IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4487 of 2012(O&M)
Date of decision: 13.02.2015

Babu Lal and others

...Appellants

Versus

Rajender and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ram Darshan Yadav, Advocate,
for the appellants .

***

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

***

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was decreed by the trial court vide judgment and decree dated 09.02.2004. Appeal preferred against the said decree failed and was dismissed on 07.08.2007. This is how, the LRs of defendant No.1 are before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, plaintiffs prayed for a decree for specific performance of the agreement, dated 22.08.1996, qua a land measuring 14 kanals 3 marlas i.e. 283/4092 share, situated in village Peewra, Tehsil and District Rewari. It was averred that defendant No.1 had executed an agreement, in favour of plaintiff and defendants No.2 & 3, for a sum of ₹ 8,84,375/-.

As per the agreement, plaintiff Rajender had 13/20th share, plaintiff No.2 Maya Devi had 1/10th share, Chander Bhan (defendant No.2) had 1/8th share and Lilawati (defendant No.3) also had 1/8th share in the land measuring 14 Kanals 3 marlas, for which the agreement was entered into. It was maintained that at the time of execution of the agreement in question, plaintiffs and defendants No.2 & 3 had paid the total sale consideration i.e. ₹ 8,84,375/- to defendant No.1. It was agreed between the parties that the sale deed would be executed at the discretion of the plaintiffs. A separate receipt, qua payment of sale consideration was executed by defendant No.1. It was maintained that the plaintiffs have always been ready and willing to perform their part of the contract qua their 13/20th & 1/10th shares. Further, defendants No.2 & 3 were purported to have connived with defendant No.1 and resultantly, they relinquished their rights and were not willing to enforce the agreement. Thus, plaintiffs were entitled to get a decree qua their shares i.e. 13/20th & 1/10th. As despite having been asked, defendant No.1 refused to acknowledge the claim of the plaintiffs and execute the sale deed. But to no avail. Thus, the suit.

In defence, it was pleaded, inter alia, by defendant No.1 that there were material addition and adulteration/ alterations in the agreement as well as receipt dated 22.08.1996. Though, defendant No.1 had executed the agreement in question, in favour of the plaintiffs and defendants No.2 & 3, for a sum of ₹ 8,84,375/-, and it was recited in the agreement to sell that the total sale consideration was received, however, only a sum of ₹ 6,00,000/- were paid to Ami Lal (defendant No.1). In fact, plaintiffs assured defendant No.1 that they would pay the balance sale consideration the next day i.e. 23.08.1996. And on this assurance, defendant No.1 handed over the receipt and the agreement to the plaintiffs. Though, the agreement and receipt did not bear the signatures of Surender, Jaswant as the attesting witnesses to the documents, plaintiffs in connivance with the Deed Writer procured their signatures.

In a separate written statement filed by defendants No.2 & 3, they also set out the similar stand, as put-forth by defendant No.1, and prayed for dismissal of the suit.

On a consideration of the matter in issue and evidence on record, the courts below found that execution of the agreement (Ex.PW1/1) and receipt (Ex. PW1/2) dated 22.08.1996, was not disputed. Recitals in the agreement as well as receipt showed that the entire sale consideration was paid to defendant No.1. Thus, oral evidence led by the defendants, to show that defendant No.1 had received only a sum of ₹ 6,00,000/-, was not admissible. Plea of fraud, set out by defendant No.1, remained unsubstantiated, as original agreement and receipt were handed over to the plaintiffs. As possession was also handed over to the plaintiffs, they were in cultivating possession of the suit property. There was a specific recital qua the share, plaintiffs had entered into an agreement for i.e. 13/20th and 1/10th share, respectively. If, defendant No.1 was not paid the entire sale consideration, why he remained quite for all these years. In fact, once the plaintiffs failed to pay the balance sale consideration, the very next day i.e. 23.08.1996, as pleaded by the defendants, he was required to resort to necessary measures in this regard. Concededly, a sum of ₹ 6,00,000/- was lend by defendant No.1 and this was never the case of the defendants, that amount qua the shares of the plaintiffs i.e. 13/20 and 1/10, would exceed the amount already received. Further, defendants No.2 & 3 never sought any relief against defendant No.1 and in fact, the written statement filed by them was in line with the stand set out by defendant No.1. Thus, the collusion between them was writ large. The notices were duly issued by the plaintiffs asking defendant No.1 to execute the sale deed, through registered post as well as by UPC. Therefore, plaintiffs had proved that they were ready and willing to perform their part of the contract. Resultantly, the suit filed by the plaintiffs was decreed and appeal preferred against the said decree by defendant No.1 failed and was accordingly dismissed.

I have heard learned counsel for the appellants at length and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, for plaintiffs to be entitled to a decree prayed for, they were required to prove that the agreement to sell, dated 22.08.1996 (Ex.PW1/1), was indeed executed by defendant No.1. Ex facie, execution of the agreement in question was not disputed by defendant No.1. In any case, the due and valid execution of the agreement was proved by the plaintiffs by examining the attesting witnesses and the scribe. The plea set out by defendant No.1, that plaintiffs had merely paid ₹ 6,00,000/- i.e. a part of sale consideration and the balance amount was never paid, remained unsubstantiated on record. The recitals in the agreement revealed that the entire sale consideration of ₹ 8,84,375/- was paid by the plaintiffs to defendant No.1, at the time of execution of the agreement itself. So much so, a separate receipt (Ex.PW1/2) in acknowledgement of the total sale consideration received was also executed by defendant No.1. Further, pursuant to the terms of the agreement, plaintiffs were in possession of the suit property and were found to be in cultivating possession of the suit land. In case, defendant No.1 had not received the total sale consideration, there was hardly any occasion for him to have still executed the agreement as well as the receipt. Both the documents in original were in the custody and possession of the plaintiffs and were duly proved on record. Nothing was brought on record by defendant No.1 to show that he ever expressed his grievance for having not been paid the entire sale consideration for all these years. Evidence on record duly proved that the plaintiffs have been ready and willing to perform their part of the contract. Learned counsel for the appellants could not point out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

(Arun Palli)
Judge

February 13, 2015
Rajan