
(1991) 01 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1388 of 1978

Janga Singh

APPELLANT

Vs

Harbans Singh

RESPONDENT

Date of Decision : 09-01-1991

Acts Referred:

Citation : (1992) PLJ 7 : (1992) 1 RRR 566

Hon'ble Judges : Ashok Bhan, J

Advocate : A.L. Behal, Advocate, Sumet Kashyap, Advocate, Anand Sarup, Sr. Advocate,, Advocates for appearing Parties

Judgement

Ashok Bhan, J.—Harbans Singh and Gurnam Singh plaintiffrespondents filed the present suit for specific performance of an agreement

dated 17.12.1973 (Ex. PI) entered into between Karam Singh son of Jagat Singh and the plaintiffs regarding one half share of land measuring 138

Kanals 15 Marlas fully detailed in para 1 of the plaint and land measuring 46 Kanals 141/2 Marlas being 1/4th share of land measuring 186 Kanals

18 Marlas described in Para I of the plaint the total holdings being 115 Kanals 17 Marlas situated in village Kahnewala, for a sum of Rs. 70,000/.

Out of this amount, Rs. 30,000/ were paid as earnest money" and balance amount of Rs. 40,000/ was to be paid at the time of execution and

registration of the sale deed. Last date for execution and registration of the sale deed was 15.6.1974. Karam Singh was murdered on 25.5.1974.

He was a bachelor and was succeeded to by his step brother Janga Singh, defendantappellant. Plaintiffrespondents were arrested for committing

the murder of Karam Singh. They were acquitted by the Sessions Judge vide his order dated 4.11.1974. The plaintiffrespondents requested the

defendantappellant to execute the sale deed in their favour but on his refusal to

do so, the present suit was filed for specific relief of the agreement.

2. Defendantappellant contested the suit and pleaded inter alia that Karam Singh never executed agreement in favour of the plaintiffs and that he

did not receive any earnest money; that Karam Singh was forcibly removed by the plaintiffrespondents and their father; that in any case if

agreement Ex. P/1 was proved, the same was got executed by Karam Singh under undue influence and coercion. It was further asserted that

Karam Singh had executed an agreement in favour of the defendantappellant on 1.12.1966 for a sum of Rs. 20,000/ out of which a sum of Rs.

8250/ had been received by him as earnest money; that Karam Singh executed another agreement on 4.6.1967 in favour of the defendant

appellant and received a sum of Rs. 3000/. The defendantappellant also pleaded some other agreement alleged to have been executed by Karam

Singh on 21.2.1974 in favour of Balbir Singh and Pargat Singh minor sons of defendantappellant. Karam Singh was stated to have received a sum

of Rs. 10,000/ from Balbir Singh and a sum of Rs. 12000/ from Pargat Singh respectively. It was, thus, pleaded that the agreements in favour of

the defendantappellant and his sons had priority over the alleged agreement in favour of the plaintiffrespondents. Plea that agreement Ex. P1 was

not enforceable, was also taken.

3. Replication was filed in which all the facts stated in the written statement were denied and those stated in the plaint were reiterated.

4. On the consideration of pleadings of the parties, the trial Court framed the following issues :

(1) Whether Karam Singh deceased executed the agreements dated 17.12.1973 for consideration in favour of the plaintiff ? OPP

(2) If issue No. 1 is proved, whether the said agreement is the result of undue influence and coercion ? OPD

(3) Whether the plaintiffs obtained possession of Khasra No. 7M/13 and 18M consequent to agreement dated 17.12.1973 ? If so its effect ?

OPP

(4) Whether Karam Singh was a minor on 1.12.1966 and 4.8.1967 ? (Objected to) OPP

(5) Whether Karam Singh deceased executed agreement dated 1.12.1966 and dated 4.8.1967 in favour of the defendant for consideration ?

OPD

(6) If issue No. 5 is proved, whether these agreements are the result of undue influence and coercion and stand cancelled ? OPP

(7) Whether Karam Singh deceased executed for consideration agreement dated 21.2.1974 and dated 2.3.1974 in favour of Balbir Singh and

Pargat Singh respectively ? OPD

(8) If issue No. 7 is proved whether these agreements were the result of undue influence or fraud ? OPP

(9) Whether the defendant has a locus standi to raise objection in respect of agreement dated 21.2.1974 and dated 2.3.1974, if so their effect ?

OPD

(10) Whether the defendant obtained the possession of the suit land in part performance of agreement in his favour ? If so its effect. OPD

(11) Whether the plaintiffs were ready and willing to perform their part of the agreement dated 17.12.1973 ? OPP

(12) Whether the plaintiffs are not entitled to the specific performance of the contract, if the objections raised by the defendant in para No. 2 of the

written statement are held to be valid ? OPD

(13) Whether the defendant is entitled to alternative relief in case the specific performance is refused ? If so to what effect ? OPP

(14) Relief.

5. Under Issue No. 1, the trial Court found that Karam Singh deceased had executed a valid agreement Ex. P 1 dated 17.12.1973 in favour of the

plaintiff respondents and the same was with consideration. Under Issue No. 2, finding recorded was against the defendantappellant and in favour

of the plaintiffrespondents and it was held that agreement Ex. P1 was not the result of undue influence and coercion. Issue No. 3 was decided in

favour of the plaintiffs and it was held that plaintiffs had obtained possession of Khasra No. 7M/13 and 18 M consequent to agreement dated

17.12.1973. Issue No. 4 was decided in favour of the plaintiffs and against the defendant. Issues No. 5 to 8 were decided against the defendant

and in favour of the plaintiffs. It was held that there were no validly executed agreements between Karam Singh deceased and the

defendantappellant or his sons Balbir Singh and Pargat Singh. Issue No. 9 was also decided against the defendant and in favour of the plaintiffs.

Under issues No. 10 it was held that in view of the finding recorded in issue No. 5 to 8 defendant had not obtained the possession of the suit land

in part performance of the agreement. Under Issue No. 11 it was held that the plaintiffrespondents were ready and willing to perform their part of

the agreement dated 17.12.1973. Under Issue No. 12, it was held that the plaintiffrespondents were entitled to the specific performance of the

contract. Issue No. 13 was also decided against the defendant and in favour of the plaintiffs and it was held that plaintiffs were entitled to the

specific performance of the contract and not the alternate relief of payment of the earnest money and damages. Consequently, the plaintiff, suit was

decreed and the defendant was directed to execute the sale deed on receipt of Rs. 40,000/ from the plaintiffrespondents. Aggrieved against the

said judgment and decree, defendant has filed the present appeal.

6. I have heard the learned counsel for the parties. Learned counsel appearing for the defendantappellant had challenged the findings recorded by

the trial Court on Issues No. 1, 2 and 13 only. Arguments on other issues were not addressed. The findings recorded by the trial Court on issues

No. 3 to 12 are thus, affirmed.

7. Now I propose to decide issues No. 1, 2 and 13 and take up issues No. 1 and 2 together, being correlated.

Issues No. 1 and 2.

8. In order to prove the execution of agreement dated 17.12.1973 Ex. P1, plaintiffrespondents examined Tara Singh P.W. 1, Surat Singh P.W. 2

and Shashi Puri P.W. 3. Tara Singh and Surat Singh are the attesting witnesses of the agreement whereas Shashi Puri is the scribe. The attesting

witnesses have deposed that they knew Karam Singh and he had agreed to sell the land in favour of the plaintiff respondents. Agreement Ex. P1

was read over and explained to Karam Singh by Shashi Puri P.W. 3, the scribe. Karam Singh after understanding the contents thereof put his

thumbimpression on Ex. P1, on receipt of a sum of Rs. 30,000/ which was by way of earnest money. Shashi Puri, P.W. 3 has also deposed that

Ex. P1 was typed by him and the same was typed at the instance of Karam Singh. Agreement was for a sale consideration of Rs. 70,000/ out of

which Rs. 30,000/ were paid to Karam Singh and that he had put his thumbmark on the same after accepting the same to be correct and on

receipt of the earnest money. He has further stated that Tara Singh and Surat Singh P.W. 1 and PW. 2 respectively, had put their attestation to the document. He produced the register of deeds, which was maintained by him and in which he had made an entry regarding the execution of agreement Ex. P1 also. A perusal of testimony of these witnesses leads to an irresistible conclusion that agreement Ex. P1 was executed by Karam Singh in favour of the plaintiffrespondents after understanding the contents thereof and on receipt of Rs. 30,000/ as earnest money. It was argued by Mr. Anand Swarup, Senior Advocate appearing for the defendantappellant that no reliance can be placed on the testimonies of Tara Singh and Surat Singh as they do not belong to the village where Karam Singh was residing. I do not find any substance in this submission of learned counsel for the appellant. The distance between the village where Tara Singh and Surat Singh P.W. 1 and PW. 2 respectively were residing and that of Karam Singh is only one Kilometre. Surat Singh is a Lambardar of village Bogewal. Village Kahnewala to which Karam Singh belonged and village Bogewal to which P.W. 2 Surat Singh belonged have only one Panchayat. Therefore, the association of Surat Singh for the purpose of attestation of the agreement Ex. P1 does not in any way raise any suspicion as to the genuineness of the deed. Stamp paper on which ultimately agreement Ex. P1 was scribed had been purchased on 16/12/1973 i.e. a day before its execution by Karam Singh. The endorsement recorded by the stampvender shows that it bears the thumb impression of Karam Singh. Genuineness of the thumb impression of Karam Singh was not disputed. This also lends credence to the submission of learned counsel for the respondents that Karam Singh had executed agreement Ex. P1 on his own free volition.

9. The next submission of learned counsel for the defendantappellant is that the sale deed was to be executed and registered by Karam Singh on or before 15.6.1974 but the plaintiffrespondents had not taken any step to require Karam Singh to execute and register the sale deed before that date. It is admitted case of the parties that Karam Singh had died on 25.5.1974 and the plaintiffrespondents were arrested on 26.5.1974 and were acquitted by Sessions Judge on 4.11.1974. The present suit was filed by the plaintiffrespondents on 24.5.1975 without much delay. Under the

circumstances, it cannot be held that the plaintiffrespondents were in any way negligent in enforcing their rights under the agreement Ex. P1.

10. The learned counsel for the appellant half heartedly argued that the agreement Ex. P1 was the result of fraud and coercion. I do not find any

substance in this submission either. It was urged that the plaintiffrespondents had been prosecuted for the alleged murder of Karam Singh. The fact

of prosecution of the plaintiffrespondents for the murder of Karam Singh cannot be taken to be against them as they have been acquitted by the

Sessions Judge vide his judgment Ex. P3. From this circumstance alone, it cannot be inferred that agreement Ex. P1 was a result of undue

influence, coercion or fraud played upon the deceased. The plaintiffrespondents have cogently proved the execution of the document Ex. P1 with

the testimonies of PW. 1 Tara Singh, PW. 2 Surat Singh the attesting witnesses and Shashi Puri PW. 3, the scribe, of the 9 agreement. In view of

the testimonies of these witnesses, I have no hesitation in affirming the findings of the trial Court and holding that Karam Singh deceased executed

an agreement dated 17.12.1973 Ex. P1 on his own volition after receiving the earnest money of Rs. 30,000/. It is further held that the agreement

Ex. P1 was not the result of undue influence or coercion as alleged. The findings on issues No. 1 and 2 recorded by the trial Court are, thus,

affirmed.

Issue No. 13.

11. It was next argued by learned counsel for the appellant that the plaintiffrespondents shouldnot be granted the specific performance of the

agreement as they can be compensated by payment of double the amount of the earnest money which had been paid to Karam Singh deceased. I

do not find any substance in this submission either. Monetary compensation is not an adequate compensation in case of specific performance of an

agreement regarding immovable property. There is no reason as to why the relief of specific performance of agreement shouldnot be granted to the

plaintiffrespondents. It has been repeatedly held by this Court that in case of an immovable property invariably the relief of specific performance by

sale of property in favour of the vendees shouldbe granted and it is under very special circumstances that the alternate relief of monetary

compensation shouldbe awarded. I do not see any special circumstances in this

case which would disentitle the plaintiff respondents from the first relief of specific performance of the agreement. The findings recorded by the trial Court under issue No. 13 are also upheld.

12. No other point was urged before me.

13. As a result of the findings recorded above, the appeal filed by the defendant appellant is dismissed. The defendant is directed to execute the

sale deed in favour of the plaintiff respondents on the basis of agreement dated 17.12.1973 Ex. P1, executed by Karam Singh in favour of the

plaintiff respondents on receipt of Rs. 40,000/. The plaintiffs are directed to deposit the amount within two months. On the deposit of the amount,

the defendant appellant should execute the sale deed, failing which the trial Court should execute the sale deed on behalf of the defendant appellant.

No costs.