

Har Kaur (deceased) v. Gura Singh and others (J. V. Gupta, J.)

Before J. V. Gupta, J.

HAR KAUR (deceased),—Appellant.

versus

GURA SINGH and another,—Respondents.

Regular Second Appeal No. 1608 of 1977

February 27, 1986.

Indian Evidence Act (1 of 1872)—Section 67—Agreement to sell executed by a party—Said agreement not signed by the executant on the last page—Such agreement—Whether can be said to be validly executed—Principles for construing such documents—Stated.

Held, that a signature is the writing or otherwise affixing a person's name or mark to represent his name, by himself or by his authority with the intention of authenticating a document as being that of or as binding on the person whose name or make is so written or affixed. The insertion of the name in any part of the writing, in a manner to authenticate the instrument is sufficient. Although the signature be in the beginning or middle of the instrument it is binding as if at the foot of it. The question always is, whether the party, not having signed it regularly at the foot, yet meant to be bound by it as it stood, or whether it was left, so unsigned because he refused to complete it when it is ascertained that he meant to be bound by it as a complete contract, the signature is, for purposes of execution, effective.

(Para 6)

Regular Second Appeal from the decree of the Court of the Addl. District Judge, Ferozepur, dated the 21st day of September, 1977 affirming with costs (and directing the plaintiff to deposit the remaining amount of Rs. 10,000 in the trial Court on or before 17th October, 1977 and the sale deed to be executed by the defendant on or before 27th October, 1977), that of the Sub Judge 1st Class, Ferozepur, dated the 14th day of June, 1974, passing a decree in favour of the plaintiff against the defendants for specific performance of the contract of sale dated 8th April, 1968 (Ex. P 1) according to the terms and conditions mentioned therein, on payment of Rs. 10,000 being the balance consideration amount, to the defendants on or before 20th July, 1974 and if the plaintiffs fail to pay the defendants or deposit in the court, the said amount of Rs. 10,000 by the stipulated date, the suit shall stand dismissed and ordering that if the plaintiffs deposit the said amount punctually, the defendants shall execute the sale deed by 6th August, 1974 and in case, the defendants fail to execute the sale deed by 6th August, 1974 the plaintiffs shall be entitled to get the same executed through the agency of the said court and further ordering that the parties shall bear their own costs. The pleader's fee is assessed at Rs. 50.

Achhra Singh and K. S. Grewal, Advocates, for the Appellants.

K. C. Puri, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) This is defendants' second appeal against whom suit for specific performance of the agreement of sale has been decreed by both the courts below.

(2) The three plaintiffs sons of Hari Singh filed a suit for specific performance of the agreement of sale dated 8th April, 1968, Exhibit P. 1, executed by Bachittar Singh (deceased) in their favour agreeing to sell the suit land for Rs. 20,000. A sum of Rs. 10,000 was said to have been paid as earnest money at the time of the execution. Bachittar Singh died on 20th May, 1968 and the suit was instituted on 6th June, 1972, as the sale deed was to be executed on or before 15th June, 1969. This suit was filed against the legal heirs of the deceased Bachittar Singh, i.e. his widow and the daughter. According to the plaint, the sale deed could not be executed due to the death of Bachittar Singh before 15th June, 1969 and hence suit for specific performance was being filed against the legal heirs of the deceased. It was further pleaded that the plaintiffs were always ready and willing to perform their part of the contract and to purchase the land in dispute in the alternative to a decree for specific performance, the plaintiffs sought recovery of Rs. 10,000 as refund of the earnest money and also claimed damages to the tune of Rs. 3,600. The suit was contested primarily on the ground that Bachittar Singh had not agreed to sell the land to the plaintiffs nor had executed the agreement of sale nor had received the advance money of Rs. 10,000. It was further pleaded that 3 or 4 months before his death, he had remained bed ridden. Thus they pleaded that the alleged agreement of sale was a forged document. A plea was also taken that the plaintiffs were not entitled to the relief of specific performance of the agreement. The trial Court found that agreement of sale Exhibit P 1 was validly executed by late Bachittar Singh. It was further found that there was no material to show that the plaintiffs were not ready and willing to perform their part of the contract. It was also held that the discretionary relief of specific performance of contract in the instant case could not be declined to the plaintiffs under the law. In view of these findings,

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the plaintiffs' suit for specific performance of the contract was decreed on payment of Rs. 10,000. In appeal, the learned Additional District Judge affirmed the said findings of the trial Court and thus maintained the decree passed in favour of the plaintiffs. Dissatisfied with the same, the defendants have filed this second appeal in this Court.

(3) During the pendency of this appeal both the defendants i.e. Har Kaur and Amarjit Kaur her daughter had died and thus the brothers of Har Kaur widow of Bachittar Singh have come on the record as the legal representatives of the deceased Har Kaur.

(4) The learned counsel for the appellants contended that Bachittar Singh who was suffering because of fracture of his spinal cord, was bed-ridden and was not in a position to execute any document and the agreement Exhibit P. 1 dated 8th April, 1968 was never executed by Bachittar Singh and was a forged document. It was pointed out that as a matter of fact Hari Singh father of the plaintiffs was the author of the said document. He is a person who is not trustworthy. He forged certain documents earlier against one Arur Singh and in a suit filed by Arur Singh it was so held that Hari Singh committed the offence of perjury in fabricating the alleged sale-deed. Thus argued the learned counsel, the relevant facts have not been considered by the courts below while appreciating the evidence. Moreover the suit was filed after the death of Bachittar Singh and that too just before 10 days from the expiry of the limitation. In case the plaintiffs had paid the sum of Rs. 10,000 as earnest money then there was no reason for them to wait for such a long time for filing the suit. It was also contended that in any case since Bachittar Singh as well as his widow and daughter had died, therefore, in these circumstances relief of specific performance of the agreement is not warranted. Reference was also made to the agreement, Exhibit P 1 to show that it consists of three sheets but the last sheet is not signed by Bachittar Singh.

(5) On the other hand, the learned counsel for the plaintiffs-respondents submitted that it has been duly proved on the record by cogent evidence of P.W. 2 to P.W. 4 and P.W. 1 that agreement Exhibit P 1 was duly executed by Bachittar Singh and a sum of Rs. 10,000 was paid by way of earnest money. It was contended that even if the last sheet of the agreement was not signed by Bachittar Singh, it was of no consequence. In support of this contention reference was made to *J. and D. Eziakoil carrying business*

under the name and style of *Fziekiel and Company* vs. *Annoda Charan Sen*, (1), *Jogesh Prasad Singh and others v. Ramchander Prasad Singh and others* (2) *Birbal vs. Thaman Singh and others*, (3). According to the learned counsel both the courts below on the appreciation of the evidence had found that the agreement was validly executed and a sum of Rs. 10,000 was paid by way of earnest money to Bachittar Singh. This being findings of fact should not be interfered with in second appeal.

(6) I have heard the learned counsel for the parties and have also gone through the relevant evidence on the record. Hari Singh had appeared in the witness box as P.W. 4. No such question was put to him that he forged the document and signed on behalf of Bachittar Singh. Not only that no objections whatsoever were taken in the courts below that three sheets of the document Exhibit P 1 were not signed by Bachittar Singh. However, in law it was of no consequence as held in *J. and D. Eziekeil's case* (supra) that speaking generally, a signature is the writing of otherwise affixing a person's name or a mark to represent his name, by himself or by his authority with the intention of authenticating a document as being that of or as binding on the person whose name or mark is so written or affixed. The insertion of the name, in any part of the writing, in a manner to authenticate the instrument is sufficient. Although the signature be in the beginning or middle of the instrument it is binding as if at the foot of it. The question always is, whether the party, not having signed it regularly at the foot, yet meant to be bound by it as it stood, or whether it was left, so unsigned because he refused to complete it but when it is ascertained that he meant to be bound by it as a complete contract, the signature is, for purposes of execution, effective. From the circumstances pointed out by the learned counsel for the defendant-appellants, at the most suspicion could be created as to why the suit was not filed with promptitude or as to why the third sheet of the agreement Exhibit P. 1 was not signed by Bachittar Singh but that by itself is no ground to interfere with in the second appeal or to set aside the concurrent findings of the courts below. Thus taking into consideration all the facts and circumstances of the case. I do not find any infirmity or illegality in the concurrent findings of the courts below as to be interfered with in second appeal.

(1) A.I.R. 1923 Cal. 35.

(2) A.I.R. (37) 1950 Patna 370.

(3) A.I.R. 1955 Rajasthan 91.

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(7) As regards the contention that the plaintiffs are not entitled to the relief of specific performance, particularly, when both the defendants Har Kaur and her daughter Amarjit Kaur had died, has no force. Admittedly, the plaintiffs are the nearest collaterals of the deceased Bachittar Singh, whereas, the legal representatives of the deceased Har Kaur who are her brothers reside in another village Harike Kalan claiming the property under the will executed in their favour by Har Kaur during the pendency of the appeal. Thus, it could not be successfully argued that the plaintiffs were not entitled to the relief of specific performance in these circumstances.

(8) Consequently the appeal fails and is dismissed with costs.

H.S.B.

FULL BENCH

Before S. P. Goyal, G. C. Mital and S. S. Sodhi, JJ.

PRITHI SINGH and another,—Appellants.

versus

BINDA RAM and others,—Respondents.

First Appeal from Order No. 324 of 1981

May 30, 1986

Motor Vehicles Act (IV of 1939)—Section 110 A—Motor Vehicles Rules, 1940—Rule 4.60—Driver of truck carrying passengers in contravention of Rule 4.60—Truck meeting with accident leading to the death of the passenger—Said accident taking place in the course of employment on owner's business—Owner of truck—Whether vicariously liable for the act of the driver—Such owner—Whether absolved of his liability as passengers carried in violation of rule 4.60.

Held, that the determining factor in order to fasten the liability to pay compensation under Section 110-A of the Motor Vehicles Act, 1939, so far as the liability of the owner is concerned, is whether the act was committed by the driver in the course of his employment or not. If the driver was acting in the course of his employment then the owner would be liable even though the driver acted in violation of rule 4.60 of the Motor Vehicles Rules, 1940; As such the owner of the truck cannot be absolved of his vicarious liability simply because the driver carried the deceased as passenger in the truck in contravention of the provisions of the aforesaid rule. (Paras 3 and 4).