



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2039 of 1993 (O&M)

Date of Order:21.01.2025

Gora Lal (deceased) through LRs .Appellant
Versus

Dalwinder Singh and another ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. V.K.Jindal, Sr. Advocate, with
Mr. Akshay Jindal, Advocate
Mr. D.K.Singhal, Advocate,
Mr. Pankaj Gautam, Advocate
Mr. Vijayveer Singh, Advocate
Mr. Yashvardhan Goyal, Advocate
for the appellant.

Mr. G.S.Punia, Sr. Advocate, with
Ms. Harveen Kaur, Advocate
for the respondents.

ANIL KSHETARPAL, JUDGE (Oral)

1. BRIEF FACTS OF THE CASE

1.1 Defendant no.1(appellant herein) assails the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff's suit for declaration that he is the owner in possession of 11 kanals and 13 marlas land and registered sale deed dated 17.07.1986, executed by him in favour of the appellant is illegal.

1.2 While filing the suit, the plaintiff claims that he neither executed the sale deed dated 17.07.1986, nor executed any agreement to sell dated 13.07.1985, on receipt of Rs.34,000/- as earnest money. While alleging that his signatures were fraudulently obtained by Sh. Surat Singh in the pretext of attesting a document as a witness. He claims that a fraud has been played upon him.



1.3 The defendants contested the suit while claiming that the plaintiff sold the suit land to the defendant no.1 vide sale deed dated 17.07.1986 on payment of the entire sale consideration of Rs.39,000/-. The defendants claimed that the sale deed was executed and signed but the plaintiff slipped away before it was presented for registration while promising to come back, however, he never turned back. It was claimed by the plaintiff that Rs.34,000/- was paid at the time of execution of the agreement to sell on 13.07.1985, whereas Rs.5,000/- was to be paid at the time of registration of the sale deed.

1.4 Subsequently, the plaintiff filed a suit for grant of decree of injunction in which the plaintiff and defendants entered into a compromise on 08.09.1986. The plaintiff admitted defendants' ownership and delivery of possession. He executed an affidavit Ex.DZ and filed an application for sanctioning mutation in favour of the defendants. He also withdrew his suit. The plaintiff also appeared before the Registrar and refused to get the sale deed registered.

1.5 Defendant no.2 claimed that defendant no.1 is in possession of the property.

1.6 The trial court culled out the following issues for adjudication:-

- “1. *Whether the suit is not maintainable in the present form?OPD*
2. *Whether the plaintiff has locus standi to file this suit?OPP*
3. *Whether the plaintiff has cause of action to file the suit?OPP*
4. *Whether the suit is properly valued for the purpose of court fee?OPP*



5. *Whether the plaintiff is estopped to file this suit by his act and conduct?OPD*
6. *Whether the defendant no.1 is owner in possession of the suit land?OPD*
7. *Whether the sale deed dated 17.06.1986 is illegal, null and void as alleged in the plaint?OPP*
8. *Whether the plaintiff is entitled to permanent injunction as prayed for?OPP*
9. *Whether the plaintiff had not executed any agreement dated 13.7.85 in favour of the defendant?OPP*
10. *Relief.”*

1.7 Both the courts have decreed the plaintiff's suit on the following grounds:-

- (1) The original agreement to sell dated 13.07.1985 has not been produced;
- (2) Mr. Dewan K.S.Puri, Handwriting and Finger Print Expert has opined that the plaintiff did not sign the agreement to sell dated 13.07.1985;
- (3) There is inconsistency in the oral statements of witnesses produced by the defendants and therefore, defendants have failed to prove their case.

2. ARGUMENTS PUT FORTH BY THE LEARNED COUNSEL REPRESENTING THE PARTIES:-

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record.

2.2 The learned senior counsel representing the appellant while referring to the various documents produced in evidence by the defendants



submits that the sale deed executed on 11.03.1986, is admittedly signed by the plaintiff. He submits that the plaintiff only denies receipt of sale consideration. He submits that on 08.09.1986, the plaintiff and the defendants entered into a settlement which was produced by the plaintiff before the trial court alongwith an application in the previous suit. He submits that the plaintiff attested the affidavit dated 08.09.1986, acknowledging that defendant no.1 is the owner of the suit property and filed an application before the revenue authorities for sanctioning mutation in his favour.

2.3 Per contra, the learned senior counsel representing the respondents submits that the original agreement to sell dated 13.07.1985, has not been produced and the payment of sale consideration is not proved. He submits that when the plaintiff appeared in evidence, the defendants did not suggest to the plaintiff that he has received the total sale consideration. Moreover, he submits that Sh. Dewan K.S.Puri has opined that the plaintiff did not sign the agreement to sell. He further submits that as per the agreement to sell, the sale deed was to be executed on 13.11.1985, whereas the alleged sale deed is dated 11.03.1986. He further submits that regarding compromise dated 08.09.1986, the defendant has not led any evidence.

3. **ANALYSIS AND DISCUSSION:-**

3.1 This court has considered the submissions, analyzed and evaluated the arguments of the learned senior counsel representing the parties.

3.2 It is evident that both the courts have materially erred while relying upon the inconsistencies in the oral depositions while giving



preference to an oral evidence over the documentary evidence. The plaintiff does not dispute his signatures and execution of the sale deed on 11.03.1986, wherein he acknowledges the receipt of Rs.34,000/- as earnest money at the time of execution of the agreement to sell. It is recited in the sale deed that the remaining amount of Rs.5000/- will be paid before the Sub-Registrar, however, he did not appear before the Sub-Registrar.

3.3 The plaintiff was summoned by the Sub-Registrar. He suffered a statement admitting execution of the sale deed, however, stated that the purchaser has not paid him the amount specified in the sale deed. He admitted his signatures on the sale deed. He further stated that he is refusing to get the sale deed registered because he has not received the total amount, as stated.

3.4 Subsequently, the defendants deposited the balance sale consideration of Rs.5000/- with the office of Sub-Registrar and the sale deed which was executed on 11.03.1986, was registered by the Sub-Registrar on 17.07.1986. Thereafter, on 13.08.1986, the plaintiff filed civil suit for grant of decree of permanent injunction restraining the defendants from getting the sale deed registered by impersonating him. In the aforesaid suit, the plaintiff claims that the defendants got his signatures on some written papers showing him some kind of writing in respect of the land without paying anything. During the pendency of the aforesaid suit, the deed of settlement was arrived at between the parties, which is exhibited as Ex.'DX' on the record. In the aforesaid settlement, the plaintiff acknowledged that defendant no.1 is owner and in possession of the property. He specifically admitted that defendant no.1-Gora Lal is owner in



possession of the same and he will get the property mutated in his favour. He further undertook to get the suit consigned to record and both the parties will remain bound by the settlement. This settlement was signed by two marginal witnesses, namely, Sardar Gurdev Singh, President, Amloh and Sh. Surat Singh, apart from the signatures of the plaintiff and defendant no.1. On 08.09.1986, the plaintiff also executed an affidavit which was attested by the Oath Commissioner, wherein he admits the ownership of defendant no.1. Not only this, the plaintiff also filed an application before the trial court in the previous suit for taking up the file and consigning his suit to the record room, because the parties have entered into a settlement. This document is exhibited as Ex.D6 on the record. On 09.10.1986, the suit of the plaintiff was dismissed in default. He never filed any application for restoration of the same.

3.5 Thereafter, the plaintiff filed the present suit on 10.04.1987. The plaintiff appeared in evidence as PW4. He denies purchasing of stamp paper from stamp vendor. However, he admits execution of the sale deed while stating that he has not been paid the sale consideration. He admits that he was summoned by the Tehsildar at the time of registration of the sale deed and his statement was recorded, however, he denied execution of the agreement to sell. Subsequently, in the cross-examination, he denied filing of the previous suit. He also denies the settlement dated 08.09.1986, executed between the parties. He even denies the affidavit filed by him in support of the plaint in the present suit. He feigns ignorance about his signatures in the affidavit dated 10.07.1987, deeds dated 27.05.1989 and 22.11.1988. He denies his signatures on affidavit dated 09.09.1986, filed in



the previous suit. However, he admits his signatures on an application dated 08.09.1986, filed in the previous suit. As per that application, there was a compromise between the parties and the previous suit was to be consigned to the record room. In the end, he stated that his signatures were obtained on number of papers after execution of the sale deed.

3.6 The civil suits are to be decided on the basis of preponderance of evidence. If the plaintiff alleges fraud, he is required to plead its particulars and prove it like a criminal case because for proving fraud, the standard of proof is beyond reasonable doubt. In this case, there is overwhelming documentary evidence which does not need repetition to prove that the plaintiff, in fact, executed the sale deed upon receipt of sale consideration. In any case, if a part of sale consideration has not been paid, the same is not a ground to set aside the sale deed. The execution of the agreement to sell is proved from photocopy of the agreement to sell, recital in the sale deed wherein execution of the agreement to sell is admitted by the plaintiff, subsequent settlement deed, the affidavit, deposition of the plaintiff in the court and application submitted by the plaintiff in the previous suit. The judgments passed by both the courts suffer from perversity. The courts should have appreciated the evidence in the proper perspective particularly when the plaintiff admitted his signatures on the sale deed and there was a compromise arrived at in the previous suit. Moreover, both the courts have overlooked that the plaintiff is totally unreliable witness. He denies the filing of his previous suit. Hence, he was not a truthful witness. The court should have proceeded against the plaintiff as he was trying to play hide and seek with the court.



3.7 Both the courts have also erred in relying upon the opinion of Handwriting and Finger Print Expert. Once a party engages Handwriting and Finger Print Expert, his opinion is expected to be biased in favour of his master.

3.8 Moreover, it is the plaintiff who examined PW1-Amolak Ram, stamp vendor, who sold the stamp paper for execution of the agreement to sell on 13.07.1985. He proved entry in his register at Sr. No.8422. In cross-examination he stated that he did not personally know the person who purchased the stamp paper. Moreover, it is the plaintiff who purchased the stamp paper for execution of the sale deed. The scribe as well the marginal witness of compromise deed dated 08.09.1986, were examined by the defendants in order to prove these documents. The courts have ignored their depositions on minor inconsistency with regard to location where the compromise deed was scribed. While appreciating the evidence, the court is required to be given preference to the documentary evidence over oral evidence.

3.9 Human memory is fallible. It is not expected to be perfect. After some years, the memory fades away. Hence, the documents are required to be preferred over oral evidence.

4. **DECISION**

4.1 Keeping in view the aforesaid facts and discussion, both the judgments passed by the courts below are set aside. The suit filed by the plaintiff shall stand dismissed with costs of Rs.50,000/- which shall be recoverable from the plaintiff.

4.2 The Regular Second Appeal is allowed.



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

(ANIL KSHETARPAL)
JUDGE

January 21, 2025

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