IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: 21.11.2022

Pronounced on:- March 13, 2023

1. RSA-1494-2016 (O&M)

Vijay Kumar Aggarwal ..... Appellant

Versus

Khushal Singh ..... Respondent

2. RSA-1618-2016 (O&M)

Vijay Kumar Aggarwal ..... Appellant

Versus

Khushal Singh ..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Sumeet Goel, Sr. Advocate with
Mr. Sumeet Jain, Advocate and
Mr. Shivam Kaushik, Advocate for the appellant
(in both appeals).

Mr. Rajinder Sharma, Advocate for the respondent
(in both appeals).

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HARKESH MANUJA, J.

This order of mine shall dispose of two appeals bearing RSA-1494-2016 (Vijay Kumar Aggarwal Vs. Khushal Singh) and RSA-1618-2016 (Vijay Kumar Aggarwal Vs. Khushal Singh).

Both the aforesaid appeals have been filed challenging a common judgment and decree dated 02.03.2016 passed by the Court of learned Additional District Judge, Amritsar, whereby two civil appeals, bearing Civil Appeal No. 22515/2011-12 (Khushal Singh Vs. Vijay Kumar Aggarwal) and Civil Appeal No. 22514/2010-2012 (Vijay Kumar Aggarwal Vs. Khushal Singh), were decided.

In the present case, dispute relates to half share of House No.1481 to 1483 and 154/111-2 min, situated at Katra Jalianwala, Amritsar, measuring 100 sq. yards. Based on an agreement to sell dated 12.12.1988 regarding the property in question with the owner i.e. the present appellant/ defendant against a total sale consideration of Rs.3 lacs, having paid an advance of Rs.30000/-, a suit for possession by way of specific performance was filed by respondent/plaintiff . It was also pleaded in the suit that as per the original agreement dated 12.12.1988, sale deed was to be executed within a period of 05 months thereof, however, on account of civil suit having been filed at the instance of one of the sister and brother of the appellant/ defendant, the same could not be got executed within the aforesaid time and another agreement-cum-receipt dated 23.09.1989 was executed between the parties with a stipulation that the sale deed would be executed within 15 days of decision of the said Civil Suit. It was further pleaded that a sum of Rs.1 lac was received by the appellant/ defendant on 19.07.1989 followed by receipt of another sum of Rs.20000/- and thus, in the document dated 23.09.1989, it was also recorded that the appellant / defendant had received a sum of Rs.1.5 lacs towards sale consideration. As per the plaint, having failed to get the sale deed executed despite repeated requests, the respondent/ plaintiff was compelled to file the suit.

Upon notice, the appellant/ defendant appeared and contested the suit by way of filing his written statement, denying the execution of agreement to sell dated 12.12.1988 as well as the receipt of earnest money, besides even denying all other subsequent documents including the receipt dated 19.07.1989 and also the

agreement to sell dated 23.09.1989 as pleaded in the plaint. It was further pleaded that the aforesaid documents were in fact an outcome of collusion between the respondent/ plaintiff and the brothers/ sisters of the appellant/ defendant having played fraud upon him.

Parties led their respective evidence. Upon consideration, the trial Court vide judgment and decree dated 17.12.2009 partly decreed the suit in favour of respondent/ plaintiff for alternate relief of refund of Rs.1.5 lacs along with interest @ 12.5% per annum from the date of execution of agreement to sell till realization of the decretal amount, however, denying the relief of possession by way of specific performance.

Aggrieved thereof, following two separate appeals came to be filed:-

i) Civil Appeal No. 22515/2011-12, titled as “Khushal Singh Vs. Vijay Kumar Aggarwal”, challenging the judgment and decree passed by the trial Court, declining the relief of possession by way of specific possession in favour of respondent/ plaintiff; and

ii) Civil Appeal No.22514/2010 titled as “Vijay Kumar Aggarwal Vs. Khushal Singh”, challenging the judgment and decree for refund of amount passed in favour of respondent/ plaintiff.

The aforesaid two appeal came to be decided by the Court of learned Additional District Judge, Amritsar, vide common judgment and decree dated 02.03.2016 to the following effect:-

a) Civil Appeal No. 22515/2011-12, titled as “Khushal Singh Vs. Vijay Kumar Aggarwal”, was allowed

granting decree for possession by way of specific performance in favour of respondent/ plaintiff, on deposit of balance sale consideration;

b) Civil Appeal No. 22514/2010, titled as "Vijay Kumar Aggarwal Vs. Khushal Singh" was dismissed.

It is the aforesaid common judgment and decree dated 02.03.2016 passed by learned Additional District Judge, Amritsar as well as the judgment and decree dated 17.12.2009 passed by Additional Civil Judge, (Senior Division), Amritsar, which have been impugned on behalf of the appellant/ defendant by way of filing two regular second appeals.

Learned Senior Counsel appearing on behalf of the appellant has vehemently contended that in the present case, the agreement to sell dated 12.12.1988 as well as the subsequent documents dated 19.07.1989 and 23.09.1989 were never proved on record. It has been submitted that the execution of the aforesaid documents having been specifically denied by the appellant/ defendant, followed by the Courts below having discarded the reports of the hand-writing expert led by the respective parties, the learned first Appellate Court could not have taken upon itself to verify the signatures of the appellant/ defendant upon the aforesaid documents by comparing those with the other documents available on record. It has also been submitted that in the facts and circumstances of the present case, the non-examination of the only independent witness i.e. the deed-writer, namely, Harbhajan Lal Vohra, was fatal to the case of respondent/plaintiff thereby wanting raising of adverse

inference against him. Learned senior counsel further submitted that in the present case, in the absence of any proof of balance sale consideration on record being available with the respondent/ plaintiff, the readiness to perform his part of the alleged agreement was never established thereby disentitling him for grant of decree for possession by way of specific performance. It has also been contended that the suit filed at the instance of respondent/ plaintiff was hopelessly barred by limitation, in support, it has been submitted that even as per the statement of respondent/ plaintiff as PW8, admittedly alteration has been done in the document dated 23.09.1989 and in view thereof, the same could not be taken into consideration and if once that is so, the suit filed at the instance of respondent/ plaintiff on 08.06.1993, seeking enforcement of agreement to sell dated 12.12.1988 was hopelessly barred by time as admittedly the time period stipulated therein about enforcement thereof was five months. In the alternate, learned Senior Counsel also argued that even if the document dated 23.09.1989 was to be taken into consideration, the same was in fact novation of the previous agreement to sell dated 12.12.1988 and thus, in the absence of any specific pleadings or prayer in the plaint filed at the instance of respondent/ plaintiff, seeking enforcement of agreement to sell dated 23.09.1989, the suit could not have been decreed in his favour. In support of his submissions, learned Senior Counsel relied upon judgment of Hon'ble Supreme Court in **G. Jayashree & Ors. Vs. Bhagwandas S. Patel and ors.** (2009) 3 SCC 141 and **U.N. Krishnamurthi (since deceased) through LRs. Vs. A.M. Krishnamurthy**, 2002 (3) RCR (Civil) 479.

On the other hand, learned counsel for respondent/ plaintiff has argued that having denied the execution of agreement to sell dated 12.12.1988 as well as 23.09.1989, the appellant/ defendant was having no right to question the readiness and willingness of the respondent/ plaintiff. For the said purpose, reliance has been placed upon the judgments of this Court in the case of **Smt. Kishno Bai Vs. Gian Singh and others,** 2018 (3) PLR 410 & **Lal Chand Vs. Tek Chand,** 2013 (5) RCR (Civil) 104. Learned counsel for the respondent further submitted that in the facts and circumstances of the present case and in view of the oral as well as documentary evidence led by the respondent/ plaintiff, the execution of agreement to sell dated 12.12.1988 and the subsequent documents dated 19.07.1989 & 23.09.1989 was duly proved on record. It has also been argued that though having raised the plea of fraud, the appellant/ defendant failed to prove the same, besides it, even no criminal action was even initiated at his instance against the respondent/ plaintiff alleging any kind of forgery as regards execution of the document relied upon by the respondent/ plaintiff. On the point of novation of the agreement, it was submitted that in fact the same was merely re-writing of the previous document dated 12.12.1988 in view of the changed circumstances. Besides it, it was also submitted that the novation was neither pleaded; nor proved by the appellant/ defendant as even no issue on the said point was ever pressed before the Courts below. Leaned counsel for the respondent also submitted that having discarded the reports submitted by the hand-writing exerts, the first appellate Court was well within its right to look into the documents in question and compare the signatures of

appellant/ defendant with his acknowledged signatures. In support of his contentions, learned counsel for the respondent/ plaintiff placed reliance upon the judgment of Hon'ble Supreme Court in **Babu Ram @ Durga Prasad Vs. Indra Pal Singh (Dead) by LRs.**, Civil Appeal NO. 2551 of 1977, decided on 13.08.1998, this Court in **Mangat Ram and others Vs. Om Parkash and others**, RSA No.1618-2014, decided on 11.01.2016, reported as 2016 (1) PLJ 311, and **Balwant Singh Vs. Pritam Singh,** in RSA No.4678 and 266 of 2012, decided on 17.08.2016, as well as Kerala High Court in **Antony, K.O. and another Vs. Krishnankutty Menoki, M.K. and others**, AS No.724 of 1999, decided on 07.12.2016.

I have heard learned counsel for the parties and gone through the paper-books as well as records of the case. I find substance in the submission made on behalf of the appellant.

In the facts and circumstances of the present case wherein serious dispute has been raised regarding the execution of agreement to sell dated 12.12.1988 as well as other subsequent documents including receipt dated 19.07.1989, besides another agreement to sell dated 23.09.1989, the following points of law arise for the consideration:-

(A) WHETHER the first Appellate Court was justified in opining about the disputed signatures of appellant/ defendant with admitted signatures while comparing the same and recording a finding about authenticity without analyzing their comparative characteristics?

(B) WHETHER having denied the execution of agreements to sell dated 12.12.1988 and

23.09.1989, appellant/ defendant could have raised the plea of readiness and willingness of the respondent/ plaintiff?

(C) WHETHER interpolation made in the document dated 23.09.1989 resulted in its automatic cancellation and nullification, thereby rendering the suit based on agreement dated 12.12.1988 to be barred by limitation?

(D) WHETHER in the fact and circumstances of the present case, discretion vested with the Courts as prescribed under Section 20 of the Specific Relief Act, 1963, for short 'the Act', could be exercised in favour of respondent/ plaintiff?

The aforementioned law points which fell for the consideration of this Court are answered in the following manner:-

(A) Having discarded the report of the hand-writing expert examined by both the parties and by taking upon itself to examine the disputed signatures of appellant/ defendant with the standard signatures, the first Appellate Court recorded to the following effect:-

> *"…..It is also well settled that Court can examine the question and standard signatures and handwriting of a party to arrive at a conclusion. On careful examination of signatures and writing of Vijay Kumar- defendant on the documents in question, compared with his standard signatures on the written statement and vakalatnama, it is found that these signatures match with each other……"*

There is no doubt about the proposition of law to the effect that under Section 73 of the Indian Evidence Act, 1872, for short, the "1872 Act", Court can take upon itself to look into the document and compare the disputed signatures with the acknowledged signatures as even held by this Court in the judgment relief upon by learned counsel for the respondent/ plaintiff in the case of **Mangat Ram's** case (supra) and relevant portion from para 5 is reproduced hereunder:-

> *"……..As regards the contention of the counsel for the appellants that no handwriting expert has been examined to prove the signatures of the appellants-defendants, it may be stated here that the opinion of the expert is not binding upon the Court and it is the solemn duty of the Court to take a decision with regard to the genuineness of the signatures. Since the Court has to take a decision and is the final authority, it can itself look into the document and compare it with the acknowledged signatures to come to a conclusion with regard to the genuineness or otherwise of the said disputed signatures….."*

Having said that, though Section 73 of the 1872 Act empowers the Court to compare the disputed signatures with the admitted signatures, however, the same cannot be done on a casual perusal or a mere glance, particularly without even recording an analysis of the characteristics of the admitted signatures as compared to those of the disputed one.

The aforesaid view can be derived from the decision rendered by Hon'ble Supreme Court in the case of

Thiruvengada Billai Vs. Navaneethammal and another, 2008 (3) SCR 23 and para 15 thereof is reproduced hereunder for reference:-

> *"15. While there is no doubt that court can compare the disputed handwriting/ signature/ finger impression with the admitted handwriting/ signature/finger impression, such comparison by court without the assistance of any expert, has always been considered to be hazardous and risky. When it is said that there is no bar to a court to compare the disputed finger impression with the admitted finger impression, it goes without saying that it can record an opinion or finding on such comparison, only after an analysis of the characteristics of the admitted finger impression and after verifying whether the same characteristics are found in the disputed finger impression. The comparison of the two thumb impressions cannot be casual or by a mere glance. Further, a finding in the judgment that there appeared to be no marked differences between the admitted thumb impression and disputed thumb impression, without anything more, cannot be accepted as a valid finding that the disputed signature is of the person who has put the admitted thumb impression. Where the Court finds that the disputed finger impression and admitted thumb impression are clear and where the court is in a position to identify the characteristics of finger prints, the court may record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the court should not hazard a guess by*

> *a casual perusal. The decision in Muralilal (supra) and Lalit Popli (supra) should not be construed as laying a proposition that the court is bound to compare the disputed and admitted finger impressions and record a finding thereon, irrespective of the condition of the disputed finger impression. When there is a positive denial by the person who is said to have affixed his finger impression and where the finger impression in the disputed document is vague or smudgy or not clear, making it difficult for comparison, the court should hesitate to venture a decision based on its own comparison of the disputed and admitted finger impressions. Further even in cases where the court is constrained to take up such comparison, it should make a thorough study, if necessary with the assistance of counsel, to ascertain the characteristics, similarities and dissimilarities. Necessarily, the judgment should contain the reasons for any conclusion based on comparison of the thumb impression, if it chooses to record a finding thereon. The court should avoid reaching conclusions based on a mere casual or routine glance or perusal."*

In the present case, from the perusal of judgment passed by the first Appellate Court, it can be traced out that no such exercise of comparing the characteristic of the disputed signatures with the acknowledged signatures was carried out and thus, in the absence thereof, the findings recorded by the first Appellate Court as regards the signatures of appellant/ defendant on the documents/ agreement in question, based upon mere self perusal is set aside, thereby

holding that the examination of aforementioned documents was not proved on record by the respondent/ plaintiff.

(B) In the present case, while relying upon judgments passed by this Court in **Smt. Kishno Bai's** case (supra) and **Lal Chand's** case (supra), it has been argued on behalf of the respondent/ plaintiff that the appellant/ defendant having denied the execution of agreement dated 12.12.1988 as well as document dated 23.09.1989 was barred from raising the plea of readiness and willingness against the respondent/ plaintiff. Relevant paragraph 11 of **Smt. Kishno Bai's** case (supra) being relevant, is reproduced hereunder:-

> "11. *It has come on record that the plaintiffs marked their presence on the target date but the appellant did not come forward. Moreover, the appellant- defendant could not take plea qua readiness and willingness since such plea was available to the defendant only in case where the agreement to sell was admitted. Such a view has been derived from the judgment of this Court in* ***Lal Chand Vs. Tek Chand 2013 (5) RCR (Civil) 104 and Tara Singh Vs. Lakhwinder Kumar & Ors 2011(1) RCR (Civil) 130****."*

With respect to both the aforesaid judgments, in my view, Section 16(c) of the Act has not been specifically referred to or dealt with therein; which statutorily enjoins the plaintiff-purchaser/vendee to establish his readiness and willingness to perform the essential terms of the contract which are to be performed by him under the agreement for the purpose of enforcement of his right of specific performance of the said contract and mere denial of agreement by

appellant/ defendant would not relieve the respondent/ plaintiff of his aforesaid statutory obligation.

My aforesaid view is also derived from law laid down by this Court, in case of ***"Gurmail Singh and another vs. Jagdish Pal Singh"***, *2018 (3) RCR (Civil) 658*. Para 15 being relevant is reproduced hereunder for reference:-

> *"The reasons assigned by the learned first appellate court is against the provisions of Section 16(c) of the Specific Relief Act. Section 16(c) of the Specific Relief Act specifically provides that the plaintiff must assert and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him. Merely because the defendants has denied the execution of the agreement to sell does not absolve the plaintiff from the duty to assert and prove that he was always ready and willing to perform his part of the contract....."*

Accordingly the appellate/ defendant was well within his right to raise the plea of readiness and willingness against respondent/ plaintiff, despite having denied the execution of the documents in question. In the present case, the respondent has not been able to establish on record his readiness to perform his part of the agreement in question as no documentary evidence has been produced on record by him to prove the balance sale consideration.

(C) As per respondent/ plaintiff, originally the agreement to sell was executed on 12.12.1988; whereas on account of civil suit having been filed at the instance of one of the sister and brother of appellant/ defendant, another document dated 23.09.1989 was

executed with a stipulation that the respondent/ plaintiff shall be entitled to file a suit of possession by way of specific performance based on the aforesaid documents, within a period of 15 days of decision of the civil suit pending between appellant/ defendant and his brother/ sister.

While appearing as PW8, respondent/ plaintiff admitted interpolation in the document dated 23.09.1989, the relevant portion from his cross-examination is reproduced as under:-

> *"…..It is correct that the portion Mark A to A1 in English Script has been interpolated lateron. This portion Mark A to A1 was interpulated after 15 days. Again said, the deft. had asked me to get the sale deed executed within 15 days of agreement to sell. Again said, within 15 days after the decision of the case. It is wrong to sugg. That portion Mark A to A1 is not in the writing of Vijay Kumar and had been interpulated by me in collusion and in connivance with my own persons….."*

In view of the aforesaid deposition, there being interpolation in the document dated 23.09.1989 as regards providing of right to the respondent/ plaintiff to file suit for the enforcement of the agreement, within a period of 15 days from the disposal of the litigation pending between appellant/ defendant and his brother/ sister, the same thus amounting to variation of rights and liabilities under the document dated 23.09.1989 being a material alteration without there being any consent of the appellant/ defendant resulted into automatic cancellation/ nullification of the same, thereby making it non-effective. Although, PW8 tried to explain the aforesaid interpolation, however, it cannot come to his rescue, the same being

beyond pleadings. The explanation offered on the point of interpolation of the aforementioned documents was never pleaded by the respondent/ plaintiff in his plaint or even in the replication.

In support, reliance can be placed upon the decision made by Hon'ble Supreme Court in the case of **Loonkaran Sethia etc. Vs. Mr. Ivan E. John and others**, AIR 1977 SC 336 and paras 23 and 30 thereof being relevant, are reproduced hereunder for reference:-

> *"23.* ***Question No. 5*** *:--Before proceeding to determine this question it would be well to advert to the legal position bearing on the matter As aptly stated in paragraph 1378 of Volume 12 of Halsbury's Law: of England (Fourth Edition), "if an alteration (by erasure, interlineation, or other- wise) is made in a material part of a deed, after it execution, by or with the consent of any party to or person entitle, under it, but without the consent of the party or parties liable under it, the deed is rendered void from the time of the alteration so as to prevent the person who has made or authorised the alteration, and those claiming under him, from putting the deed in suit to enforce against an party bound by it, who did not consent to the alteration, any obligation, covenant, or promise thereby undertaken or made.*
>
> *A material alteration, according to this authoritative work, is one which varies the rights, liabilities, or legal position of the parties as ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained and a such void, or which may otherwise prejudice the party bound by the deed as originally executed.*

> *The effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed.*
>
> *30. As the above mentioned alterations substantially vary the rights and liabilities as also the legal position of the parties, they cannot be held to be anything but material alterations and since they have been made without the consent of the defendants first set, they have the effect of cancelling the deed. Question No. 5 is, therefore, answered in the affirmative."*

Accordingly, on account of material interpolation/ material alteration in the document dated 23.09.1989 having been nullified/ cancelled and non-effective, the suit filed by the respondent/ plaintiff on 08.06.1993, solely based on the agreement dated 12.12.1988 was clearly barred by limitation.

In the facts and circumstances of the present case, once the document dated 23.09.1989 became non-effective on account of unilateral material alterations carried out therein, the plea of novation thereof may not be required to be dealt with.

(D) Admittedly, the jurisdiction to award decree of specific performance is discretionary and the Courts are not bound to grant such relief merely because it is lawful to do so, though the discretion vested with the Courts being not arbitrary has to be exercised in a sound and reasonable, to fall within the four corners of sub-section (1) to Section 20 of the Act. Considering the facts and circumstances of the present case, above and beyond the findings recorded in the preceding paragraphs as well as from the pleadings and the evidence available on record, the grant of discretionary relief of specific

performance in favour of respondent/ plaintiff is not made out for the following reasons:-

i) There being a specific and categoric denial about the execution of the agreement to sell, the signatures having been disputed by the appellant/ defendant, non-examination of the sole independent witness Harbhajan Lal Vohra to the agreement to sell (Ex.PW1/2) dated 12.12.1988, was fatal to the claim of respondent/ plaintiff;

ii) Receipt dated 19.07.1989 (Ex.PW8/4) pertaining to Rs.1 lakh allegedly paid by respondent/ plaintiff to appellant/ defendant being in Urdu was never proved on record, through any witness having knowledge of Urdu language;

iii) PW4-Anil Taneja (Bank witness) in his deposition though proved pay order of Rs.1 lakh in the name of appellant/ plaintiff prepared at the instance of respondent/ plaintiff, however, deposed that he was having no knowledge regarding the encashment of the aforesaid pay order.

iv) Even while appearing as PW8, respondent/ plaintiff admitted that he was not in possession of any proof with regard to payment made to the appellant/ defendant.

Relevant portion of cross-examination of PW8 is reproduced hereunder:-

> *"I am not in possession of the proof with regard to the payment made to the defendant nor I have any proof with regard to consideration passed to defendant as alleged by me……."*

v) No separate receipt proved on record regarding alleged payment of Rs.20000/- by respondent/ plaintiff to appellant/ defendant.

vi) The extensions dated 06.05.1989 (Ex.PW8/2) (typed) and 13.07.1989 (Ex.PW8/3) (handwritten), both are in Punjabi. Neither it has been established on record that the appellant/ defendant was conversant with Punjabi language and the same was made in his hand-writing; nor the person who wrote the aforesaid extensions was examined as witness. Even there is no independent witness to the aforesaid two extensions;

vii) The plaintiff while appearing as PW8 deposed in his cross-examination that the agreement to sell in the present case is one page document; whereas from perusal of the records it can be made out that the agreement to sell dated 12.12.1988 is a two page document; and

viii) The particulars of individual who purchased the stamp paper for the purpose of execution of agreement to sell dated 12.12.1988 have not even been disclosed.

In view of the circumstances narrated hereinabove, there being serious doubts about the execution of the agreement to sell dated 12.12.1988, besides even the payments as alleged by the respondent/ plaintiff being not proved, it may not be appropriate for this Court to uphold the discretion exercised by the first Appellate Court in favour of the respondent/ plaintiff as regards the grant of decree for specific performance in his favour.

Accordingly, for the reasons recorded hereinabove, finding merits in the present appeals, the same are allowed. Resultantly, the judgments and decrees dated 02.03.2016 passed by the Court of learned Additional District Judge, Amritsar as well as Additional Civil Judge, (Senior Division), Amritsar, are hereby set aside, thereby dismissing the suit filed at the instance of respondent/ plaintiff in toto without there being any order as to costs.

Pending application(s), if any, shall also stand disposed off.

A photocopy of this order be placed on the file of other connected case.

March 13, 2023 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*