

IN THE COURT OF DEEPAK KUMAR CHOUDHARY, P.C.S.
CIVIL JUDGE (SENIOR DIVISION), JALANDHAR.

Civil Suit No.336 of 2014
Date of Instt: 25.03.2008

Case No.: CS-51971/2013
Date of Decision : 09.07.2015

Dr. Mukesh Joshi
son of Tilak Raj Joshi
c/o Joshi Hospital,
Kapurthala road, Jalandhar.

.....Plaintiff

Versus

1. Ravinder Kumar Chopra

son of Sh. Janki Dass Chopra,
resident of EJ 351,
Kot Pakshian, Jalandhar.

2. Sh. Rakesh Kumar

S/o Sh. Janki Dass
R/o EJ-351-352,
Kot Pakshian, Jalandhar.

3. Sh. Sushil Kumar

S/o Sh. Janki Dass
R/o EJ-351-352
Kot Pakshian, Jalandhar.

.....Defendants

Suit for possession as owner by way of specific performance of the Agreement to Sell dated 18.10.2007 in respect of H. No. EJ-352 built on area measuring 6.75 Marlas being ½ share out of area measuring 13½ Marlas situated at Mohalla Kot Pakshian, Jalandhar

bounded on East : EJ-351 west : Chandha Sahib, North : Others, South : Road.

AND

For issue of mandatory injunction, directing the defendant to execute a legally valid and duly registered sale deed in favour of the plaintiff in respect of the property in dispute fully detailed in the head-note of the plaint and to deliver vacant physical possession of the property in dispute as owner to the plaintiff on receipt of the balance sale consideration and expenses for the sale deed in terms of the agreement to sell dated 18.10.2007.

AND

For issue of permanent injunction, restraining the defendant from alienating the property in dispute by way of sale, gift, exchange, mortgage, lease or in any other manner whatsoever and also from parting with the possession thereof in any manner whatsoever to anybody else, except the plaintiff.

Present : Sh. IS Bhatia Advocate for plaintiff.

Sh. RK Nagiana Advocate for defendant no.1

Sh.N.K. Aggarwal, Advocate for defendants no.2 &3

J U D G M E N T :

PLEADINGS

1. Plaintiff herein contends that the defendant No.1 approached the plaintiff and represented that he was the exclusive owner in possession of the property in dispute fully described in the head note of the plaint on the basis of the sale deed dated 16.12.1953 bearing documents No. 2925 and also further

represented that the said property was free from all encumbrances, litigation, attachment, disputes, charges and liens. Being legally competent and fully authorized to deal with the same, he offered to sell the property in dispute to the plaintiff and relying on the representations and assurances, the plaintiff agreed to purchase the same.

2. The deal was negotiated through Sh. Pardeep Kanda and the terms which were reduced into a written agreement to sell dated 18.10.2007. As per the agreement the defendant No.1 agreed to sell the property in dispute to the plaintiff for a total sale consideration a sum of ₹ 62,50,000/- and plaintiff paid a sum of Rs. 15 lacs in cash on account of earnest money to the defendant No.1 at the time of execution of the agreement to sell dated 18.10.2007 in presence of attesting witnesses. Out of the balance sale consideration a sum of ₹ 10 lacs was to be paid on or before 31.12.2007 at the time of execution and registration of the sale deed. As per the agreement, on 20.11.2007, the plaintiff paid a sum of ₹ 10 lacs in cash to defendant No.1 on account of additional earnest money and the the defendant No.1 acknowledged its receipt by an endorsement made on the back of the agreement to sell under his signatures. Plaintiff has always been ready and willing to perform his part of the contract and even now is ready and willing to perform his part of the

contract and balance sale consideration is lying ready with the plaintiff. However, the defendant No.1 kept on putting off the plaintiff on one pretext or the other as and when plaintiff approached the defendant No.1 to execute the sale deed in his favour. On 27.12.2007 plaintiff came to know through Pardeep Kanda that there was a family dispute between the defendant No. 1 and his brothers regarding the ownership of the property in dispute, regarding which Rakesh Kumar and Sushil Kumar had filed the suit for permanent injunction and had obtained a temporary injunction from the court on 27.12.2007. The plaintiff made inquiries which revealed that defendant No.1 had alienated $\frac{1}{2}$ share of the portion owned by him in favour of Sushil Kumar S/o Janki Das vide gift deed dated 23.02.1974 registered on 26.02.1974 and that the defendant No.1 had no sale-able interest in respect of the said portion. On being approached, defendant No.1 assured the plaintiff that he would look in to the matter and get the dispute resolved with his brothers and further assured that he would get the suit withdrawn and shall execute the sale deed in favour of plaintiff. On 31.12.2007, the plaintiff also informed the Sub-Registrar, Jalandhar regarding the pendency of the said civil suit.

3. It is further contented that defendants No.2 &3 have no right, title or interest in the property in dispute and that the

defendant No.1 having executed a legally enforceable contract, he is under obligation to transfer a clear, undisputed, marketable and unencumbered titled to the property to the plaintiff on receipt of balance sale consideration, to which the defendant No.1 refused, hence this suit.

4. Upon notice defendant No.1 appeared and filed written statement, taking preliminary objections as plaintiff is estopped by his own act, conduct and acquiescence from filing the present suit, plaintiff has no locus standi to file the present suit, since agreement to sell dated 18.10.2007 stood cancelled and the amount paid as earnest money stood forfeited since the plaintiff has failed to perform his part of contract and was not ready and willing to perform his part of the agreement dated 18.10.2007 and in this regard defendant has already served the legal notice dated 02.01.2008 upon the plaintiff. It is further contended that plaintiff has concealed the material facts, no cause of action has arisen to the plaintiff to file this suit, the plaintiff is guilty of cheating and making manipulations in agreement to sell dated 18.10.2007. It is contended that the plaintiff played a fraud upon the defendant by manipulating the agreement to sell since by making a cutting in last line of page number 2 of the agreement to sell and also obtained signatures of the

defendant on the pretext that pen by mistake some line had been over drawn over the word 'Doem' written on the last line of page no.2 of the agreement to sell dated 18.10.2007 and got the signatures of the defendant on pretext that word 'Doem' should be read over as 'Doem' only but later on the plaintiff along with his associates have written another words without knowledge of the defendant in place of Doem, the word 'Awal' was written in place of Doem and thus the sense of line was changed by inserting this word. It is also contended that at the time of execution of the agreement to sell dated 18.10.2007 it was made clear to the plaintiff that if there is any dispute or litigation with any body then the plaintiff would be responsible for the same and in such case the defendant would only help him and would give his testimony to support him and that even though the suit property was valued at about ₹ 1.50 crores, the agreement was made to sell the property at a lesser price because the plaintiff had taken responsibility of all the litigation or dispute which would be arisen with regard to the property in question. On merits, the execution of the agreement to sell between the parties was admitted and it is contended that the same was cancelled and notice in this regard was served upon the plaintiff. It is further contended that defendant is owner to the extent of ½ share of the property in question

and only after verifying the facts and documents, plaintiff entered into agreement with the defendant. Filing of suit by Rakesh Chopra and Sushil Chopra by defendant is also admitted. Apart from reiterating the averments of the preliminary objections rest of the averments of the plaint have been as incorrect and prayed for dismissal of the suit.

5. Defendants no.2 and 3 filed their separate written statement whereby they took preliminary objections as suit is collusion one in between the plaintiff and defendant no.1 in order to grab the property belonging to them, the alleged agreement to sell is procured document, the defendant no.1 is not competent to sell the property to the plaintiff, whereas the defendants are co-sharer in the property in dispute, the site plan attached with the plaint is wrong and an effective decree cannot be passed in absence of the correct site plan, the property in dispute is situated at Prime location i.e. Milap Chowk, Jalandhar which is commercial in nature and the market value of the property is not less than ₹ 5 crores and the sale consideration mentioned in the forged agreement is ₹ 62,50,000/-, the alleged agreement to sell do not confer any title in favour of the plaintiff and the plaintiff by way of misuse in process of law and being hand in glove with defendant no.1 has filed the present suit without arraying the defendants no. 2 and 3 as party in the suit and they were

arrayed as defendants only on an application moved under Order 1 Rule 10 CPC. On merits, it is contended that the defendant no.1 has no sale-able right in the property in dispute more than his share without partition and it is contended that the property bearing no. E.J.352, Milap Chowk, Mohalla Kot Pakshian, was earlier owned by defendant no.1 and late Sh.Janki Dass in equal share to the extent of $\frac{1}{2}$ share each. Late Janki Dass gifted away his $\frac{1}{2}$ share in the said property to defendant no.2 which was accepted by Rakesh Kumar vide registered gift deed dated 26.02.1974. The defendant no.1 gifted away his $\frac{1}{2}$ share to defendant no.2 vide registered gift deed dated 26.02.1974. Unfortunately, the father of defendants expired and after his death, his share was inherited by defendants and their sisters on the basis of natural succession. All the co-sharer are in joint possession over the property in dispute. No partition has been effected so far. Since, there were threats from the side of defendant no.1 to create charge over the property, the defendants no.2 and 3 filed suit against the defendant no.1. Rest of the averments have been denied as incorrect and prayed for dismissal of the suit.

6. Replications were filed, whereby the contentions of written statements were refuted as incorrect and those of plaint are reaffirmed as correct.

ISSUES

7. From the pleadings of the parties, following issues were framed, it is pertinent to mention here that issue no.8-A was framed vide order dated 05.12.2011, whereas issues no.9 and 10 were framed vide order dated 21.02.2015 :-

1. *Whether the plaintiff played a fraud and cheated the defendant by manipulated the agreement to sell dated 18.10.2007?OPD*
2. *Whether the agreement dated 18.10.2007 has been cancelled? OPD*
3. *Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD*
4. *Whether plaintiff has got no locus standi and cause of action to file the present suit?OPD*
5. *Whether the plaintiff was ever ready and willing to perform his part of the contract?OPP*
6. *Whether plaintiff is entitled to the relief of Specific performance of the agreement ?OPP*
7. *Whether plaintiff is entitled to alternative relief of recovery of ₹.50,00,000/- i.e. double the amount of earnest money?OPP*
8. *Whether plaintiff is entitled to permanent injunction as prayed for? OPP*
- 8-A. *Whether defendant no.1 was not competent to sell suit*

property? If so its effect?OPD 2-3

9. *Whether the sale consideration of ₹ 62,50,000/- was less than the prevailing market rate of similarly located properties?OPD1*

10. *Whether the property has been agreed to be sold for a lessee value because the plaintiff had undertaken the responsibility for the litigation qua the suit property? OPD1*

11. *Relief.*

EVIDENCE OF DEFENDANTS

8. Since, the onus to prove issues no.1 to 4 was upon the defendants, the defendants were directed to produce the evidence at the first instance.
9. Vikas Chopra son of Ravinder Chopra stepped into witness box as DW-1 and tender in evidence his affidavit Ex.DW1/A, which is in consonance with the stand taken in the written statement and he also relied upon document Ex.D1 copy of agreement to sell dated 18.10.2007. In his cross-examination he deposed that Pardeep Kanda property dealer and his father were present at the time of execution of the agreement. The balance amount was to be paid on 20.11.2007. The valuation of the property was got done from an approved valuer. His father and Pardeep Kanda had got the valuation done. He

further stated that he was stating the factum regarding valuation as per information given by his father and that whatever document regarding the valuation was obtained, the same was with his father but he has not seen any such document till date. He denied that the property in dispute was a disputed property. He further stated that did not know why his father agreed to sell the property valuing ₹ 1.50 crores for a sum of ₹ 62,50,000/- to the plaintiff and also stated that he did not know if his father had known that the property was disputed one for which reason the property was agreed to be sold for a lesser value. He further deposed that besides him, Sh.Pardeep Kanda and one another person had signed the agreement to sell on 18.10.2007. The entire process for execution of the agreement took about 1½ month. As regards Ex.D1, he stated that it did not contain the photostat of the back side of all the three pages and that he did not get any rectification made in the agreement dated 18.10.2007. The witness also saw Ex.P1, the copy of the agreement to sell dated 18.10.2007, and stated that it bears the signatures and thumb impression of his father on every page and also has the photostat of the writings on the back side of the first page. The agreement to sell Ex.P1 and the endorsement on the back of the first page were signed by his father. After seeing Ex.D1, he stated that it does not contain any date at

point mark D1/A and denied that the signatures at point mark B at the cutting and over writing on the second page of Ex.P1 are that of his father. He further stated that he did not remember the contents of his affidavit Ex.DW1/A because it relates to the year 2007. He admitted that defendants no.2 and 3 had filed a civil suit against his father and said suit came to his knowledge in February 2008 as he had overheard his father talking about the said case with somebody on telephone. He further stated that he did not see the papers pertaining to the said case filed by his uncles against his father as it was not his concern. He is not aware of any other developments pertaining the property in dispute and agreement to sell in dispute after its execution on 18.10.2007. He admitted that defendant no.2 and 3 have since compromised with his father and admitted that defendants no.2 and 3 have relinquished their claim qua the property in dispute in favour of his father defendant no.1 and have withdrawn the injunction suit filed against his father from the court of Sh.A.K.Chauhan, CJJD, Jalandhar in November or December 2012 and that his father was now at liberty to deal with the property in dispute.

10. Ravinder Chopra defendant stepped into witness box as DW-2 and tender in evidence his affidavit Ex.DW2/A, which is in consonance with the averments of the written statement filed

by him. He also relied upon documents copy of agreement to sell dated 18.10.2007 Ex.D1, certified copy of sale deed dated 16.12.1953 Ex.D2, affidavit dated 31.12.2007 Ex.D3, application along with report dated 28.01.2008 Ex.D4 & Ex.D5, copy of legal notice Ex.D5, postal receipt Ex.D6, UPC receipt Ex.D7, report of postal authorities and his letter as Ex.D8 & Ex.D9. In his cross-examination he admitted that partition has been effected between the legal heirs of late Sh.Janki Dass Chopra and in the said family settlement by way of oral partition $\frac{1}{2}$ share in the property no.EJ 352, Kot Pakshian Jalandhar had fallen to his share as per registered sale deed dated 15.12.1953 and the legal heirs had taken the possession of their respective portions as owners. In his further cross examination he admitted that he had executed an agreement to sell dated 18.10.2007 in respect of house no.EJ 352, area measuring 6.75 marlas being $\frac{1}{2}$ share out of area measuring $13 \frac{1}{2}$ marlas. After seeing the copy of agreement Ex.P1, he admitted the same to be executed between him and plaintiff and also admitted his signatures on the same at point mark A, B, C, D and E. He further admitted that he received ₹ 10 lacs from plaintiff on 20.11.2007 and executed the endorsement Ex.P2 on the back of Ex.P1. He received a sum of ₹ 25 lacs in total. He denied that the word Doem in the last line of page 2 of Ex.P1 was

cut with his consent and the word *Awal* was scribed to replace the cutting. At the time of execution of agreement to sell dated 18.10.2007 there was no litigation with regard to the property agreed to be sold to the plaintiff nor there was any dispute. He was in exclusive possession of the entire property offered to be sold to the plaintiff and he had got the valuation of the property done from Govt. approved valuer on 18.10.2007 but he did not remember the name of the architect from whom he got the valuation done. He has not incorporated the alleged fact that the market value of the property was ₹ 1.5 crores and the property was being sold at ₹ 62,50,000/- in consideration of the plaintiff having taken the responsibility for the litigation or dispute that could arise in future. He admitted that Ex.D1 does not depict the cutting and his signatures on page 2 as is shown in Ex.P1 and there is no endorsement on the back of the first page of Ex.D1 as shown on the back of the first page of Ex.P1. He further admitted that no date is mentioned in the last line of page 2 of Ex.D2, whereas date 18.10.2007 is duly mentioned in the last line of page 3 of the Ex.P1. He volunteered to add that he was supplied incomplete copy of the agreement to sell which he has produced in the Court. In his further cross examination he admitted that the dispute regarding the property in dispute raised by his younger brothers Rakesh

Kumar and Sushil Kumar has been resolved now in December, 2012 but he is not ready and willing to execute the sale deed in favour of the plaintiff by way of the performance of his obligation under the agreement to sell in dispute and volunteered to add that the price of the property has gone high.

11. DW-3 Jagdish Chander, Record Keeper, Office of Sub Registrar brought the record with regard to attestation of affidavit by Ravinder Kumar on 31.12.2007 and proved the relevant entry of the register as Ex.D10. In his cross examination he deposed that on Ex.D3 affidavit, Ravinder Kumar did not put his signatures in his presence.
12. DW-4 Bhagwan Dass, Postman, GPO, Jalandhar who deposed that he had gone for deliver of letter no.5795 to Ravinder Kumar Chopra, but house no.EJ 352 was found locked and on the third day he met his daughter who disclosed that Ravinder Kumar Chopra was not at home and he informed her with regard to registered letter. He proved on record authority letter Ex.D11, copy of register Ex.D12 and the registered envelope Ex.D14. In his cross examination he deposed that he personally knew Ravinder Kumar Chopra present in the Court. He admitted that the article is opened one and there are no documents in the said envelope. He had visited the house on 29.12.2007 and 31.12.2007 and had

found the house locked on all such visits. He admitted that house of Rakesh Kumar Chopra who had sent the article is adjoining house no.EJ 352, Milap Chowk, Jalandhar. He had informed regarding the registered article D-14 at the house of Ravinder Kumar Chopra.

13. DW-5 Kasturi Lal, Postman, New Grain Market, Jalandhar prove on record authority letters Ex.D15 and Ex.D16 and deposed as regards delivery of letter no.8987 to plaintiff on 05.01.2008.
14. DW-5 (repeat) Ramesh Kumar, LDC, Commercial Unit No.3, Partap bagh, PSPCL, Jalandhar brought the record pertaining to meter reading no.36/14 in the name of Sushil Kumar, r/o EJ 351 Nawan Bazar, CT 36/16 in the name of Rakesh Kumar, CT 36/17 in the name of Rakesh Kumar and prove on record bills Ex.PW5/A to Ex.DW5/C and copy of the ledger as Ex.DW5/D and Ex.DW5/E. In his cross-examination he deposed that connection no.36/14 and 36/16 are connection, whereas connection no.36/19 is domestic one.
15. DW-5 (repeat) Sh.Kuldip Singh, Junior Assistant, Estate Office, JDA, Jalandhar brought the record pertaining to auction held on 27.03.2006 of plots situated within police post Divn. No.3, Opposite Punjab Kesri, Milap Chowk,

Jalandhar and proved copy of record as Ex.DW5/A. He also proved copy of letter dated 10.12.2014 as Ex.DW5/B.

16. Sushil Kumar Chopra, defendant no.3 stepped into witness box as DW-6 and tender in evidence his affidavit Ex.DW6/A and relied upon documents i.e. gift deeds Ex.D6/1 and Ex.D6/2, endorsement of the Sub Registrar Ex.D6/2-A, compromise Ex.PX/4, copy of statement of Ravinder Kumar Chopra Ex.D6/3, copy of order Ex.D6/4, copy of site plan Ex.D5, copy of statement of Anita Ex.D6/6, copy of order passed by the Income Tax Authorities Ex.D6/7 to Ex.D6/8, copy of order Ex.D6/9 to Ex.D6/10, subsequent assessment orders Ex.D6/11 & Ex.D6/12, copy of sale deed Ex.D6/13 and copy of petition Ex.D6/14. In his cross-examination he admitted that as per Ex.D2, $\frac{1}{2}$ portion comprising area measuring 6.75 marlas was owned by Ravinder Kumar Chopra. Thereafter, a memorandum of family settlement dated 04.09.2012 was executed between the members of the family and the property was partitioned, when instant suit was pending. In the end of December, 2007, they had come to know about the execution of the agreement to sell in dispute in favour of plaintiff by defendant no.1. They did not serve any notice upon Dr.Mukesh Joshi plaintiff prior to the filing of the civil suit for permanent injunction titled as Rakesh Kumar vs. Ravinder Kumar. He admitted that

Dr.Mukesh Joshi was not party to the memorandum of family settlement. He does not know if Dr.Mukesh Joshi, never gave his acceptance to the said family settlement. In his further cross-examination he admitted that the area of this property is commercial. There are five shops at the passage in the property bearing no.352. He cannot tell orally the shops in possession of each of the defendants. Three shops are in possession of defendant no.1 and two are with him.

17. Counsel for the defendants no.2 and 3 also placed on record copy of petition in EA No.100/85 decided by the court of Sh.IS Bajwa, CJJD, Jalandhar as Ex.DX and closed evidence of defendants no.2 and 3.

EVIDENCE OF PLAINTIFF

18. To prove the assertions, the plaintiff himself stepped into witness box as PW-1 and tender in evidence his affidavit Ex.PW1/A, which is in line with the averments of the plaint and he also relied upon documents i.e. copy of agreement to sell Ex.P1, copy of telegraphic message Ex.PX/1, intimation with regard to pendency of suit given to Sub Registrar dated 31.12.2007 Ex.PX/2, copy of order dated 30.11.2012 Ex.PX/3, copy of memorandum of partition Ex.PX/4, copies of site plans Ex.PX/5 & Ex.PX/6, copies of statements made by defendants and Smt. Sunita Ex.PX/7 to Ex.PX/9, copy of FIR No.145 dated 02.06.2008 Ex.PX/10, copy of statement

of defendant Ex.PX/11 and copy of order dated 20.12.2008 Ex.PX/12. In his cross-examination he deposed that the negotiations had taken place in the office of Sh.Pardeep Kanda, property dealer and at the residence of defendant no.1. He had assured himself regarding the title of the defendant no.1 on the basis of the copies of the documents provided by the defendant no.1 and the assurance given by him being Ex.D2, translation of which is DUX. The witness however stated that he could not produce any document dated 18.10.2007 from where it could be shown that there was any dispute regarding the title of the property as on 18.10.2007. He further stated that he had not lodged any complaint regarding this original agreement with the police and added that to his mind, the original agreement was produced in the Court but denied that he has intentionally suppressed the original agreement in order to avoid the real terms and conditions of the agreement.

19. He further stated that he used purchase real estate for the purpose of investment and also stated that the property in dispute is situated at Milap Chowk, Jalandhar and there are shops around it but volunteered to add that defendant no.1 is using the property as his residence. He admitted that there are shops on the ground floor of the property in dispute. He further stated that the telegram was not addressed to him and

it was sent at the address of defendant No.1. The further deposed that he had obtained a copy of the plaint of the suit filed by the defendants No.2 & 3 from the concerned court. He had requested an advocate known to him to who managed to procured the said copy of the plaint for him. The witness also stated that he did not know if the a compromise has been rejected by the Court in case titled as Ravinder Chopra Vs. Rakesh Kumar. He admitted that there is no registration number of the Tehsildar Jalandhar-1 office on Ex. PX/2. He denied that he never appeared in the office of Tehsildar Jalandhar-1 on 31.12.2007. Ravinder Chopra had got served a legal notice in March 2008 through an advocate. He had sent a reply to the said notice in the Court. It was a civil case pending in the Court of Mrs. Manjinder Kaur CJJD Jalandhar for 04.03.2008. He further deposed that Ex. D1 is not the true copy of the agreement Ex.P1.

20. PW2 Bhupinder Singh stepped in to witness box and tendered in evidence his affidavit Ex. PW2/A and supported the case of plaintiff with regard to execution of agreement to sell dated 18.10.2007, being marginal witness of the same. In his cross-examination he deposed that defendant No.1 agreed to sell his share in the property bearing No. 352, who showed him copy of sale deed in Urdu but he does not remember the date month and year. Defendant No.1 told him that he selling

his share from the joint property and that he has no knowledge about the joint owners. Ravinder Kumar told them that he has gifted his $\frac{1}{2}$ share to defendant No.3. In his further cross-examination he deposed that he came to know Ravinder Chopra through Pardeep Kanda, a property dealer. The negotiation between Mukesh Joshi and Ravinder Chopra had taken place at the house of the maternal uncle of Vikash Chopra at Vijay Nagar. He further stated that he had partnership with Dr. Mukhesh Joshi in purchase of one or two properties. The cutting in the agreement was done and authenticated by the defendant No.1 when ₹. 10 lacs was paid to him. The said amount was paid on or about 20.11.2007. He admitted that he had put his witness on the page where the cutting was made. He denied that he has not appended his signatures as he was not present. He further deposed that he never met Sh. Davinder Moudgil, Advocate. After the execution of the agreement to sell in dispute, he met the defendant No.1 many times alongwith Pardeep Kanda. He further stated that he had gone to the office of Sub-Registrar, Jalandhar on 31.12.2007 and admitted that some entry was made in some register but he could not recall about it and also stated that he does not know if the defendant No.1 got served a legal notice on the plaintiff through his counsel. He denied his signatures on the

endorsement Ex.P2 and also denied that property was valued at ₹. 1.5 cores at that time and volunteered to add that property is not more than ₹.50-55 lacs and added that two times in the recent past, the the government has reduced the Collector rates pertaining to the properties in Jalandhar. He further stated that there is residential house in the property in dispute of the defendant No.1. the property is situated opposite to Monika Tower which is the commercial shopping complex and the house in dispute is situated in Mohalla Kot Pakshiyani which is a residential property.

21. PW-3 Ram Lal Bassan, Sr. Manager Punjab National Bank prove on record certificate dated 23.05.2013 as Ex.PW3/1 and statement of accounts as Ex. PW3/2 to PW3/16.
22. Mr. Davinder Moudgil Advocate stepped in to witness box as PW 4 and deposed with regard to the fact that civil suit titled Rakesh Kumar, Sushil Kumar against Ravinder Kumar in respect of property No. EJ-352 Milap Chowk Jalandhar filed by him during winter vacations and prove on record copy of plaint as Ex. PW4/1. He further deposed regarding the grant of status-quo order regarding alienation of the suit property by the Court of S.Ravinder Singh, Vacation Judge, Jalandhar and also proved on record copy of telegram to convey the order to Ravinder Kumar Chopra as Ex.PX/1. He also brought the case diary for the year 2007 and there is no entry

in his diary regarding the filing of the suit on behalf of Rakesh Kumar and Sushil Kumar against Ravinder Kumar during winter vacation. In his cross-examination he deposed that during the pendency of the said suit compromise was effected between the sons and daughter of Janki Dass Chopra whereby the property was only partitioned and also testified that certified copy of said memorandum is Ex.PX/4, site plan Ex.PX/5 & Ex.PX/6, which were part and parcel of Ex.PX/4 and certified copies of statements of parties as Ex.PX/7 to Ex.PX/9. In his further cross-examination he deposed that he does not remember if the compromise was rejected by this Court and also did not not know if the original telegram was not received by him with the endorsement of postal authorities that the telegram has not been received by Ravinder Chopra. Thereafter, evidence of the plaintiff was closed.

ARGUMENTS FOR DEFENDANTS

23. Opening the arguments, the counsel for the defendant no.1 submitted that even though the making the agreement between the parties and the making of the subsequent endorsement and the receipt of payment on the date of making the agreement and on the date of making of the endorsement is admitted, it is the plaintiff who had played

fraud with the defendant no. 1 by substituting the words 'Doem' with 'Awal' and in doing so, the plaintiff had made a material alteration in the agreement which strikes at the very root of the agreement between the parties. This had been done by the plaintiff with a mala fide intention and in fact the defendant no. 1 never undertook to be responsible for any litigation that may be associated with the property. In order that the mala fide act and conduct of the plaintiff may not be exposed, the plaintiff has not produced the original agreement to sell and given the contentions raised by the defendant no.1, it calls for and adverse inference to be drawn against the plaintiff. The defendant has proved on record the fact that the property is a commercial property and since the plaintiff had undertaken to be responsible for all the prospective litigation in respect of the suit property, as such the defendant demanded a lesser than the market value.

24. On the date fixed for the execution of the sale deed, the plaintiff was not ready and willing to execute the sale deed and as against this the defendant was present before the sub-registrar. It is claimed by the plaintiff that there was litigation pending in respect of the suit property and a restrain order had been granted by the court of Sh. Ravinder Singh, the then Civil Judge (Senior Division), Jalandhar but the present defendant no.1 had never been communicated the said order

and it is strange that the while the present plaintiff was aware of the order, the person against whom the same was passed had no knowledge of the same and this shows that the same had been filed by the defendants no. 2 and 3 in collusion with the plaintiff. Since the plaintiff was not ready and willing to perform his part of the agreement, a legal notice was served upon the plaintiff that as per the terms settled between the parties, the agreement stands canceled and the earnest money stands forfeited. Accordingly, not only is the plaintiff not entitled to the specific performance of the agreement to sell, the plaintiff is also not entitled to the alternate relief of recovery of money as prayed for and the suit of the plaintiff is liable to be dismissed.

25. The counsel for the defendants no. 2 and 3 submitted that whereas the defendants no. 2 and 3 are not a party to the agreement, the factum of litigation between the defendants no. 2 and 3 against the defendant no. 1 is admitted and the rights of the defendants no. 2 and 3 be not compromised in any manner.

ARGUMENTS FOR PLAINTIFF

26. The counsel for the plaintiff submitted it is a fact not denied by the defendant no. 1 that there was an agreement between the parties and that the earnest money was received by the defendant no.1 as is alleged by the plaintiff. The only point

of contention is whether or not the plaintiff remained ready and willing to perform his part of the agreement and in this regard the plaintiff has proved on record the fact that as on the date fixed for the execution of the sale deed, the defendants no. 2 and 3 had obtained a restrain order from the Court of Sh. Ravinder Singh, the then Civil Judge (Senior Division), Jalandhar and as such the defendant no. 1 was not in a position to execute the sale deed. In fact the plaintiff was present in the office of the sub-registrar and had moved an application to this effect. It is argued that it is not believable that while the defendant no.1 was not in the knowledge of the restrain order the plaintiff could be in the knowledge of the same but this argument is not acceptable in view of the settled law that filing of the suit is notice to all. As against this, the plaintiff has adduced on record evidence to the effect that he had the requisite funds for the payment of the balance sale consideration and also for bearing the other expenses. As such it is not open for the defendant to argue that the plaintiff was not ready and willing to perform his part of the agreement.

27. Continuing with his arguments the counsel submitted that even though it is argued that the plaintiff had made material alteration in the agreement to sell by substituting the words 'Doem' with 'Awal', this argument is not acceptable because

the defendant no. 1 is an Advocate by profession and as against a common man of ordinary prudence defendant no.1 is in a better position to understand the effect and import of initials and he would have not put his initials or signatures or any document without understanding the meaning behind it and the effect and import of such endorsement under his signatures/ initials. In the present case, the initials on the cutting is admitted and even though it is argued that the plaintiff has not produced the original document, even the production of the document would be of no consequence because Ex.P1, copy of the agreement is not such as would show that the word “Doem” was cut to make the word “Awal” and thereafter, another writing was made on it. The cutting on the document is clear and admitted. Accordingly, the argument of the defendant no.1 that there is material alteration in the agreement does not stand any ground. Since, the plaintiff was prevented by an injunction order from getting the sale deed executed, the order having been passed against the defendant no.1, the defendant no.1 had also no authority to execute the sale deed as on 31.12.2007. The plaintiff has proved on record documentary evidence to the effect that as on the date fixed for execution of the sale deed, he was having the balance sale consideration, plaintiff has

thus proved that he was ready and willing to perform his part of the agreement.

28. The defendant no.1 has put forwarded a case that the property is a commercial property and it had been under valued so as to absolve the defendant no.1 from the consequences of any litigation and that the consequence of litigation if any were to be borne by the plaintiff but as on the date of making the agreement, there was no litigation pending and the evidence adduced by the defendant no.1 as regards the property having been under valued only to meet such like contingency does not appeal to logic and in the absence of any other substantive evidence, it cannot be said that the property had been undervalued. Accordingly, the plaintiff has proved that he remained ready and willing to perform his part of the agreement and so far as the rights of the defendant no.1 to alienate the property are concern, the matter has since been settled between the defendants and now there is no impediment in the execution of the sale deed by the defendant no.1 in favour of the plaintiff.
29. This court has gone through the file and considered the submissions made. Issue wise findings on the aforesaid issues are as under:-

Issue No.1, 9 & 10:

30. All these issues are taken up together being interconnected with each and for the sake of brevity and to avoid repetition. As regards the issue no.1, it is claimed by the defendant no.1 that the plaintiff had manipulated the agreement to sell dated 18.10.2007 by making getting made an endorsement, whereby the words “Doem” replaced with “Awal” whereas the defendant no.1 had agreed for ₹ 62,50,000/- as a price which was lesser than the market value only because the plaintiff had taken the responsibility of any litigation qua the property. It needs to be considered whether the mention of word “Awal” for word “Doem” is a material alteration and whether it was a matter considered while negotiating the price for which the property was to be sold.
31. In this context it would be pertinent to observe that the defendant was not an illiterate person and even as a common man of ordinary prudence he is imputed due knowledge of the fact as to what would be the effect and import of any endorsement made. Given the fact that as on the date of making the agreement there was no litigation pending, there was no reason as to why the plaintiff would agree to sell the property for a price lesser than the market value. If there was any reason for which the defendant no.1 agreed to sell the property for a price lesser than the market value, it was

expected of both the plaintiff and defendant that reasons may be specified especially if it pertains to any pending or impending litigation. It is not the case of the defendant no.1 that he had any inkling of any possible litigation for which reason he agreed to sell the property for a lesser price and if he carried any such doubts, it was imperative that he disclose those facts to the plaintiff but it is not pleaded by the defendant no.1 that he had disclosed to the plaintiff about any possibility of litigation concerning the title of the property. It may be mentioned here that the incorporation of the clause whereby the seller takes responsibility of any litigation in respect of the property is only a matter of abundant caution to ensure that the vendor may be held liable for any defect in the title, save such defects as could not have been discovered by the buyers as person of ordinary prudence. Hence, there is nothing on record to suggest that as to why the plaintiff would be given a valuable property for a lesser than market value and the mere endorsement on the agreement replacing the word “Doem” with “Awal” cannot be termed as material alteration and there is nothing on record to suggest that the sale consideration of ₹ 62,50,000/- was less than the market value. Even otherwise, the parties may agreed to such price as may be far higher or far lesser than the market value and the court cannot pass any observations regarding the same. In

the absence of any substantive evidence as regards the market value of the similar properties, it cannot be said that sale consideration of ₹ 62,50,000/- was less than the market value.

Issue No.8-A:

32. As regards the competency of the defendant no.1 to sell the property to the plaintiff, this court is of the view that as on the date of making the agreement there was no doubt in the mind of either of the parties that is the plaintiff or the defendant no.1 as regards the competency of the defendant no.1 to execute the sale deed in favour of the plaintiff and it is only on account of the subsequent suit filed by the defendants no.2 and 3 that a doubt was raised regarding the title of the defendant no.1 as not being absolute title. It may however, mentioned that the dispute between the defendant no.1 on the one hand and the defendants no.2 and 3 on the other has since been settled and now the defendant no.1 is competent to pass on a perfect title to the plaintiff. With this in mind, it would also be pertinent to referred to the provisions of Section 13 of the Specific Relief Act, whereby it is provided that if a person having no title or having an imperfect title, contracts to sell an immovable property and he subsequently acquires interest in the property, the purchaser can compel him to make good the contract out of

such interest. Accordingly, even if it is presumed that as on the date of making the agreement the defendant no.1 had an imperfect or no title, now that the defendant no.1 has acquired a title over the property, the plaintiff can enforce the agreement. Accordingly, the findings of this issue is decided against defendants no.2 and 3 and in favour of plaintiff.

Issue No.2 & 5:

33. As regards the issue no.2 as to whether the agreement dated 18.10.2007 has been cancelled, this court is of the view that whereas the defendant no.1 claims that the agreement stood cancelled on account of the fact that the plaintiff failed to get the sale deed executed on 31.12.2007, the fact of the matter remains that as on 31.12.2007, the rights of defendant no.1 to execute the sale deed had been put on hold by an injunction order and even if the same was not in the knowledge of defendant no.1, if the plaintiff had knowledge of the injunction order and for that matter did not press for the execution of the sale deed, it cannot be said that the plaintiff was not present to get the sale deed executed. It may be mentioned here that in fact plaintiff had moved an application before the Sub Registrar that there was an injunction order of the Court restraining the defendant no.1 from alienating the suit property and accordingly, the defendant could not have cancelled the agreement by merely

sending a legal notice. This court also finds favour with the arguments advanced by the counsel for the plaintiff that filing of the suit is notice to all and merely because the injunction order against the defendant no.1 had not been communicated to him, it would not be that present plaintiff could not have gathered knowledge of such injunction order and hence, if in spite of the knowledge, the plaintiff went ahead to get the sale deed executed, he would be rather committing contempt and could have been dragged into other litigations.

34. As regards the readiness and willingness of the plaintiff to execute the sale deed, this court is of the opinion that the plaintiff was present in the office of sub registrar on 31.12.2007 and from the documentary evidence adduced in the form of statements of witnesses from the Bank, it is proved that as on the date fixed for execution of the sale deed, the plaintiff was having with him money to pay the balance sale consideration and to meet the other expenses for registration.
35. Accordingly, findings on these issues are determined in favour of the plaintiff and against the defendants.

Issue No.3:

36. No arguments has been addressed by the ld. counsel for the parties. Even otherwise, there is nothing in record to suggest

that as to what are the acts or on account of which conduct of the plaintiff could it be said that the plaintiff is estopped from filing the present suit. Accordingly, this issue is decided in favour of the plaintiff and against the defendants.

Issue No.4 :

37. The counsels for the parties have not addressed any arguments on this issue. Even otherwise there is nothing on record to suggest that the plaintiff did not have locus standi to file the suit. As such, this issue is decided against the defendants and in favour of the plaintiff.

Issue No.6 :

38. In view of findings of issues no.1, 2, 5, 8-A, 9 and 10, and in view of the provisions of Section 10 of the Specific Relief Act that the Court shall order specific performance of a contract when there exists no standard for ascertaining the actual damage caused by non performance of the act agreed to be done or where the act agreed is such that compensation in money for its non performance would not afford adequate relief and explanation to Section 10 further provides that unless the contrary is proved the Court shall presume that breach of a contract for transfer of immovable property cannot be adequately relieved by compensation in money. Accordingly, in the absence of any evidence to show that the breach on the part of the defendant no.1 to transfer the

immovable property to the plaintiff could be compensated in money, there is nothing on record on the basis of which it could be held that the plaintiff is not entitled for specific performance of the agreement to sell dated 18.10.2007. Findings of issue no.6 are hereby returned in favour of the plaintiff and against the defendants.

Issue No.7:

39. Since, the main relief has been granted, the plaintiff is found not to be entitled to alternative relief of recovery of ₹ 50,00,000/-. As such findings of this issue are hereby returned against the plaintiff and in favour of the defendants.

Issue no.8:

40. The law provides that a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour and when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of the property and when there exists no standard for ascertaining the actual damage caused or likely to be caused by such invasion. In the present case, the plaintiff, on the basis of the agreement to sell and on the basis of findings of this Court as regards the plaintiff being entitled to specific performance of the agreement to sell, has a substantive right over the property, which would be seriously prejudiced if the defendants meddle with the property to the detriment of the rights of the

plaintiff. Hence, the plaintiff is entitled to injunction as prayed and findings on this issue are returned in favour of plaintiff and against the defendants.

Relief:

41. In view of the findings on the aforesaid issues, the suit of the plaintiff is decreed with costs for specific performance of the agreement to sell dated 18.10.2007. The plaintiff is directed to deposit the balance sale consideration in the Court within one month from the receipt of certified copy of Judgment and Decree, failing which the agreement shall stand rescinded as per the provisions of Section 28 of the Specific Relief Act, 1963. Defendants is restrained from selling and transferring the suit property in any manner to any other person except to the plaintiff. Suit of the plaintiff for alternative relief of recovery of ₹ 50,000,00/- is hereby dismissed. Decree Sheet be prepared. The file be consigned to Record Room, Jalandhar, after due compilation.

Announced : Thursday
July 09, 2015

(Deepak Kumar Choudhary)
Civil Judge (Senior Division)
Jalandhar.

Present : Sh. IS Bhatia Advocate for plaintiff.
Sh. RK Nagiana Advocate for defendant no.1
Sh.N.K. Aggarwal, Advocate for defendants no.2 &3

Arguments heard. Vide separate judgment of the even date, the suit of the plaintiff has been decreed with costs for specific performance of the agreement to sell dated 18.10.2007 and for permanent injunction, whereas the suit for alternative relief of recovery of ₹ 50 lacs has been dismissed. Decree sheet be prepared. File be consigned to record room.

Announced : Thursday
July 09, 2015

(Deepak Kumar Choudhary)
Civil Judge (Senior Division)
Jalandhar.