
(1996) 01 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 2052 of 1978

Sohan Singh (Deceased by L.R.'s) and others	APPELLANT
Vs	
Fauja Singh and others	RESPONDENT

Date of Decision : 04-01-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : AIR 1997 P&H 136 : (1996) 3 RCR(Civil) 464

Hon'ble Judges : Harphul Singh Brar, J

Bench : Single Bench

Advocate : M.L. Sarin and Hemant Sarin, for the Appellant;

Judgement

1. This is a Regular First Appeal against the judgment and decree dated 2-12-1978 of learned Sub-Judge, 1st Class, Batala vide which suit for possession by way of specific performance on the basis of an agreement dated 22-4-1974 executed by defendant No. 1 Smt. Puran Kaur of land measuring 22 Kanals 17 Marias in favour of the plaintiff Fauja Singh, was decreed.

2. The case of the plaintiff as alleged in the plaint is that defendant No. 1 Smt. Puran Kaur was the owner of land measuring 22 Kanals 17 Marias as described in the heading of the plaint; Puran Kaur defendant No. 1 had agreed to sell this land to the plaintiff vide agreement dated 22-4-74 for Rs. 27,000/- and she received Rs. 5,000/- as earnest money at the time of the agreement. Sale-deed was to be executed by 14th of Harh Registration expenses, according to the agreement, were to be borne out by the plaintiff. It was alleged in the plaint that the plaintiff had always been ready and was still willing to get the sale-deed executed from defendant No. 1; the suit land, was said to be in possession of defendants Nos. 2 to 8 who have been impleaded as parties. The plaintiff has challenged the alleged decree on the basis of compromise between defendants Nos. 2 to 8 and defendant No. 1 regarding the suit land in favour of defendants Nos. 2 to 8 as illegal, collusives, void and inoperative against the rights of the plaintiff. Defendant No. 9 who allegedly acted as Mukhtiar of defendant No. 1 is

not admitted as correct. Defendant No. 1 is relative of defendants Nos. 1 to 8 and so far as the plaintiff knows defendant No. 1 did not appoint him her Mukhtiar with her free consent and has ultimately stated that they are not bound by any alleged consent decree passed at their back.

3. Suit was resisted by defendants Nos. 2 to 8. It was stated by them in the written statement that Fauja Singh had already filed a suit which was dismissed and, therefore, this suit was barred by Order 2, Rule 2, C.P.C. An objection as to the suit being not properly valued for purpose of Court-fee and jurisdiction was also taken and they have claimed to be the owners in possession of the suit land on the basis of a decree against defendant No. 1 Smt. Puran Kaur.

4. It was denied by defendants Nos. 2 to 8 that there was any agreement between the plaintiff and defendant No. 1 and in the alternative they challenged the agreement as collusive being executed during the pendency of a suit filed by defendants Nos. 2 to 8 against defendant No. 1. It was further contended in the written statement that decree in favour of defendants Nos. 2 to 8 was binding on the plaintiff also.

5. Defendant No. 1 also had filed the written-statement wherein she had admitted almost all the averments made by the plaintiff in the plaint. It was stated by her in her written-statement that defendants Nos. 2 to 8 were in unlawful possession of the suit land. According to her, she never appointed defendant No. 9 as her Mukhtiar and a decree, if, any, against her is nullity and she was ready to execute a sale-deed in favour of the plaintiff.

6. Replication was filed by the plaintiff reiterating his stand and rebutting the averments made by the defendants Nos. 2 to 8.

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

1. Whether any sale agreement was executed by defendant No. 1 in favour of the plaintiff, for consideration ?

2. If issue No. 1 is proved whether the above agreement was got executed during the pendency of the suit filed by defendants Nos. 2 to 8, if so, to what effect ? OPD 2 to 8.

3. Whether the present suit is barred under Order 2, Rule 2, C.P.C. because of allegedly dismissal of a suit filed by the present plaintiff against the defendants ? OPD 2 to 8.

4. Whether the present suit is barred under the principle of res judicata? OPD 2 to 8.

5. Whether defendants Nos. 2 to 8 had got a valid decree against defendant No. 1 regarding the suit land, to the effect that they were owners in possession of the same if so, to what effect? OPD 2 to 8.

6. Whether the present suit is collusive one and has been filed in conspiracy with

defendant No. 1? OPD 2to8.

7. Whether the suit is properly valued for purposes of Court-fee and jurisdiction ?
OPD

8. Whether the plaintiff is entitled to the specific performance of the contract ?
OPP

9. Whether the plaintiff is entitled to the possession of the suit land ? OPP

10. Relief.

8. After hearing the learned counsel for the parties and after appreciating the evidence on record, the trial Court decreed the suit of the plaintiff for specific performance of the contract.

9. After going through the evidence on record and after perusal of the judgment of the trial Court, I do not find any ground to differ with the same.

10. Trial Court has rightly decided issue No. 1 in favour of the plaintiff. Agreement Ex. P-1 has been proved on the basis of the evidence of Chuni Lal scribe of the agreement, Darshan Singh as an attesting witness of the agreement and the statement of Fauja Singh plaintiff himself who proved the agreement. Moreover, the factum of execution of the agreement Ex. P-1 by Smt. Puran Kaur has been admitted by Puran Kaur herself in her written-statement. I, therefore, hold that the agreement to sell the disputed land Ex. P-1 executed by Smt. Puran Kaur in favour of Fauja Singh stands proved.

11. Issue No. 2 has also been rightly decided by the trial Court against the defendants and in favour of the plaintiff. Defendants had not filed a copy of the plaint in this suit in order to determine that the agreement Ex. P-1 was executed after the date of the presentation of that plaint. Even a copy of an order passed in that suit has not been filed. Only a copy Ex. DW4/1 of an agreement filed in that suit was produced and this agreement is dated 6-9-1974 which certainly cannot be conclusive to prove that the agreement Ex. P-1 was executed during the pendency of that suit.

12. Issue No. 3 has also been rightly decided in favour of the plaintiff and against the defendants. According to the stand of the defendants 2 to 8 the plaintiff had filed a suit against them previously and the same was dismissed. On that basis it was argued that present suit is barred by Order 2, Rule 2, C.P.C. Ex. P-3 copy of the judgment in that suit has been placed on the record. It is discernible from this judgment that suit of Fauja Singh was for permanent injunction restraining Smt. Puran Kaur from alienating the suit land in favour of the defendants. According to this judgment, the suit was instituted on 9-8-74 and was decided on 25-7-1995. It is pertinent to note that there is an endorsement Ex. P-2 on the back of the agreement deed Ex. P-1 extending the date for the execution of the sale deed till the suit in respect of the suit land is decided. This suit referred to, was the suit was filed by defendants Nos. 2 to 8 against Smt. Puran Kaur

defendant No. 1 and was later on decreed by way of compromise.

13. As already discussed above, the defendants had not led any satisfactory evidence as to when that suit was filed by them against Smt. Puran Kaur defendant. It is, therefore, just possible that the suit of defendant Nos. 2 to 8 may be lying pending when the suit for permanent injunction was filed by Fauja Singh. If the suit was lying pending then Fauja Singh could not bring a suit for specific performance because a suit for specific performance could be filed only after the disposal of the suit as agreed to vide endorsement Ex. P-2 on the back of agreement Ex. 2-1. Fauja Singh, in these circumstances, could file a suit only for permanent injunction on the basis of an agreement Ex. P 21 at that time. As the plaintiff could not file a suit for specific performance at that time there was no question of his omitting to sue for specific performance at the time of his filing a suit for permanent injunction. The provisions of Order 2, Rule 2, C.P.C. are thus, not applicable to the case in hand.

14. Issue No. 4 has also been rightly decided by holding that the suit is not barred by the principle of res judicata, when admittedly, there was no previous finding as regards the specific performance of the contract entered into by defendant No. 1 in favour of the plaintiff.

15. The decision of the trial Court on issue No. 5 is also unassailable. The contention of defendants Nos. 2 to 8 that they have got a decree in respect of the suit land passed against defendant No. 1 and that decree being binding on all persons including the plaintiff, is without any force.

16. In order to substantiate their plea defendants Nos. 2 to 8 have examined Chain Singh DW-1, Surta Singh DW-3, Parduman Singh DW-7, Karam Singh DW-4, Nanak Chand DW-5, Tarshem Singh DW-6. They have also produced in evidence Mukhtiar-nama (power of attorney) Ex. D-1 alleged to have been executed by Puran Kaur in favour of defendant No. 9 Chain Singh; Receipt Ex. D 2 vide which an amount of Rs. 10,000/- is alleged to have been paid to Puran Kaur; Report Ex. DW7/1 of the Finger Expert above the thumb-impressions of Puran Kaur on Mukhtiarnama D-1 and Ex. DW4/1 a copy of the compromise.

17. Chain Singh DW-1 has stated that Smt. Puran Kaur defendant No. 1 was his Massi and she had given for Mukhtiarnama Ex. D-1 to him. He has further stated he had compromised in the Court on behalf of Smt. Puran Kaur on the basis of that Mukhtiarnama and had received Rs. 10,000/- which amount was paid to Smt. Puran Kaur vide receipt Ex. D-2 and the suit in question was decreed in favour of defendants Nos. 2 to 8 on the basis of the compromise entered into by Chain Singh alleged Mukhtiar-a-am of Smt. Puran Kaur. Chain Singh admitted in his cross-examination that Smt. Puran Kaur was present on the date of compromise and the compromise was effected with her consent. He further stated that his statement and statement of Smt. Puran Kaur was recorded before the Sub-Judge and the money was paid to him by Sohan Singh and that amount was paid by him to Smt. Puran Kaur in the Court and all of them had thumb-

marked in the Court itself.

18. DW-3 Surta Singh claims to be an attesting witness of the compromise. According to him, an amount of Rs. 15,000/- was received by Chain Singh. This witness is of village Ramgarh Mangal and claims to have been brought by Chain Singh on the date of compromise. His village is 10 miles from that of Chain Singh. His cross-examination reveals that the money was given to Chain Singh before the Deed-Writer where Smt. Puran Kaur was also present and from there Chain Singh and Smt. Puran Kaur went to the village. According to him, the receipt was executed by Smt. Puran Kaur after 6-7 days when they had come to Batala again. The statements of Chain Singh DW-1 and Surta Singh DW-3 are thus, contradictory. According to Chain Singh, he had received Rs. 10,000/- in the Court and the receipt thereof was taken from Smt. Puran Kaur on the same day while according to Surta Singh DW-3 the amount of Rs. 15,000/- was paid to Chain Singh before the Deed-Writer and from that place both Chain Singh and Smt. Puran Kaur had gone to the village and receipt of that amount was executed by Smt. Puran Kaur after 6-7 days. The whole story put up by the defendants, thus, falls to the ground. The defendants have not filed any document which may have been thumb-marked by Smt. Puran Kaur in the Court as stated by Chain Singh. From this, it is further shown that receipt of any amount referred to above by Smt. Puran Kaur or any compromise by Chain Singh on behalf of Puran Kaur with defendants Nos. 2 to 8 is very much doubtful.

19. As regards the alleged Mukhtiarnama Ex. D-I executed by Smt. Puran Kaur in favour of Chain Singh no satisfactory evidence has been led by defendants Nos. 2 to 8 to prove the same. There is only a bald statement of Chain Singh himself that the Mukhtiarnama in his favour was executed by Smt. Puran Kaur. This solitary statement of Chain Singh is not sufficient to hold that this Mukhtiarnama was executed by Smt. Puran Kaur of her free will are necessarily so when Smt. Puran Kaur had denied the execution of any Mukhtiarnama in favour of Chain Singh in her written-statement. No attesting witness of this Mukhtiarnama has been produced. Mere production of a Finger Print Expert to show that the thumb-impressions on the Mukhtiarnama were of Puran Kaur, does not prove the execution of Mukhtiarnama by Puran Kaur in favour of Chain Singh defendant No. 9 when no direct evidence has been produced to prove the same. Even the statement of Chain Singh DW-1 and Surta Singh DW-3 as already stated above are quite contradictory and do not repose any confidence.

20. Karam Singh DW-4 has deposed that compromise between Sohan Singh and Smt. Puran Kaur was entered into in his presence and Chain Singh appeared on behalf of Smt. Puran Kaur. He has proved copy Ex.DW4/1 of that compromise. In cross-examination Karam Singh DW-4 has stated that he did not see Smt. Puran Kaur on the day of compromise. This witness contradicts both Chain Singh DW-1 and Surta Singh DW-3. According to him, Smt. Puran Kaur was present on the date of compromise. His evidence discloses that he, Sohan Singh, Tarsem Singh and Chain Singh etc. had come from the village and had gone back to the village

in the same evening. He does not state that this compromise was effected in the Court. It rather seems that this witness along with Chain Singh was brought by the defendants only to play a fraud on Smt. Puran Kaur. His evidence rather shatters the whole case of the defendants 2 to 8. Nanak Chand DW-5 had only written a compromise a copy of which is Ex. DW4/1. He stated nothing except that he had seen copy Ex. DW4/1 of the compromise. His statement, therefore, is of no help to the defendants in any way. Tarsem Singh DW-6 the last witness is one of the defendant themselves. He has stated that their suit filed against Smt. Puran Kaur was compromised by her Mukhtiar Chain Singh for Rs. 15,000/-. The amount according to him, is said to have been paid to Smt. Puran Kaur vide receipt Ex.D-1 which was attested by him. He being one of the defendants is an interested witness. As discussed above, the statements of other witnesses i.e. DW-1 Chain Singh, DW-3 Surta Singh and DW-4 Karam Singh have been found to be contradictory and rather against the case set-up by the defendants themselves. In the absence of corroboration of the statement of Tarsem Singh DW-6 by the other witnesses produced by him, his statement cannot be believed. Moreover, his statement is also contradictory. According to him, the amount was paid by him to Sohan Singh who further gave it to Chain Singh. Chain Singh did not however, state that Sohan Singh received the amount from Tarsem Singh. He also stated that Smt. Puran Kaur was present at the time of the compromise. The majority of the witnesses, thus, claim that Smt. Puran Kaur was present at the time of the compromise/There is no evidence on the file that Puran Kaur was produced in the Court for securing her thumb-impressions on the alleged compromise for comparison. It, thus, looks that Mukhtiarnamea Ex.D.1 and receipt Ex.D.2 were created by defendants 2 to 8 to defraud Smt. Puran Kaur; and in any case in view of the evidence discussed above, no sanctity to a compromise a copy of which is Ex.DW4/A can be attached.

21. Defendants Nos. 2 to 8 have not filed any decree of the Court in their favour and against defendant No. 1 Smt. Puran Kaur in respect of the suit land. Even otherwise defendants 2 to 8 have failed to bring satisfactory evidence on the record to prove that the alleged compromise was valid or lawful. Thus, the alleged consent decree on the basis of compromise which has not been validly proved, is unenforceable, void, ineffective and invalid so far as the right of the plaintiff is concerned. The learned trial Court has thus, rightly held that there is no valid decree against defendant No. 1 and in favour of defendants 2 to 8 so as to affect the suit in hand. I endorse the decision of the learned trial Court as legal and valid.

22. Issue No. 7 has also been rightly decided in favour of the plaintiff and against the defendants. The plaintiff has claimed specific performance of the contract for Rs. 27,000/-. Court-fee on that amount has been affixed. The suit has been properly valued for the purposes of court-fee and jurisdiction at Rs.27,000/-.

23. Issue No. 8 has also been rightly decided by the trial Court. The plaintiff is entitled to specific performance of the contract as an agreement between the

plaintiff and defendant No. 1 has been proved.

24. Issue No. 9 has also been rightly decided by the trial Court in favour of the plaintiff. The plaintiff is entitled to possession of the suit land.

25. In view of my aforesaid discussion, the judgment and decree dated 2-12-1978 of Subordinate Judge 1st Class, Batala, is affirmed and the appeal is dismissed, however, without any order as to costs.

26. It may be mentioned in the end that at the time of admission of this appeal stay was declined to the appellant as according to the learned Judge, no prima facie case was made out for the grant of stay. It is hoped that the decree of the trial Court might have been executed by now. If, in any case, it is not executed till today, it is ordered that Smt. Puran Kaur shall execute and get registered a sale-deed in favour of the plaintiff within six months from today in accordance with the agreement dated 22-4-1971 on the receipt of the remaining sale consideration. In case of her default, the plaintiff may get the sale-deed executed and registered through the Court. The sale-deed shall be binding against the other defendants also.

27. Appeal dismissed.