
Befroe Viney Mittal, J

SUJAN KAUR,—Defendant/Appellant

versus

CHAND SINGH,—Plainfiff/Respondent

R.S.A. No. 415 OF 1991

25th April, 2003

Specific Relief Act, 1963—Agreement to sell—Trial Court decreeing the suit—1st Appellate Court affirming the findings of trial Court—Defendant specifically denying factum of the execution of the agreement—Court below ignoring the fact that when dispute with regard to the suit land was pending then question of defendant entering into any fresh agreement did not arise at all—Findings of Courts below contrary to the record & based on misreading & non-reading of important evidence—Judgments & decrees of the Court below liable to be set aside being judicially perverse.

Held, that the evidence on the record raises such suspicion which has not been explained at all by the plaintiff. The factum of the execution of the agreement has been specifically denied by the defendant. The Court also cannot loose sight of the fact that the defendant is an old, illiterate and rustic villager who is a widow. In this view of the fact, when an earlier attempt had been made by Gurcharan Singh and Jarnail Singh to grab her land, then any alleged execution of the agreement on her behalf shall have to be examined with extra caution and all suspicions surrounding the said execution shall have to be dispelled by the person alleging such execution i.e. the plaintiff.

(Para 19)

Further held, that when the dispute with regard to the land in question was pending till October 17, 1984 then the question of Sujan Kaur defendant entering into any fresh agreement with Chand Singh who is a close relation of Gurcharan Singh on October 5, 1984 did not arise at all. This fact alone is sufficient for the Court to discard and reject the said agreement. From the perusal of the judgments of the courts below I find that this important fact of the matter at all had not been adverted to by the Court below.

(Para 22)

Further held that the judgments of the courts below are based upon such findings which are contrary to the record, having been rendered on the basis of misreading and non-reading of important evidence and ignoring the facts and circumstances of the case and are not rendered in correct perspective and, therefore, being judicially perverse, are liable to be set aside.

(Para 23)

R.K. Battas, Advocate with Munish Jolly, Advocate, *for the appellant.*

Y.K. Sharma, Advocate, *for the respondent.*

JUDGMENT

VINEY MITTAL, J.

(1) The present regular second appeal has been filed by the defendant. She has challenged the judgment and decree of the learned courts below whereby the suit for specific performance filed by the plaintiff has been decreed.

(2) The plaintiff-respondent Chand Singh (hereinafter referred to as the 'plaintiff') filed the suit for specific performance of the agreement to sell dated October, 5, 1984. It was claimed by the plaintiff that the defendant-appellant (hereinafter referred to as the 'defendant') Sujana Kaur had agreed to sell 1/3rd share of land measuring 128 kanals 2 marlas as the rate of Rs. 14,000 per killa. He further claimed that the defendant had received Rs. 25,000 as earnest money in the presence of two witness Jaswant Singh and Kesar Singh. Out of the land covered under the agreement, three killas of land was already under mortgage with one Amarjit Singh son of Bogha Singh and Kartar Kaur wife of Jarnail Singh. The aforesaid mortgaged amount was to be paid by the plaintiff to the mortgagees for redeeming the land. It was stated by the plaintiff that he was always ready and willing to perform his part of the agreement and was still ready and willing to perform the same but the defendant had been guilty of the breach of the aforesaid agreement and had declined to execute the sale deed in question. On that basis the suit for specific performance was filed by the plaintiff. In the alternative, a prayer was also made for the return of Rs. 25,000 stated to have been paid as earnest money along with the damages of Rs. 25,000 thereupon with 18 percent interest.

(3) Upon notice of the suit, the defendant put in appearance. She filed written statement. The suit of the plaintiff was contested. The defendant denied having ever executed any such agreement in favour of the plaintiff Chand Singh. On the other hand, the case put up by the defendant was that Chand Singh in connivance with his relations Gurcharan Singh and Jarnail Singh wanted to grab the property of the defendant who is an old, illiterate and rustic villager. The defendant further pleaded that Gurcharan Singh and his brother Jarnail Singh had earlier fabricated an unregistered will of Karnail Singh the deceased husband of the defendant to grab the share of Karnail Singh. However, the aforesaid will was discarded by the court of learned Additional, District Judge, Bathinda,—vide judgment and decree dated March, 12, 1984. Even the appeal filed by Gurcharan Singh and Jarnail Singh before the High Court was dismissed in limine on October 17, 1984. In this manner, the defendant has maintained that when Sujan Kaur defendant had litigation with Gurcharan Singh and Jarnail Singh, then question of her executing any agreement in favour of Chand Singh who was the son of the sister of the wife of Gurcharan Singh did not arise. It was categorically pleaded by the defendant that the alleged agreement was a false and fabricated document. On that basis, it was further maintained by the defendant that since she had never entered into any such agreement to sell the suit land, therefore, the question of receiving any earnest amount as alleged by the plaintiff and her readiness and willingness to execute the same did not arise.

(4) Although a replication was filed by the plaintiff to the written statement filed by the defendant but it was more of a ritual. The detailed facts as narrated in the written statement with regard to the relationship of Chand Singh with Gurcharan Singh were not denied nor the earlier dispute between Gurcharan Singh and Jarnail Singh on the one hand and Sujan Kaur on the other with regard to the will alleged to have been executed by Karnail Singh was controverted.

(5) After the framing of the issues and the evidence of the parties, the learned trial court decreed the suit filed by the plaintiff. However, the appeal filed by the defendant failed before the learned Additional District Judge, Bathinda.

(6) Now aggrieved against the aforesaid judgment and the decree of the learned courts below, the defendant has preferred the present regular second appeal.

(7) I have heard Shri R.K. Battas, the learned counsel appearing for the defendant-appellant and Shri Y.K. Sharma, the learned counsel for the plaintiff-respondent and with their assistance have also gone through the record of the case.

(8) After the perusal of the record and hearing the learned counsel for the parties, I find that the following substantial questions of law arise in the present appeal :

- (a) As to whether the findings recorded by the learned courts below being based upon misreading and non-reading of important evidence are not vitiated in law ?
- (b) As to whether the judgment of the courts below having not dealt the case with a proper perspective and being perverse are not liable to be set aside ?

(9) Shri R.K. Battas the learned counsel appearing for the defendant has argued that there was no proof with regard to the fact that the defendant had ever executed the agreement Ex. P1 in question in favour of Chand Singh or had ever agreed to sell the land to him. It has further been submitted by Shri Battas that Karnail Singh who was the husband of the defendant Sujana Kaur was the real brother of Gurcharan Singh and Jarnail Singh. After the death of Karnail Singh, the aforesaid Gurcharan Singh and Jarnail Singh had forged a will allegedly executed by Karnail Singh to grab his property. However, on a contest made by Sujana Kaur, the said will was rejected by the court of learned Additional District Judge,— *vide* judgment and decree dated March 12, 1984 and even an appeal filed by the aforesaid Gurcharan Singh and Jarnail Singh was dismissed in limine by this court on October 17, 1984. On that basis, the learned counsel has submitted that in fact when the aforesaid persons failed to grab the land of Karnail Singh in their earlier attempt, then the aforesaid Gurcharan Singh had now put up Chand Singh who was his close relation by forging the present agreement to sell.

(10) Shri Battas has further submitted that in fact the evidence on record showed that the said agreement was never executed by defendant Sujan Kaur. Shri Battas has relied upon the statement of the handwriting expert Shri Satwant Puri who has appeared as DW4 and has deposed that the thumb impression alleged to be that of Sujan Kaur on the agreement Ex. P1 was super imposed and was beyond comparison. According to the learned counsel even other evidence produced by the plaintiff has not been able to remove the doubts and prove the due execution of the said agreement by Sujan Kaur.

(11) On the other hand Shri Y.K. Sharma, the learned counsel appearing for the plaintiff has submitted that the said agreement Ex. P1 stood duly proved by the statement of the scribe Raj Kumar PW1 and the two attesting witnesses Kesar Singh PW2 and Jarnail Singh PW3. Shri Sharma has also submitted that the handwriting expert PW4 Shri K.C. Jaidka produced by the plaintiff had proved that the said agreement bore the thumb impression of Sujan Kaur. On the basis of the aforesaid evidence Shri Sharma has defended the findings recorded by the learned courts below and has submitted that the present appeal deserves to fail.

(12) I have given my thoughtful consideration to the rival contentions raised on behalf of the respective parties.

(13) It is not in dispute that a specific plea was raised by the defendant in her written statement with regard to the earlier litigation between Gurcharan Singh and Jarnail Singh on the one hand and she herself on the other. In the earlier litigation, the aforesaid Gurcharan Singh and Jarnail Singh who are the real brothers of Karnail Singh had set up a will alleged to have been executed by Karnail Singh in their favour. The aforesaid will was discarded by the learned Additional District Judge,—*vide* judgment and decree dated March 12, 1984. Even the regular second appeal filed by them was dismissed in limine by this Court,—*vide* order dated October 17, 1984. The factum of the aforesaid litigation although specifically pleaded by the defendant in her written statement was not denied by the plaintiff in his replication. Another fact which was categorically pleaded by the defendant in her written statement was the close relationship between the aforesaid

Gurcharan Singh and the plaintiff Chand Singh. It was stated by the defendant in the written statement that Gurcharan Singh is the mother's sister's husband of Chand Singh, meaning thereby that Chand Singh's mother was the sister, of Gurcharan Singh's wife. This fact, although specifically pleaded by the defendant in her written statement, is again not denied by the plaintiff in the replication.

(14) In view of the aforesaid fact itself it would be taken that the said facts pleaded by the defendant in the written statement are admitted to be correct facts even as per the plaintiff.

(15) Another fact which needs noticing here at the outset is that the plaintiff Chand Singh was residing with aforesaid Gurcharan Singh. This fact is apparent and proved from the voter list Ex.D2 on the record of the case. In the aforesaid voter list, in house No. 449 Gurcharan Singh was shown as living along with his wife Karnail Kaur, and Devinder Kaur along with Chand Singh son of Kheta Singh.

(16) The factum of the close relationship of Chand Singh plaintiff with Gurcharan Singh is further proved from the testimony of DW1 Mukhtiar Singh who has stated that Chand Singh was son of Gurcharan Singh's sister-in-law and was living in the house of Gurcharan Singh along with him. Even while appearing as her own witness DW3 defendant-Sujan Kaur described her relation with Gurcharan Singh and Jarnail Singh and also relationship of Chand Singh and Gurcharan Singh.

(17) However, even though the said relationship between Gurcharan Singh and Chand Singh is not disputed by him in the replication and later stands proved from the testimony of the aforesaid witnesses and the documentary evidence Ex. D2 but still when the aforesaid Chand Singh appeared as PW5 then he not only denied his relationship with Gurcharan Singh but had the courage to say that he did not even know aforesaid Gurcharan Singh and Jarnail Singh. He stated that since it was a big village, therefore, he did not know Gurcharan Singh and Jarnail Singh sons of Arjan Singh. This fact speaks volumes about the conduct

of aforesaid Chand Singh. The plaintiff had relied upon the statement of Raj Kumar who was a typist working at Mansa. The agreement in question was executed in village Nathana. The witness Raj Kumar has stated that the said agreement Ex. P1 had been typed out by him and had been typed at the instance of defendant-Sujan Kaur. However, it has been admitted by the aforesaid witness that neither he maintained any register of documents nor had put any signatures nor his name on the document in question. In this view of the matter, there is nothing on the record to show that the document Ex. P1 had been scribed and typed by him. PW2 Kesar Singh is one of the attesting witnesses. He is Mason by profession. He has admitted that he has been working with Chand Singh also. However, the said witness has denied his knowledge about the relationship between Chand Singh and Gurcharan Singh. It may be interesting to notice that the aforesaid witness in his cross-examination has stated that the said document had been written by Raj Kumar in his own hand. PW3 Jaswant Singh is the other attesting witness of the said document. Even the statement of the aforesaid witness does not inspire any confidence. He has also shown ignorance about the relationship between Chand Singh and Gurcharan Singh.

(18) Chand Singh has himself appeared as PW5. He has stated that he had known Sujan Kaur for the last six or seven years and had not known her earlier. As noticed earlier he has also stated that he did not know Gurcharan Singh and Jarnail Singh. The plaintiff has further categorically stated in his statement that Sujan Kaur had put her thumb impression in the register of the scribe.

(19) Thus, the evidence on the record raises such suspicion which has not been explained at all by the plaintiff. The factum of the execution of the agreement has been specifically denied by the defendant. The court also cannot lose sight of the fact that the defendant is an old, illiterate and rustic villager who is a widow. In this view of the fact, when an earlier attempt had been made by Gurcharan Singh and Jarnail Singh to grab her land, then any

alleged execution of the agreement on her behalf shall have to be examined with extra caution and all suspicions surrounding the said execution shall have to be dispelled by the person alleging such execution i.e. the plaintiff.

(20) Although the defendant is not a *parda-nashin* lady as such but the fact remains that she was herself an old, illiterate and rustic villager who was a widow. Her position could not be any better than a *pardanashin* lady as such. The Hon'ble Supreme Court of India in the case of **Mst. Kharbuja Kuer, versus Jangbahadur Rai and others (1)** has held as under :

“As regards documents taken from *pardanashin* women the court has to ascertain that the party executing them has been a free agent and duly informed of what she was about. The reason for the rule is that the ordinary presumption that a person understands the document to which he has affixed his name does not apply in the case of a *pardanashin* woman. The burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a *pardanashin* lady to establish that the said document was entered into by her after clearly understanding the nature of the transaction. It should be established that it was not her physical act but also her mental act. The burden can be discharged not only by proving that the document was explained to her and that she understood it but also by other evidence, direct and circumstantial.”

(21) In my considered opinion, the observations made by the Apex Court with regard to *pardanashin* lady would apply on all fours to the facts of the present case also. There is nothing on the record to show that the suspicion surrounding the execution of the agreement Ex. P1 has been dispelled by the plaintiff. It is apparent that the

(1) AIR 1963 S.C. 1203

statements of the witnesses have been completely misread by the courts below and the document Ex. D2 has not been taken into consideration.

(22) One glaring fact which has also been completely lost sight of by the learned courts below is that the earlier litigation with regard to the will of Karnail Singh set up by Gurcharan Singh and Jarnail Singh was decided by the court of learned Additional District Judge, Bathinda,—*vide* judgment and decree dated March 12, 1984 when the aforesaid will was rejected, Gurcharan Singh and Jarnail Singh filed an appeal before this court. The regular second appeal was also dismissed in limine on October 17, 1984. Thus when the dispute with regard to the land in question was pending till October 17, 1984 then the question of Sujan Kaur defendant entering into any fresh agreement with Chand Singh who is a close relation of Gurcharan Singh on October 5, 1984 did not arise at all. This fact alone is sufficient for the court to discard and reject the said agreement. From the perusal of the judgment of the courts below I find that this important fact of the matter at all had not been adverted to by the courts below.

(23) In view of the aforesaid discussion, I find that the judgments of the courts below are based upon such findings which are contrary to the record, having been rendered on the basis of misreading and non-reading of important evidence and ignoring the facts and circumstances of the case and are not rendered in correct perspective and, therefore being judicially perverse, are liable to be set aside.

(24) Accordingly, I allow the present appeal and while setting aside the judgments and decrees of the courts below, dismiss the suit for specific performance filed by the plaintiff-respondent.

(25) There shall be no order as to costs.