

Raj Kumar Garg Vs. Raj Kumar and Another

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Court : Himachal Pradesh

Decided On : Sep-26-2011

Judge : Rajiv Sharma

Appeal No. : Civil Suit No. 45 of 2007

Appellant : Raj Kumar Garg

Respondent : Raj Kumar and Another

Advocate for Def. : Mr. Sudhir Thakur

Advocate for Pet/Ap. : Mr. Ramakant Sharma

Judgement :

Rajiv Sharma, J.

SUIT FOR SPECIFIC PERFORMANCE.

1. Plaintiff has instituted a suit for specific performance of agreement dated 24.08.2006. According to the plaintiff, he entered into an agreement with the defendants on 24.08.2006, for purchasing the land to the extent of 65 bighas, comprised in Khata No. 1, Khatoni No. 1 to 4, total Khasra Nos. 25, as per Jamabandi for the year 2001-2002, in which the defendants have share to the extent of 75 bighas out of total land, measuring 174. 13 bighas, situated in village Char, Pargana Lachrang, Tehsil Kausali, District Solan, H.P. The total sale

consideration for purchasing the land to the extent of 65 bighas was fixed at Rs.48 lacs and out of the total land, a sum of Rs.4 lacs was paid to the defendants, which was acknowledged by them. The remaining sale consideration was to be paid by the 1 Whether the reporters of the local papers may be allowed to see the judgment? No. plaintiffs on or before 23.04.2007, by which date, the sale deed was to be executed by the defendants in favour of the plaintiff. The agreement was entered into between the parties in the presence of two witnesses, namely Shri Sandeep Kumar and Shri Pankaj. The plaintiff remained present in the office of Sub Registrar, Kasauli alongwith the balance sale consideration as well as money for the purpose of purchasing the stamp papers etc. for the purpose of execution and registration of the sale deed. A registered notice was sent to the defendants on 20.04.2007, whereby both the defendants were requested to execute, sign and deliver the sale deed and to remain present for registration on 23.04.2007. The notice dated 20.04.2007 was sent through registered A.D. to both the defendants. The notices were also sent to the defendants under U.P.C.. Plaintiff was ready and willing to perform his part of the contract. The defendants failed to appear before the Sub Registrar on 23.04.2007. There was an entry with regard to mortgage of the land falling to the share of defendant No. 2 for a sum of rupees 8 lacs, which entry stood removed, since defendant No. 2 has deposited the amount on 14.03.2007. According to the plaintiff, it was for the defendants to clear all encumbrances before getting the sale deed executed and registered in his favour. According to the plaintiff, the time was not an essence of the contract nor the parties had agreed by way of entering into an agreement to make the time as an essence of the contract. The cause of action had accrued in favour of the plaintiff on 24.08.2006 and thereafter on 20.04.2007. According to the plaintiff, this Court has the territorial as well as pecuniary jurisdiction to entertain and try the suit. The court fee has been affixed as per law. It is in these circumstances, the plaintiff has filed the suit for specific performance of the agreement dated 24.08.2006 and has prayed for a decree for possession of the suit as per the details given in the plaint.

2. The suit was contested by the defendants. The defendants have taken a number of preliminary objections. According to the defendants, plaintiff was estopped by his own act, conduct and acquiescence to file and maintain the suit. The suit is not maintainable in the present form as the plaintiff has no legal, valid,

enforceable and subsisting cause of action against the defendants to file and maintain the suit. On merits, it is denied that the agreement was entered into between the parties on 24.08.2006 for the purchase of land, measuring 65 bighas. It is denied that according to agreement, total sale consideration of the land measuring 65 bighas was fixed at Rs.48 lacs. It is also denied that a sum of Rs.4 lacs was paid to them by the plaintiff. It is also denied that the sale consideration was to be paid by the plaintiff on or before 23.04.2007. According to the defendants, the alleged agreement is illegal, false and fictitious document and is an out come of fraud having been played by one Shri Ankush Vashisht, who was defendant in a suit pending before Civil Judge (Junior Division), Kasauli. The plaintiff and Shri Ankush Vashisht were acting as property dealers. The plaintiff and one Shri Ankush Vashisht and few other persons got signatures of the defendants on the blank papers and on some judicial and non-judicial papers for finalizing the matter for sale of 50 bighas of land for a sale consideration of Rs.3 crores. The defendants were also visited by Shri Ankush Vashisht. On 16.01.2007, the plaintiff alongwith some other persons came to the house of defendants in the evening and claimed that they were sent by Ankush Vashisht as some more signatures were required and they were made to sign on some blank papers. According to the defendants, these documents were false and fictitious. There was no occasion for the defendants to enter into an agreement with the plaintiff. The defendants never received any amount from the plaintiff and the matter was also reported to the police on 02.02.2007, a copy of the same was sent to the D.G.P., Shimla and also to Hon'ble Chief Minister of Himachal Pradesh, demanding inquiry into the matter. It is denied that the agreement was made in the presence of Shri Sandeep Kumar, son of Shri Murli Dhar and Pankaj, son of Shri Beli Ram. It is denied that the plaintiff remained present in the Court of Sub Registrar, Kasauli for purchasing the stamp papers etc. for the purpose of execution of sale deed. It is denied that a notice was sent on 20.04.2007 to the defendants. It is denied that the defendants have failed to appear before the Sub Registrar on 23.04.2007. It is denied that the plaintiff was entitled for the relief of specific performance. It is denied that the time was not an essence of the contract since the property agreed to be sold by the defendants and purchased by the plaintiff being the immovable property. It is denied that the suit is within limitation. According to the defendants,

no cause of action has arisen in favour of the plaintiff.

3. Replication was filed by the plaintiff and the averments contained in the plaint were reiterated.

4. On the pleadings of parties, the following issues were framed by this Court on 13.03.2008:

1. Whether this suit is liable to be stayed under Section 10 of the Code of Civil Procedure as the defendants have instituted a suit against the plaintiff regarding the property which is the subject matter of this suit in the Court of Civil Judge (Jr. Division), Kasauli and which suit was instituted prior in point of time to the present suit?..OPD.

2. Whether the plaintiff entered into an agreement dated 24.8.2006 with the defendants for purchasing the suit land as alleged?.OPP.

3. Whether the plaintiff paid a sum of rupees 4 lacs to defendants as advance of the consideration amount as alleged?.OPP

4. Whether the plaintiff is entitled to the decree of specific performance of agreement dated 24.8.2006 and injunction or any other relief as pleaded? ..OPP.

5. Whether the agreement dated 24.8.2006 is illegal, false or fictitious and obtained by committing fraud and misrepresentation by plaintiff on the defendants?..OPD.

6. Whether the plaintiff is estopped by his own acts and conduct and acquiescence to file and maintain the present suit? OPD.

7. Whether the suit is not maintainable in the present form?.OPD.

8. Whether the plaintiff has no legal, valid enforceable and subsisting cause of action against the defendants?..OPD.

9. Whether the suit is bad for non joinder of necessary parties?..OPD.

10. Relief.

5. The plaintiff, besides placing on record a number of documents, has examined as many as four PWs in order to prove his case. The defendants have examined eight witnesses and also placed on record certain documents.

6. I have heard the learned counsel for both the parties and gone through the records carefully.

7. For the reasons to be recorded hereinafter while discussing the issues, my findings to the issues are as under:

Issue No. 1 : Not pressed.

Issue No. 2 : No.

Issue No. 3 : No.

Issue No. 4 : No.

Issue No. 5 : Yes.

Issue No. 6 : Yes.

Issue No. 7 : Yes.

Issue No. 8 : Yes.

Issue No. 9 : No.

Relief : The suit of the plaintiff is dismissed as per operative part of the judgment.

REASONS FOR FINDINGS

ISSUE NO. 1.

8. Since the defendants have withdrawn the Civil Suit No. 94/1 of 2007, titled Raj Kumar and another Vs. Ankush Vashisht and others, instituted in the Court of learned Civil Judge (Senior Division), Kasauli on 26.03.2011, this issue needs no adjudication and is decided accordingly.

ISSUES NO. 2 TO 9:

9. These issues have been taken up together as similar evidence and law is required to be discussed in order to prove these issues. In order to prove the above issues, the plaintiff has examined four witnesses.

10. PW-1 Shri K.K. Sharma has proved Ex. PW-1/A, affidavit. Plaintiff has appeared as PW-2. According to him, he has entered into an agreement for the purchase of suit land with defendants No. 1 and 2 vide Ex. PW-2/A. This agreement was signed by him and defendants No. 1 and 2. He has identified the signatures at point "B-1 to B-4". He has identified the signatures of defendant No. 1 at point "C-1 to C-5". He has also identified the signatures of defendant No. 2 Shri Ajay Kumar at point "D-1 to D-4". The agreement was witnessed by Shri Sandeep Kumar, son of Shri Murli Dhar and one Pankaj Kumar, son of Shri Beli Ram, who have signed at points "E" and "F". These persons signed in his presence. He has testified that the total sale consideration for the suit land was fixed at Rs.48 lacs and a sum of Rs.4 lacs was paid by him to defendants No. 1 and 2 at the time of execution of the agreement. The defendants have acknowledged the receipt of the amount which has been written on the reverse side of Ex. PW-2/A. The receipt is Ex. PW-2/B. The terms and conditions of the contract and respective obligations are contained and scribed in Ex. PW-2/A. He has further testified that the date for registration of the sale deed as per the agreement was fixed by the parties on or before 23.04.2008. A registered notice Ex. PW-2/A was issued to the defendants on 20.04.2007 through Advocate Shri N.K. Bhalla, on whose instructions he remained present in Tehsil/Court of Sub Registrar, Kasauli from 10 a.m. to 4:45 p.m. in the evening. The defendants did not turn up and, thereafter, he sworn an affidavit Ex. PW-1/A, which was attested by the Tehsildar. This affidavit was executed and signed by him. He was carrying entire sale consideration, including expenditure of registration. He had a sum of Rs.50 lacs with him on that day. A sum of Rs.44 lacs was to be paid to the defendants as balance consideration and rest towards registration charges. Ex. PW-2/C was dispatched by a registered acknowledgment due post. Copies of postal receipts are Ex. PW-2/D-1 to Ex. PW-2/D-2. This notice was received back un-served in the envelope which was sent. The envelopes are still unopened and

are Ex. PW-2/D-3 and Ex. PW- 2/D-4. He recognized the signatures of Raj Kumar, defendant No. 1, on the acknowledgment due at point "H". He also recognized the signatures of Ajay Kumar, defendant No. 2, on acknowledgment due at point "J". He has proved the copy of Jamabandi for the year 2001-2002 vide Ex. PW-2/E. According to him, the defendants did not execute the sale deed because they were demanding more money. According to them, the value of the land had increased. He was ready and willing to perform his part of the obligations, as imposed upon him vide agreement Ex. PW-2/A. According to him, he is still ready and willing to perform these obligations and execute the sale deed. He has always been and is still possessed of sufficient funds to pay the balance sale consideration and registration charges. In his cross-examination, he has stated that he knew Shri Ankush Vashisht. He has denied the suggestion that he and Ankush Vashisht were in partnership and engaged in sale and purchase of the property. He got the performa of Ex. PW-2/A typed out in Computer Centre at Dharampur. This was prepared on 24th August, 2006 between 12 noon to 1 p.m. Only two performas of Ex. PW-2/A were prepared. The first one was prepared about a month prior to the execution of Ex. PW-2/A. Ex. D-1 is the same performa, which was prepared a month back to the execution of Ex. PW-2/A. Ex. PW-2/A was signed in his office at around 4 p.m. in the evening on the day on which it was executed. His office is situated at a distance of kilometer from the Computer Centre towards Dharampur. The defendants had been told by him to be present in his office at 4 p.m. on that day. They came about 10/15 minutes prior to that time. Sandeep was outside his office at that time and Pankaj was standing at the counter of his shop/office. They had not been called by him to be present there. The blank columns in Ex. PW- 2/A were filled in by Pankaj, who was a witness of this agreement. He further testified that Ex. PW-2/B has been scribed by Pankaj. The figure 48 lacs in words as well as in numerical has been written by Shri Pankaj. A sum of Rs.4 lacs was paid by me in cash to both the defendants. This was paid in currency notes of Rs.500/- each. He could not say whether the receipt was dated or not. Witnesses Pankaj Kumar and Sandeep Kumar have written their respective addresses in their own hands. He has purchased stamp paper Ex. PW-2/A at Solan. It was purchased on the same day when the agreement was executed. He did not remember the time when he purchased it. He has admitted

that a daily diary report was lodged at the Police Station, Dharampur with respect to this agreement and some kind of inquiry was conducted by the police. He did not know whether this complaint was sent to the Director General of Police and the Chief Minister. He has admitted that Civil Suit No. 94/1 of 2007, titled Raj Kumar Vs. Ankush Vashisht and Raj Kumar Garg, i.e., (he) was filed in the Court of Sub Judge at Kasauli. He has denied the suggestion on the day when the agreement was executed, the value of the land was Rs.5 lacs per bigha. Agreement Ex. D-1 was handed over to Raj Kumar one month prior to the execution of the agreement to sell. It was given to Raj Kumar, defendant to read the conditions contained therein. He has denied the suggestion that he went to the house of Raj Kumar, defendant alongwith two persons on 16.01.2007 and told him that they had been sent by Ankush Vashisht. He did not know whether Raj Kumar had given his Power of Attorney to Ankush Vashisht with respect to this land. He has denied the suggestion that he got the signatures of Raj Kumar on a blank paper and told him that this was asked for by Ankush Vashisht. He has denied the suggestion that Ex. D-1 was accidentally dropped in the house of defendant No. 1 at night during the visit. He has also denied the suggestion that any fraud has been committed by him. He has denied that the case was pending against him in the police station. He did not know anybody named Sudarshan, resident of Chandigarh. He has admitted that suit property was mortgaged with the State Bank of India, Solan. He was told that the mortgage amount was Rs.7 lacs. The mortgage stood redeemed. He did not know who paid the amount. He denied the suggestion that Ankush had paid a sum of Rs.8 lacs for redeeming the mortgage. He only knew that defendants No. 1 and 2 entered into an agreement to sell the suit land with somebody else. He also stated that he has not taken the possession of the suit land. He has denied the suggestion that he was in partnership with Ankush and Sudershan dealing in property.

11. PW-3 is Shri Sandeep Kumar. He has stated that he knew defendants No. 1 and 2. Agreement Ex. PW-2/A was executed between the plaintiff and defendants. He was a witness to this agreement. He identified his signatures at point "E". In his cross-examination, he has deposed that Ex. PW-2/A was executed in the office/shop of the plaintiff. It was executed around 4 p.m. in the evening. He was outside the shop. He was called by the plaintiff inside. Pankaj had also come there

to inquire about the availability of the Liquid Petroleum Gas, in which the plaintiff was dealing. The agreement was not scribed in his presence. The blanks in the agreement/proforma were filled in his presence. These were filled in by Ghan Shyam, brother of Raj Kumar, plaintiff. He did not know whether the plaintiff and his brother are engaged in property dealing. He filled in his name below his signatures on Ex. PW-2/A and also written his address in his own hand. He has admitted that Ex. PW-2/A was not typed in his presence. He did not know anybody by the name of Ankush Vashisht. Both the defendants came to the office of plaintiff around 4 p.m. in the afternoon. The agreement must have been signed about 4:45 p.m. in the evening. A sum of Rs.4 lacs was paid in cash by the plaintiff. This was in currency notes of Rs.500/- each. There were eight packets containing Rs.50,000/- each. He did not remember whether the receipt was executed separately or on the same stamp paper. It was not computerized. The receipt was scribed by Pankaj, who was the second witness to this agreement. He only saw Ex. PW-2/A with the plaintiff. He did not see any other proforma lying with him. He did not know, who purchased the stamp paper for execution of Ex. PW-2/A. He has admitted that one or two criminal cases were pending in the Court at Kasauli. He further stated that there must be about two cases pending against him. In Ex. PW-2/A, the words and figures 48 lacs were written by Ghan Shyam, brother of the plaintiff. He did not know whether the suit land was worth Rs.5 lacs per bigha in the year 2006. Agreement Ex. PW-2/A was firstly signed by Raj Kumar and Ajay and thereafter by the plaintiff. He did not see anybody else other than Ghan Shyam present in the premises.

12. PW-4 Pankaj Kumar has also signed the agreement as witness at point "F". According to him, the agreement was signed by both, plaintiff and defendants. The receipt Ex.PW-2/B was on the reverse side of Ex. PW-2/B, which was scribed by him. In his cross-examination, he has deposed that this agreement was brought in Shivalik Guest House in his presence. The Gas Agency is situated at a distance of three kilometers from Shivalik Guest House. The defendants reached the Shivalik Guest House in the evening. The blanks in Ex. PW-2/A were filled in Shivalik Guest House around 4 p.m.. The blanks were not filled in in his presence. He signed this at around 4 p.m. in the evening. All the parties signed the agreement at around 4 p.m. in the evening. The receipt Ex. PW-2/B was scribed by him at

around 4 p.m.

13. DW-1 Shri Om Parkash has deposed that whole record pertaining to the previous Government (2003 to 2007) has been destroyed in the presence of the Section Officer of CM-B Section on 28th to 30th March, 2008. According to him, original of the summoned record was not available. However, he has obtained certified copies from the office of Deputy Commissioner, Solan.

14. DW-2 Shri Parveen Gupta has deposed that inquiry report carried out by the A.D.M., Solan is Ex. DW-2/A. Ex. DW- 2/B is the letter sent by the Principal Secretary to the Chief Minister, addressed to Shri Raj Kumar and copy forwarded to the Deputy Commissioner, Solan. In his cross-examination, he has admitted that in the summoned record, the reference was only with regard to letter dated 06.07.2007, written by ADM, Solan to the office of the Chief Minister.

15. DW-3 Shri Ram Pal Sharma has produced the document Ex. DW-3/A. DW-4 Ms. Anuradha Sood has brought the record from the office of Civil Judge (Sr. Division), Kasauli, District Solan.

16. DW-5 Deepak Kumar has brought the original of G.P.A., which was registered in the office of Tehsildar on 29.11.2006. The attested copy of the same is Ex. DW-5/A. He has also brought the copy of revocation deed, whereby Ex. DW-5/A was revoked, copy whereof is Ex. DW-5/B, dated 19.01.2007. According to him, the Tehsildar has also looked into the matter and has concluded the inquiry. The copy of the inquiry report is Ex. DW-5/C, dated 10.05.2007. The copies of the statements are annexed with Ex. DW-5/C. Copy of the complaint instituted by defendant No. 1 is Ex. DW-5/D, dated 02.02.2007. In his cross-examination, he has admitted that there was no pagination in the file which has been brought from the office of Tehsildar, Kasauli. There was no index giving the details of the number of the leaves. He has admitted that there was original statement annexed with the copy of the inquiry report. Thereafter, he volunteered that the originals are in the office of Deputy Commissioner, Solan. He further deposed that there was no separate note that the originals of the inquiry report and the statements have been supplied to the office of the Deputy Commissioner, Solan.

17. Defendant No. 1 Raj Kumar has appeared as DW-6. He has deposed that the plaintiff was a property dealer. He used to work with Shri Ankush Vashisht. Shri Ankush Vashisht has approached him and assured him that in case he is ready and willing to dispose of the land, he will manage to get Rs. 3 crores for the same. He had executed a General Power of Attorney in favour of Shri Ankush Vashisht, copy whereof is Ex.DW5/B. Thereafter, Shri Ankush Vashisht made him to sign certain documents. He obtained his signatures on blank papers. Three persons approached him during night around 9:00/10:00 P.M. These three persons were Raj Kumar (plaintiff), Pankaj and Sandeep Aggrawal. Shri Sandeep Agrawal is in liaison with the plaintiff and Ankush Vashisht. He was made to sign the blank papers by these three persons at the instance of Ankush Vashisht. He was assured that these documents were to be utilized for the purpose of sale of the land measuring 50 bighas. Thereafter, there was power failure and one of the documents left behind by these three persons, namely Raj Kumar, Sandeep Aggarwal and Pankaj. It was only when the power was restored, he came to know that he has been made to sign on blank papers. He has shown this document to Shri Gopal Singh next day in the morning. Shri Gopal Singh apprised him that this document will be used for preparing an agreement for the sale of the suit land. The document is similar to one that is Ex. D-1. He went alongwith Shri Gopal Singh to his Advocate for taking steps for the cancellation of General Power of Attorney, i.e., Ex. DW5/A. He got the General Power of Attorney cancelled on 16th January, 2007, copy whereof is Ex.DW5/B. He has also lodged a complaint at the Police Station, Dharampur. A copy of the same was endorsed to the Hon'ble Chief Minister. A copy was also sent to the Director General of Police, H.P., copy whereof is Ex.DW- 5/D. The copy of the complaint which was sent to the Hon'ble Chief Minister was endorsed to the Deputy Commissioner, Solan. The matter was looked into by the Tehsildar, Kasauli and he investigated the matter and prepared the report Ex. DW5/C, dated 10th May, 2007. According to him, he has not taken any consideration from the plaintiff. He has not signed any agreement with the plaintiff. He had never entered into any agreement with the plaintiff, i.e., Ex.PW2/A. He has also not executed any receipt Ex. PW2/B. According to him, plaintiff has also a Gas Agency at Dharampur. His office situate at Sukhi Johri at Dharampur. His brother also owns a hotel in the name and style of 'Shiwalik

Resort” at Mandunkdad. This hotel situate about 5 km. from the office of the plaintiff. Neither he had visited the office of the plaintiff nor had gone to the hotel of his brother to sign any document. According to him, the plaintiff was also convicted by the Court of learned Additional Sessions Judge, Solan on 23.06.2009, copy whereof is Ex. DW-7/A. At the relevant time, the value of the land was about 5 to 6 lacs per bigha. The copies of one year average produced is Ex. DW-7/B to Ex. DW- 7/D. According to him, a sum of Rs.8 lacs was deposited by Shri Ankush Vashisht in the loan account of hisson. A notice was issued to Shri Ankush Vashissht why he had deposited the money without his expressed consent, copy whereof is Ex. DW7/E. The same was sent by Registered A.D. cover, copy whereof is Ex. DW-7/F. Copy of the acknowledgment by the Bank is Ex. DW-7/G. He has also got issued a notice to Ankush vashisht for cancellation of General Power of Attorney, dated 18.1.2007, copy whereof of is Ex. DW-7/H, postal receipts are Ex. DW-7/J and DW-7/K. His son, i.e., defendant No. 2 had also sent a communication to the Bank of India as to why it has received the amount against his loan account without his express consent, copy of the letter is Ex. DW7/L. It was also sent by a registered letter, postal receipt is Ex. DW-7/M. Copy of the Jamabandi for the year 2004-2005 of mauja Mandomathkanda, Tehsil Kausali, District Solan, copy whereof is Ex. DW-7/N and copy of Jamabandi for the year 2002-2003 of Mohal Dharampur Bathol, District Solan is Ex. DW-7/O. According to him, he is in exclusive possession of the suit land. He and his son have been defrauded and cheated by the plaintiff. He has also instituted a Civil Suit in the Court of learned Civil Judge, Senior Division, Kausali, copy whereof is Ex. PW4/A. In his cross-examination, he has recognized the signatures on Ex. PW2/A, encircled and marked as C-1. He also recognized his signatures on Ex.PW2/A, already marked and encircled as C-2. He also recognized his signatures already marked and encircled as C-3. He identified his signatures as C-4 and C-5 on Ex. PW2/A. According to him, he is well conversant with the signatures of his son, i.e., defendant No. 2 and he identified his signatures on Ex. PW2/A as D-1, D-2, D-3 and D- 4, respectively. He has denied the suggestion that he has entered into an agreement with the plaintiff on 24th August, 2006. He has denied that the document, i.e., Ex. PW2/A was also signed by other two witnesses, namely, Sandeep Agarwal and Pankanj. He has denied that a sum of Rs.4lacs was paid to

him by the plaintiff by way of advance. He also denied that the agreement was entered into for a consideration of Rs.48 lacs. He also denied the suggestion that the sale deed was to be executed on or before 23rd April, 2007, on which date he has to receive the balance payment. He has not received any notice from the plaintiff dated 20th April, 2006. He has shown his ignorance whether the plaintiff has visited the office of Tehsildar, Kasauli and has also prepared an affidavit Ex. PW1/A. He has denied that he has ever entered into any agreement with Ankush Vashisht. According to him, the entire land is cultivable.]

18. DW-7 Gopal Singh has supported the version of DW-6. According to him, the defendants have shown him a blank agreement paper. The defendants told him that this document has been left behind by three persons, i.e., Raj Kumar, Pankaj and Sandeep Aggarwal. This document was similar to Ex. D-1. He was apprised by the defendants that no agreement was ever executed between the parties. He was never told that any consideration was ever discussed qua the suit land. He was apprised by the defendants that they have been cheated and defrauded by the plaintiff. He was associated with the defendants in the cancellation of the G.P.A., dated 24th August, 2006, Ex. DW-5/A. The matter was also referred to S.H.O., Police Station Dharampur. The letter was also sent to the Hon'ble Chief Minister. A copy was also sent to the Director General of Police, H.P. The matter was also looked into by the Tehsildar, Kausali and the parallel enquiry was also initiated by the S.H.O., Police Station, Dharampur. According to him, the defendants are in exclusive possession of the suit land. The approximate value of the land in the year 2006-07 was about Rs.5- 6 lacs per bigha. According to him, the plaintiff alongwith his brother also owns a hotel in the name and style of "Shivalik Resort" at Mandomathkanda. The distance between the Gas Agency Office of the plaintiff and hotel is about 5-6 km. In his cross-examination, he has deposed that the defendants are agriculturists by profession. The distance between his house and the defendants is about km. Both the defendants have visited him on 17.1.2007. He was not the author of the complaints, rather the complaints were written through Shri Sudhir Thakur, Advocate. The complaint was got written from Shri Sudhir Thakur after about 15 days. His statement was not recorded by the Tehsildar, Kasauli during the course of enquiry. According to him, the defendants are owners of land about 75 bighas. He knew Pankaj Kumar and

Sandeep Agarwal. He has admitted that Ex. D-1 is a photo copy. On Ex. PW2/A, D-1 to D-3 are the signatures of defendant No. 1. He has identified the signatures of defendant No. 1 on Ex. PW2/A as well. He was also well conversant with the signatures of defendant No. 2. He identified the signatures of defendant No. 2 on Ex. PW2/A. He has denied the suggestion that the agreement was executed on 24th August, 2006 between the plaintiff and defendant. He has also denied the suggestion that the agreement was executed and witnessed by two witnesses, namely, Sandeep Agarsal and Pankaj Kumar. He did not know that sale deed was to be registered on or before 23rd April, 2007 on the basis of Ex. PW2/A. He has denied that the total consideration of the land was Rs.48 lacs and the defendants have received a sum of Rs.4 lacs from the plaintiff as advance.

19. DW-8 is Shri K.K. Sharma. He has proved Ex. DW- 5/C. He has submitted the report Ex. DW-5/C to the Deputy Commissioner, Solan.

20. Ex. PW-1/A is the affidavit sworn by the plaintiff on 23rd January, 2007 to the effect that he remained present in the Court of Tehsildar, Kasauli on 23rd April, 2007 from morning to evening. Ex. PW-2/A is agreement dated 24.08.2006. Copy of the receipt, whereby a sum of Rs.4 lacs alleged to have been paid to the defendants is Ex. DW-2/B. Plaintiff was served with a notice by the defendants vide Ex. PW-2/C on 20th April, 2007. The copies of the postal receipts are Ex. PW-2/D-1 to Ex. PW- 2/D-2. Copy of envelopes, whereby notices were returned unserved are Ex. PW-2/D-13 and Ex. PW-2/D-14. Plaintiff has also proved a copy of Jamabandi for the year 2001-2002 vide Ex. - 20 - PW-2/E. This is the documentary evidence proved by the plaintiff.

21. Ex. DW-5/D is the copy of the complaint made by the defendants to the Chief Minister on 02.02.2007. The same was acknowledged vide Ex. DW-2/B, dated 28.02.2007. The report lodged by the defendants against the plaintiff is Ex. DW-3/A. The statement of Shri Ankush Vashisht was recorded vide Ex. PW-5/C. The copy of the inquiry report prepared by the Tehsildar and furnished to the Deputy Commissioner, Solan, dated 10th May, 2007 is Ex. DW-5/C. The inquiry report furnished by the Additional District Magistrate, Solan to the Additional Secretary of the Hon'ble Chief Minister is Ex. DW- 2/A, dated 06.07.2007. Copy of the G.P.A.

executed by the defendants in favour of Shri Ankush Vashisht is Ex. DW-5/A. Ex. DW-5/B, dated 19.01.2007 is the copy of revocation deed, whereby Ex. DW-5/A was revoked. A notice was served upon Shri Ankush Vashisht on 18.01.2007 vide Ex. DW-7/H and copies of the receipts are Ex. DW-7/J and DW-7/K. The defendants have also served a notice upon Shri Ankush Vashisht why he has deposited a sum of Rs.8 lacs in the account of defendant No. 2 for redeeming the mortgage vide Ex. DW-7/E. Copy of the Registered A.D. cover is Ex. DW-7/F and copy of the acknowledgment by the bank is Ex. DW-7/G. A notice was also issued to Shri Ankush Vashisht for cancellation of G.P.A., dated 18.01.2007 vide Ex. DW-7/H, postal receipts whereof are Ex. DW-7/J and DW-7/K. The defendants have also written a letter to the Manager, Bank of India as to why the bank has accepted the money on their behalf vide Ex. DW-7/L. A letter was also sent to the Manager by way of registered letter vide Ex. DW-7/M. The defendants have also placed on record revenue record. Copy of the Jamabandi for the year 2002-2003 is Ex. PW-7/O and copy of Jamabandi for the year 2004-2005 is Ex. PW-7/N. Defendants have also placed on record the copies showing one year average value of land vide Ex. PW-7/B to Ex. PW-7/D. Copy of the judgment vide which the plaintiff was convicted by the learned trial Court is Ex. DW-7/A, dated 23.06.2009. DW-4/A is copy of the plaint and DW-4/B is the copy of order-sheet proved by DW-4.

22. According to PW-2, agreement between the parties was signed on 24th August, 2006. The same was to be registered on or before 20th April, 2007. He has testified that the total consideration was Rs.48 lacs and a sum of Rs.4 lacs was paid by him to the defendants. The same was acknowledged by the defendants vide receipt Ex. PW-2/ B. He has also issued notice to the defendants vide Ex. PW-2/C. He has proved the postal receipts Ex. PW-2/D-1 and Ex. PW-2/D-2 and envelopes Ex. PW-2/D-3 and Ex. PW-2/D-4. He has also proved the copy of Jamabandi for the year 2001-2002, Ex. PW-2/E. According to him, the agreement was signed in his office. He was ready and willing to do his part. He was present in the Tehsil/Court of the Sub Registrar, Kasauli from 10 a.m. to 4:45 p.m. in the evening on 23rd April, 2007. He has also testified that two proformas of Ex. PW-2/A were prepared. The first one was prepared about a month prior to the execution of Ex. PW-2/A. According to him, Ex. D-1 was the same proforma which

was prepared a month back to the execution of Ex. PW-2/A. Ex. PW-2/A was signed at around 4 p.m. in his office. He has paid was Rs.4 lacs to the defendants in currency notes of was Rs.500/-. They were eight packets containing Rs.50,000/- each. The stamp papers were purchased by him. However, he did not remember the time when he purchased the same. He has testified that the blanks of Ex. PW-2/A were filled by PW-4 Pankaj and Rs.48 lacs was also written by him in figures and words.

23. According to PW-3, agreement was executed in the shop of the plaintiff. However, he contradicted the statement of PW-1 by stating that the blanks were filled by one Shri Ghan Shyam, brother of plaintiff and figure of Rs.48 lacs was written by Ghan Shyam.

24. PW-4 Pankaj Kumar has testified that the agreement was executed in Shivalik Guest House. The distance between Shivalik Guest House and office/shop of the plaintiff was about three kilometers. He has testified that the blanks were not filled in his presence.

25. DW-5 has deposed about the revocation of G.P.A. Ex. DW-5/A, which was executed between defendant No. 1 and one Shri Ankush Vashisht on 29.11.2006. It was cancelled vide Ex. DW-5/B on 19.01.2007. He has also testified about the complaint lodged by defendant No. 1 to Hon'ble Chief Minister vide Ex. DW-5/D on 02.02.2007, which was acknowledged by the office of Hon'ble C.M. on 28.02.2007 vide Ex. DW-2/B. The inquiry was held by the Tehsildar and the same was furnished to the Deputy Commissioner vide Ex. DW-5/C on 10.05.2007. The statement of Shri Ankush Vashisht was recorded vide Ex. PW- 5/C. The inquiry report furnished by the Additional District Magistrate, Solan to the Additional Secretary of the Hon'ble Chief Minister is Ex. DW-2/A, dated 06.07.2007.

26. Defendant Raj Kumar has denied that any agreement was entered into between the parties. According to him, plaintiff and few other persons have visited his house in the evening and he was made to sign certain documents. He has also signed the G.P.A. with Shri Ankush Vashisht on 29.11.2006. The same was revoked on 19.01.2007. A notice was issued to Shri Ankush Vashist regarding revocation of G.P.A. vide Ex. DW-7/H, postal receipts whereof are Ex. DW-7/J and

DW-7/K, respectively. He has also deposed that the mortgage was redeemed not by the defendants, but the money was paid with Shri Ankush Vashisht. A notice was issued to Shri Ankush Vashisht why he has paid the money with Bank vide Ex. DW7/E. The same was sent by Registered A.D. cover, copy whereof is Ex. DW-7/F. Copy of the acknowledgment by the Bank is Ex. DW-7/G. He has also got issued a notice to Ankush Vashisht for cancellation of General Power of Attorney, dated 18.1.2007, copy whereof of is Ex. DW-7/H and the postal receipts are Ex. DW-7/J and DW-7/K. A letter was also written to the Manager, Bank of India as to why the bank has accepted the money from a stranger person vide Ex. DW-7/L, receipt whereof is Ex. DW-7/M. He has also placed on record copy of Jamabandi for the year 2002-2003 Ex. PW-7/O and copy of Jamabandi for the year 2004-2005 Ex. PW-7/N. According to him, the average value of the land was more than Rs.5 lacs. He has also placed on record the copies showing one year average value of land vide Ex. PW-7/B to Ex. PW-7/D.

27. Now, the Court will advert to the documentary evidence led by the plaintiff and defendants. Copy of agreement is Ex. PW-2/A. In Ex. PW-2/A, column "B" has been left blank. Under caption "NOW THIS AGREEMENT WITNESSETH AS UNDER", there is no Serial Nos. from 1 to 19, it starts from Sr. No. 20 to 35. There is variance also in the form and contents of Ex. D-1. Ex. PW-2/A on the face of it is an incomplete document.

28. PW-1 did not remember when he has purchased the stamp papers. It is also not explained by the plaintiff why the receipt has been obtained on the reverse side of Ex. PW-2/A, i.e., Ex. PW-2/B. The place and the manner in which Ex. PW-2/A has been executed is also doubtful in view of the contradictions in the statements of PW-1, PW-3 and PW-4. This document is not admissible in evidence.

29. Their Lordships of Hon'ble Supreme Court in Life Insurance Corporation of India and Another Versus Ram Pal Singh Bisen, (2010) 4 SCC 491 have held that mere filing or exhibiting of a document in court does not amount to proof of its contents. Admission of a document in court may amount to admission of its contents but not their truth. Their Lordships of the Hon'ble Supreme Court have

held as under (paras 12, 22, 25, 27 and 31):-

“To prove his averments in the suit, respondent-plaintiff tendered himself in the witness box and proved his case as also documents filed in support thereof. Surprisingly enough, appellants herein did not lead any oral evidence, yet some of the documents filed by appellants were exhibited, probably under misconception of law that they were not disputed in Court by respondent. It is also necessary to mention here that appellants had also not served any notice of admission or denial of documents on the respondent during trial as contemplated under Order 12 Rule 2 of the Code of Civil Procedure (for short “CPC”).

Records do not reveal that any such procedure was adopted either by the appellants or by the Trial Court to prove the documents filed by the appellants and mark them as Exhibits. Thus, no advantage thereof could be accrued to the appellants, even if it is assumed that said documents have been admitted by respondent and were then exhibited and marked.

We are of the firm opinion that mere admission of document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law.

It was the duty of the appellants to have proved documents Exts. A-1 to A-10 in accordance with law. Filing of the enquiry report or the evidence adduced during the domestic enquiry would not partake the character of admissible evidence in a court of law. That documentary evidence was also required to be proved by the appellants in accordance with the provisions of the Evidence Act, which they have failed to do.

Under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the Court. Contents of the document cannot be proved by merely filing in a court.

30. Mr. Ramakant Sharma, learned counsel for the plaintiff has vehemently argued that the plaintiff was always ready and willing to do his part and for that purpose he remained in Tehsil/Court of Sub Registrar, Kasauli from 10 a.m. to 4:45 p.m. in the evening on 23.04.2007 and has also issued a notice dated 20.04.2007. The foremost question is that since the plaintiff has failed to prove Ex. PW-2/A, his self serving statement will not advance the case of the plaintiff. The Civil Suit No. 94/1 of 2007 instituted by the defendants against one Shri Ankush Vashisht, plaintiff and Sudershan Sharma has been withdrawn by them as per the statement made by the learned Advocate appearing on behalf of the defendants. The defendants have also placed on record sufficient material, as discussed hereinabove about the complaints lodged by them to the Chief Minister. The inquiry was conducted by the Tehsildar, Kasauli and he has furnished the report to the Deputy Commissioner on 10.05.2007 vide Ex. DW-5/C. The Additional District Magistrate, Solan sent a report to the Additional Secretary of the Hon'ble Chief Minister vide Ex. DW-2/A, dated 06.07.2007. Case was also registered with Police Station, Kasauli, which was also looked into. There was no occasion for one Shri Ankush Vashisht to redeem the mortgage by paying a sum of Rs.8 lacs. The defendants have issued a notice to Shri Ankush Vashisht in this regard vide Ex. DW-7/E. A letter was also written to the Manager of the Bank vide Ex. DW-7/L why he has accepted this amount from a stranger. The average price of the land as per Ex. DW-7/B to Ex. DW-7/D was more than Rs.5 lacs per bighas. It is in these circumstances that defendant No. 1 was constrained to revoke the G.P.A. executed between him and Shri Ankush Vashisht on 29.11.2006 vide Ex. DW-5/B, dated 19.01.2007 and a notice to this effect was also issued to Shri Ankush Vashisht on 18.01.2007. Since the agreement itself has been found to be invalid, the recitals contained therein cannot be looked into, including whether the time was an essence of the contract or not. There is no merit in the contention of Mr. Sudhir Thakur, learned counsel for the defendants that the necessary parties have not been arrayed. The alleged agreement has been entered into between the plaintiff and the defendants and the right of no third party was involved. In view of the observations and discussions made above, the issues No. 2 to 9 are answered accordingly.

RELIEF

31. In view of my findings on the above issues, the suit of the plaintiff is dismissed, with costs. The decree-sheet be prepared accordingly.

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