

Kuldip Singh Vs. Udham Singh

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Court : Punjab and Haryana

Decided On : Aug-09-2005

Reported in : (2005)141PLR481

Judge : Tapen Sen, J.

Appeal No. : Regular Second Appeal No. 2259 of 1989

Appellant : Kuldip Singh

Respondent : Udham Singh

Advocate for Def. : R.S. Bains, Adv.

Advocate for Pet/Ap. : R.N. Moudgil, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

Tapen Sen, J.

1. The appellants, Kuldip Singh is aggrieved by the Judgment and Decree passed by the Additional District Judge, Gurdaspur in Civil Appeal No. 358 of 1988 delivered on 19.5.1989 allowing the appeal filed by the Respondent herein and dismissing the suit of the Plaintiff/Appellant herein.

2. The Plaintiff/Appellant filed Civil Suit No. 29/7 on 8.5.1984 praying for specific performance of contract said to have been executed by the Defendant/Respondent herein on 11.3.1981 agreeing to sell his property mentioned in the plaint and/or in the alternative for recovery of a sum of Rs. 38,000/- as damages and compensation. It is apparent that Kuldip Singh died during the pendency of the appeal before the Lower Appellate Court and he was substituted by his mother, Surjit Kaur.

3. The Plaintiff/Appellant made out a case before the Trial Court to the effect that the Defendant/Respondent was the owner of the site (Ahata) highlighted by the Letters ABCD and situated at Batala West, Kahnuwan Road, Batala. According to him, the Defendant/Respondent had agreed to sell the same in favour of the Plaintiff/Appellant and in furtherance of the said intention, he had executed an Agreement on 11.3.1981 for a total consideration of Rs. 38,000/- out of which he had received a sum of Rs. 18,000/- as earnest money. It is further averred that the Deed of Sale was to be executed within one month from the decision of a case which was then pending in the Court of the learned Subordinate Judge, 1st Class, Batala (Swarn Kaur etc. v. Udham Singh).

4. It was further stated in the plaint that the balance amount of Rs. 20,000/- was to be paid at the time of registration of the Sale Deed. The costs for stamped papers and registration was to be borne by the Plaintiff/Appellant and in case the Plaintiff committed any default, the earnest money was liable to be forfeited and in case of default by the Defendant/Respondent, he was liable to refund the earnest money and to pay another sum of Rs. 18,000/- as liquidated damages.

5. It is stated that the aforementioned suit between Swarn Kaur and Udham Singh was dismissed on 18.2.1983. The Plaintiff/Appellant was always ready and willing to perform his part of the contract but the Defendant/Respondent committed breach thereof. It was further stated that just South of the property marked ABCD (property in dispute), there was another property marked CDEF which belonged to the brother of the Defendant/Respondent namely, Harnam Singh and the said Harnam Singh had sold this plot to the father of the Plaintiff/Appellant namely, Jaswant Singh by a registered Deed of Sale on 2.3.1981 and since that date,

Jaswant Singh was in possession thereof as the owner.

6. The Defendant/Respondent, upon having been noticed, filed written statement and contested the suit. According to the Defendant/Respondent, the story built up by the Plaintiff/Appellant to the effect that Harnam Singh was the owner of an adjoining plot on the South being CDEF, was totally incorrect and in fact CDEF was a part and parcel of the entire plot belonging to him alone. He further stated that Plots ABCD and CDEF constituted one Block and that Harnam Singh was neither the owner nor in possession and he was not competent to transfer the same to the plaintiff. His further case was a complete and total denial of the fact relating to execution of any Agreement to Sell any portion of the plot in dispute and/or in relation to having received any earnest money from the Plaintiff/Appellant as alleged in the plaint. The Defendant/Respondent further stated that he was a resident of Bihar and was in lawful possession of the entire plot in dispute as its owner and that one Dharam Singh had been allowed by him to occupy the plot in dispute as Licensee but later on Dharam Singh filed suit through his wife and children against him. Since he was residing in Bihar, he started feeling difficulties in defending himself in that suit. The father of the Plaintiff/Appellant namely, Jaswant Singh assured him to help not only in defending the suit but also in the recovery of possession from Dharam Singh and his family. Under that inducement, Jaswant Singh (father of the Plaintiff/Appellant) got some documents written by the Defendant/Respondent and also got his signatures on blank papers on the excuse that they were required to be used in that particular case. The Defendant/Respondent claimed that the plea of the Agreement having been executed by him was set up by the Plaintiff/Appellant and in any event, the same was a result of forgery and/or fabrication committed by Jaswant Singh.

7. The aforementioned other suit filed by Dharam Singh through his wife Swarn Kaur was in respect of the entire plot including the portion marked CDEF.

8. The Trial Court framed the following Issues:

'1. Whether the defendant executed an agreement dated 11.3.81 regarding the disputed property in favour of the plaintiff?

2. If issue No. 1 is proved whether the said agreement is the result of forgery and fabrication as alleged?
3. Whether the plaintiff was/is ready and willing to perform his part of the contract?
4. Whether the suit is within limitation?
5. Whether the suit is properly valued, stamped and verified?
6. Whether the plaintiff is entitled for the decree of the specific performance?
7. Whether in the alternative, the plaintiff is entitled for a Rs. 38,000/- as compensation and return of advance money?
8. Relief.' [SIC]

The Plaintiff/Appellant examined nine witnesses while the Defendant/Respondent examined two witnesses.

9. PW-1, Sardari Lal is said to be the Scribe of the Agreement. PW-2, Dharam Vir is the Stamp Vendor. PW-3, Suresh Chander is the Draftsman. PW-4, Shri C.S. Bajwa is an Advocate. PW-5, Santokh Singh who is the attesting witness to Ex.P1 which is said to be the Agreement while PW-6, Ranjit Singh is the Ex-Municipal Commissioner, another attesting witness. PW-8, Smt. Surjit Kaur is the mother of the original plaintiff (Kuldip Singh), who pursued the case after his death. PW-9 is one Jaswant Singh.

10. The Defendant examined himself as DW-1 and another witness namely, Davinder Singh, a Clerk.

11. While dealing with Issue No. 1, the Trial Court came to the conclusion that on 11.3.1981, the Defendant/Respondent had entered into an Agreement to sell the suit property in favour of the Plaintiff/Appellant. The aforementioned conclusion of the learned Trial Court was on the basis of his considerations in relation to the evidences given by the witnesses.

PW-1, Sardari Lal, who was the scribe of the Agreement (Ex.P1), had stated that he had read over the contents of Ex.P1 to the Parties as well as to the witnesses and that they had signed and put their thumb impressions thereon. He had also stated that he had entered this Agreement in his register at Serial No. 120 and that this entry bore the signatures of Kuldeep Singh and Udhham Singh (the Plaintiff and the Defendant). He had further stated that at the time of execution of the Agreement, the Plaintiff/Appellant had paid a sum of Rs. 18,000/- as earnest money to the Defendant/Respondent.

PW-2, Dharam Vir Singh, the Stamp Vendor, had stated that he had sold the stamped papers of the Agreement Ex.P1 to the Defendant/Respondent on 11.3.1981.

PW-5, Santokh Singh and PW-6, Ranjit Singh are attesting witnesses of the Agreement Ex.P1 who had corroborated the statements of PW-1, Sardari Lal regarding execution of Ex.P1 by the Defendant/Respondent in favour of the Plaintiff/Appellant. These witnesses also stated that the total sale price agreed upon was Rs. 38,000/- out of which a sum of Rs. 18,000/- had been paid to the Defendant/Respondent by the Plaintiff/Appellant as earnest money.

PW-8, Smt. Surjit Kaur is the mother of the original Plaintiff namely, Kuldeep Singh and she had also stated that the Defendant/Respondent had executed the Agreement to Sell being Ex.P1 for a total consideration of Rs. 38,000/- in favour of her son namely, Kuldeep Singh and that at the time of execution of the Agreement, Ex.P1, a sum of Rs. 18,000/- had been paid as earnest money. She also identified the signatures of Kuldeep Singh (her son) on the Agreement and also stated that Kuldeep Singh had expired. She also stated that the Sale Deed was to be executed within a period of one month from the date of decision of the suit filed by Swarn Kaur against the Defendant/Respondent.

PW-9 is Jaswant Singh (father of Kuldeep Singh), who also supported and corroborated the statements of his wife Smt. Surjit Kaur, PW-8 and he further stated that the power of attorney Ex.P9/A had been executed by the Defendant/Respondent for defending a suit.

12. In view of the aforementioned evidence, the Trial Court concluded that on 11.3.1981, Udham Singh (Respondent) had entered into an Agreement to Sell the suit property in favour of the Plaintiff/appellant. The Trial Court also came to the conclusion that the Agreement to Sell, Ex.P1 was not a result of forgery. On Issue No. 3 above, he held that the plaintiff (Appellant) was ready and willing to perform his part of the Agreement. He also held the other issues in favour of the Plaintiff/Appellant and decreed the suit.

13. Being aggrieved, Udham Singh (Respondent) filed Civil Appeal No. 358 of 1988 and by the impugned Judgment dated 19.5.1989, the same was allowed and the Judgment and Decree of the Trial Court was set aside. It is against that Judgment that the Plaintiff/Appellant has filed the instant Regular Second Appeal.

14. Upon a perusal of the Judgment of the learned Lower Appellate Court, it is evident that he proceeded to deal with the case of the parties by taking up Issue Nos. 1 and 2 together which, for convenience, are quoted below:

'1. Whether the defendant executed an agreement dated 11.3.81 regarding the disputed property in favour of the plaintiff?

2. If issue No. 1 is proved whether the said agreement is the result of forgery and fabrication as alleged?' [SIC]

Let it be recorded that Issue No. 1 had been dealt with by the learned Trial Court in the manner stated above by considering the evidence of Plaintiff's witnesses described above. On Issue No. 2, the learned Trial Court had come to a conclusion that the Agreement was not a result of forgery and while dealing with this issue, the learned Trial Court observed that the Defendant/Respondent had not led any cogent and consistent evidence to prove that the Agreement was a result of forgery and fabrication. The Trial Court held that his statement was vague and had also held that there were no circumstances to prove forgery. The learned Lower Appellate Court, on the other hand, takes up these two issues i.e. Issue Nos. 1 and 2 in Paragraph 9 and records his inability to agree with the findings returned by the Trial Court.

15. The learned Lower Appellate Court, while disagreeing with the findings given by the learned Trial Court, dealt with the case of the Defendant/Respondent by observing that he being a resident of Bihar, was facing a suit filed against him by one Swarn Kaur and therefore, found it difficult to defend himself. Being a Tailor by profession, he came across another Tailor who used to sit in front of a shop of a Cloth Merchant who introduced himself as Jaswant Singh. This Jaswant Singh agreed to help him and got a power of attorney from him. The Defendant also put his signatures on blank papers.

16. The learned Lower Appellate Court also recorded the admission made by PW-1 in his cross-examination relating to having written the power of attorney, a photocopy, whereof was marked Ex.A.

17. The other consideration by the learned Lower Appellate Court was in relation to the statements of Dharam Vir, PW-2 who was the Stamp Vendor. He had deposed that the Defendant had purchased stamped papers from him to execute an Agreement which was entered in the register. In cross-examination, this witness had stated that vide entry at Serial No. 13095, the Defendant/Respondent had purchased stamped papers worth Rs. 15/-. The Agreement Ex.P1 however was found to be on stamped papers worth Rs. 2.25/-. Consequently, the learned Trial Court held that the evidence of this witness to the effect that stamped papers were purchased by the Defendant/Respondent, actually helped the Defendant in his reply to the effect that on the same day, he had executed a power of attorney in favour of the father of the plaintiff.

18. The learned Lower Appellate Court also dealt with the evidence of PW-5 and PW-6 who are attesting witnesses of Ex.P1. He disbelieved their evidence by saying that PW-5 had stated that the market price of the land in 1981 was Rs. 6,500/- to Rs. 7,000/- per Maria whereas PW-6 had stated that the market price in those days was Rs. 600/- to Rs. 700/- per Maria. He also records the fact that PW-6 had admitted in his cross-examination that he was a witness of the power of attorney executed by the Defendant/Respondent in favour of Jaswant Singh (father of the Plaintiff/Appellant). The learned Lower Appellate Court also records that PW-5 was a neighbour of Jaswant Singh and therefore, obviously disposed to

help the Plaintiff.

19. This Court after having carefully gone through the Judgment of the learned Lower Appellate Court comes to a conclusion that the said Judgment cannot be said to be erroneous or not based on reasons. The learned Counsel for the Appellant has argued that the entire Judgment is based on presumptions and conjectures because in most of the parts of the Judgment, the learned Lower Appellate Court has used the expression 'it appears'. However, having gone through the Judgment, this Court is not inclined to criticize the usage of the said expressions because these have been used in the process of weighing the facts and circumstances of the case and for coming to a logical conclusion. The manner in which the learned Lower Appellate Court has dealt with the statement of the Stamp Vendor, PW-2, in coming to a conclusion that after having got the power of attorney, the father of the plaintiff had got some signatures on another document to set it up as an Agreement to Sell, cannot be faulted. It is evident that Dharam Vir, PW-2, who is the Stamp Vendor, had deposed that the Defendant/Respondent had purchased stamped papers from him to execute an Agreement which was entered at Serial No. 13095. However, in cross-examination, he had stated that vide this entry, the Defendant/Respondent had purchased stamped papers of Rs. 15/-. Surprisingly, the Agreement to Sell, which was Ex.P1, was written on stamped papers of Rs. 2.25/-. The learned Lower Appellate Court therefore correctly came to the conclusion that the 'Agreement Ex.P-1, according to these PWs, was scribed at about 4 P.M. The power of attorney being registered document, must have been executed before 4 P.M. It, therefore, appears that after having got power of attorney from the defendant, father of the plaintiff got some signatures of the defendant on another document and set up the same as an agreement to sell.'

20. Similarly, while dealing with the capacity of the original plaintiff, Kuldip Singh, to pay a sum of Rs. 18,000/- which in the year 1981, was a huge amount, the learned Lower Appellate Court correctly dealt with the matter and came to the conclusion that Kuldip Singh was less than 20 years of age when the Agreement was said to have been executed. No independent source of income to purchase the property in dispute was established and therefore, he correctly observed that

the 'whole show was managed' by the father of the Plaintiff/Appellant namely, Jaswant Singh in the name of his son, Kuldip Singh. Similarly, the learned Lower Appellate Court also correctly disbelieved the story built up by the Plaintiff/Appellant to the effect that adjacent to the area in question namely, Plot ABCD, there was another Plot namely, CDEF which belonged to Harnam Singh, who later on sold it to Jaswant Singh. While disbelieving this story, the learned Lower Appellate Court correctly took into consideration Ex.PW-8/A which was a copy of the judgment dated 18.2.1983 passed in the suit filed by Swarn Kaur against Udham Singh (the Respondent herein). In the very head note of that Judgment, the Southern boundary of the Plot was described to be a vacant site on the Kahnuwan Road. That apart, PW-3, Suresh Chander, who had prepared the Site Plan (Ex.P2) had deposed that there was no line like CD on the spot and that the entire Plot ABEF (ABCD + CDEF) was one Plot. Consequently, this Court does not find any fault with the learned Lower Appellate Court when he stated that:

'This shows that the plaintiff wrongly mentioned the southern boundary as the property of Harnam Singh and now of his father Jaswant Singh. Surjit Kaur PW-8 is mother of the plaintiff. Her statement has no bearing on the cause, because she was not present at the time of the execution of the agreement Ex.P1' [SIC]

Finally, the learned Lower Appellate Court correctly came to the conclusion that the evidences discussed by him showed that Jaswant Singh (father of the Appellant) had fraudulently got the Agreement (Ex.P1) from Udhan Singh. After having decided other issues, he correctly came to the conclusion that since Kuldip Singh was not in a position to purchase the site in question after having spent Rs. 38,000/- and therefore, it could not be said that he was always ready and willing to perform his part of the Agreement. In any event, the Appellant did not produce any postal receipt or acknowledgement due/receipt to show that the Notice issued by PW-4 Shri C.S.Bajwa, Advocate had really been dispatched to the defendant. In that view of the matter, there was no question of the plaintiff/appellant being ready and willing.

21. Taking into consideration the aforementioned facts and circumstances this Court does not find any reason to interfere with the Judgment passed by the

learned Lower Appellate Court in Civil Appeal No. 358 of 1988 by reason whereof he was pleased to allow the appeal filed by the respondent herein and as a consequence thereof, was pleased to set aside the Judgment and Decree of the Trial Court passed in the suit. This Court consequently, upholds the judgment of the learned Additional District Judge, Gurdaspur and as a consequence of this Judgment, the instant Regular Second Appeal is hereby dismissed.

No order as to costs.

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