had been affixed prior to the body writing Ex.P-1. The document expert Mr.V.B Bhatnagar in his report Ex.DW-5/A has also stated that the thumb impression of Gurdev Singh was already existing on the stamp paper and it was scribed later on. The thumb impression of Gurdev Singh is on right side of the paper whereas in the normal circumstances, it should have been in the middle of the stamp paper. The endorsement on the back of stamp paper Ex.PW-3/B appears to have been written with a different hand than the writing of the agreement Ex.P-1. The uneven spacing of the writing makes it clear that the thumb impression was already existing and un-even writing was effected in order to adjust the thumb impression. It is thus proved that the agreement Ex.P-1 is a forged and fabricated document. Defendant No. 1 did not enter into any such agreement and he did not receive the earnest money of Rs. 1,00,000/- from the plaintiff. I, therefore, decide this issue against the plaintiff and in favour of the defendants."

Issue No. 2 and 3 were also decided against the plaintiff and consequently the suit of the plaintiff was dismissed by the trial Court.

8. Aggrieved by the judgment and decree of the trial Court, Hakam Singh plaintiff filed the first appeal before the first appellate Court and that appeal also met with the same fate for the reasons given in paras No. 10, 11, 12, 13 and 14 of the judgment of the appellate Court, which read as under:-

"10. First on issues No. 1 and 2 Ex.P-1 is the agreement set-up by the plaintiff, on the back of this deed there is endorsement Ex.PW-3/B of stamp vendor that stamp paper was purchased by Gurdev Singh. Ex.PW-3/A is copy of entry of register of stamp vendor. Ex.P-1, PW-3/A, and PW-3/B purport to be thumb marked by the plaintiff. A perusal of the same shows that thumb impressions are all lump of ink and are incomparable. Even Shri V.B. Bhatnagar, DW-5 has opined thumb impression on Ex.P-1 had been affixed before the body writing.

11. Ex.P-1 was said to have been written at Barnala by Sardara Ram Stamp Vendor now deceased, father of Ravinder Nath PW-3, attested by Rajinder Kumar PW-1, a typist at Barnala and one Sadhu Singh son of Rattan Singh resident of Tibba. PW-1 admitted that he did not know the parties and Sadhu Singh of Tibba has not been examined. The plaintiff has not produced expert evidence to prove that P-1 was thumb-marked by Gurdev Singh. Writing P-1 and of PW-3/B are said to be of Sardara Ram but DW-5 opined otherwise. Plaintiff PW-2 admitted he was not present at the time of execution of Ex.P-1. Moreover, he is only a lad of 28 years. Hence, the evidence of the plaintiff does not prove the execution of Ex.P-1.

12. As per Gurdev Singh, he used to live in the house of father of the plaintiff and plaintiff's father used to cultivate the land in dispute. The suit land is situated at village Tibba in Sub-Division Dhuri whereas the agreement Ex.P-1 was scribed at Barnala. Sadhu Singh alleged attesting witness of Ex.P-1 is said to be from village

Tibba, but he has not been examined. Thumb impression attributed to him again is a lump of ink wholly incomparable. Again, below the writing Ex.PW-3/B there is written the name of "Gurdev Singh son of Jeeva Singh" and under that name there is signatures of one Kishan Singh. It has not been explained as to who that Kishan Singh was. Rajinder Kumar PW-1 was only a typist at Barnala and Sardara Ram was not a deed writer. Admittedly, there are many recognised deed writers at Barnala. It has not been explained as to why Ex.P-1 was not got scribed from a regular deed writer. PW-2 admitted that he did not know either Sardara Ram or Rajinder Nath. A huge sum was allegedly paid to defendant No. 1. Normally in such transactions both the parties involve persons of their confidence. It has not been explained as to how the plaintiff took the risk of getting Ex.P-1 written and attested from persons not known to him. Again PW-2 admitted that on 11.11.1991, after Gurdev Singh did not respond to the execution of the sale deed, he did not give notice to Gurdev Singh. These are all suspicious circumstances surrounding Ex.P-1.

13. Ex.D-1 is copy of DDR, entry No. 35 (dated 18.10.1992 got recorded by Sarwan Singh (father of plaintiff) in police station, Sherpur. He mentioned thereon that Gurdev Singh (defendant No. 1 here) was owner of 18 bighas of land, who used to reside with him (Sarwan Singh), that on the morning of 16.10.1995 Gurdev Singh was found missing from his (Sarwan Singh's) house. He suspected that somebody had kidnapped Gurdev Singh for the purpose of getting sale transaction. What is significant in his entry is that though PW-2 denied, but Sarwan Singh admitted (in Ex.D-1) that land of the defendant was cultivated by him and that defendant used to live with him. It is also to be noticed from D-1 that Sarwan Singh did not mention in it the fact of Ex.P-1. Notice Ex.P-2 was given to the defendant only on 11.11.1993. No explanation is forthcoming as to why the plaintiff and his father kept silent for so long.

14. The learned trial Judge has concluded that agreement Ex.P-1 was forged and fabricated and defendant No. 1 did not enter into any such agreement. In the very nature of things, fraud is secret in its origin and inception the means adopted for its success and fraudulent motive or design cannot be proved to the very hilt and it should be inferred from the circumstances placed before Court. Each circumstance by itself may not mean much, but taking all of them together, they may reveal a fraudulent or dishonest plan. Thangachi Nachia v. Ahmed Hussian Malumiar AIR 1957 Mad 1974 and [Passarilal Mannoolal Vs. Mst. Chhuttanbai and Others](#), are rulings on the point. Therefore, I agree with the above said conclusion."

9. I have heard the learned counsel for the appellant and have gone through the judgments of the Courts below.

10. A vigorous effort has been made by the learned counsel to convince me that defendant No. 1 Gurdev Singh has not appeared in the witness box and therefore, he has taken a great risk by not coming into the witness box to rebut the case of the plaintiff and that an adverse inference has to be drawn against him. The learned

counsel also submits that it stands proved on record that Ex.P-1 had been duly executed and that defendant No. 1 had put his thumb impression on it and in these circumstances the onus lies on defendant No. 1 to establish that some fraud etc, had been committed upon him or that the agreement was a forged document. The counsel also submitted that in the written statement the particulars of alleged fraud have not been supplied and, therefore, it is not open to defendants to raise the plea of fraud etc. and in these circumstances, the suit of the plaintiff ought to have been decreed. In support of this contention the learned counsel has also placed reliance upon the various judgments, namely [Sardari Lal Vs. Kartar Singh and Others,](#) and [Vidhyadhar Vs. Manikrao and Another,](#) .

11. I have gone through the case law and in view of the dictum laid down by the Supreme Court and the High Courts there is no dispute with the proposition of law so far as this case is concerned. It is the basic law enshrined in Section 114 of the Evidence Act that the parties are bound to produce best evidence and in the absence of best evidence, an adverse inference has to be drawn against the party which has not produced best evidence. But in the present case, the onus to prove issue No.1 was on the plaintiff. He was supposed to prove that there was due execution of the agreement Ex.P-1, by Shri Gurdev Singh who admittedly was residing with the father of plaintiff. So much so even the father of the plaintiff made a complaint to the police that Shri Gurdev Singh had gone from the house and he was apprehending that somebody might get some document executed in his favour by taking the thumb-impression of Shri Gurdev Singh.

12. In these circumstances, it can reasonably be inferred that there was heavy onus on the plaintiff to show as to why his father Sarwan Singh was deposing against him. In the opinion of this court, there was some sort of fiduciary relationship between the plaintiff and his father on one side and defendant No. 1, who was unmarried and issueless on the other. Both the Courts have rightly discussed the various suspicious circumstances surrounding the agreement Ex.P-1 and those suspicious circumstances have not been removed by the plaintiff by placing on record any cogent evidence. The agreement Ex.P-1 has not been executed by a regular scribe inspite of the fact that several regular scribes were available at Barnala. Even the conduct of the plaintiff does not inspire confidence. He did not call upon defendant No. 1 by serving notice in writing that the time for the performance of the agreement has come and that he should accept the remaining sale consideration and prepare for the registration of the sale deed. The plaintiff even did not get his presence marked in the office of the Sub-Registrar on the date fixed for the execution of the sale deed. As per the agreement Ex.P-1 a sum of Rupees one lac is alleged to have been paid to defendants No. 1 by the plaintiff. No effort was made by the plaintiff to show from where this huge amount of rupees once lac he got and where rupees one lac had allegedly been utilised by defendant No. 1. Even the purchase of stamp paper over which the agreement Ex.P-1 has been written is shrouded with mystery. There is no quarrel with the basic principle of law

that party to the suit should invariably come in the witness box to defend its case but in the present case this Court cannot lose sight of the fact that there was hardly any necessity on the part of defendant No. 1 to appear in the witness box because he had already sold the property in dispute to the vendees and the serious contest was between the vendees and the plaintiff. The vendees had proved themselves to be the bona fide purchasers for consideration and in these circumstances, I am constrained to interfere in the concurrent findings recorded by the Courts below against the plaintiff.

This appeal stands dismissed in limine. No order as to costs.