IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No.2061 of 2013 (O&M)
Date of Decision: February 24, 2015.

Surjit Singh

..........APPELLANT(s).

VERSUS

Swaran Singh

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Rangi, Advocate for the appellant (s).

Mr. Gurcharan Singh, Advocate for the respondent.

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SURINDER GUPTA, J.

This regular second appeal challenges the concurrent finding of the Courts below whereby the suit filed by respondent-plaintiff Swaran Singh was decreed for possession of House No.151 Street No.10, Mohalla Har Kishan Nagar, Shimlapuri, Ludhiana measuring 115 square yards by way of specific performance of the agreement dated 17.04.2000 on payment of balance sale consideration and the appellant-defendant was also restrained from alienating the suit property.

The case of the respondent-plaintiff, in brief, is that appellant-defendant entered into agreement dated 17.04.2000 for the sale of house in dispute for a consideration of ₹3,60,000 out of which he had received a sum of ₹3,40,000 a year prior to the execution of agreement, which amount was adjusted as earnest money. The sale deed was to be executed within a period of one year i.e. up to 17.04.2001. The appellant-defendant had requested to allow him to stay in the disputed house for one year and due to his acquaintance and being in similar profession, respondent-plaintiff agreed for the same. A legal notice dated 03.04.2001 was served on the appellant-defendant asking him to execute the sale deed as per agreement. After serving the notice, respondent-plaintiff came to know that the appellant-defendant was involved in various cases of cheating including the one of attempt to sell the disputed house to one Sushil Gupta by changing its khasra numbers from 984 to 930 and 931 and giving it Corporation No.1515. When the sale deed was presented before the Sub Registrar, Ludhiana, it was got impounded by the respondent-plaintiff.

Respondent-plaintiff was always ready and willing to perform his part of contract and also remained present in the office of Sub Registrar, Ludhiana throughout the day on 17.04.2001 and got his presence marked but the appellant-defendant did not turn up there. The ultimate refusal of appellant-defendant to perform his part of contract culminated into filing of the instant suit.

In written statement, appellant-defendant termed the agreement dated 17.04.2000 as false, frivolous and fabricated document, which was result of misrepresentation. It was alleged that appellant-defendant purchased the house in question from Surinder Singh son of Bhagwan Singh for sale consideration of ₹3,60,000 on 16.07.1998 and agreement on full and final payment was executed between the appellant-defendant and Surinder Singh, who also executed general power of attorney in favour of appellant-defendant. After one month of the agreement, appellant-defendant was called to the police station at the instance of said Surinder Singh and respondent-plaintiff Swaran Singh and original papers of agreement to sell, general power of attorney were taken back by Surinder Singh and general power of attorney was cancelled. The appellant-defendant filed a suit against Surinder Singh and respondent-plaintiff Swaran Singh and under the compromise dated 02.11.1998, Surinder Singh agreed to get registered the sale deed of the disputed house in favour of appellant and complied with the terms of the settlement. However, respondent-plaintiff and Surinder Singh nursed a grudge against the appellant-defendant since then and in April, 2000, the appellant-defendant was again called in CIA Staff at the instance of respondent and there some stamp papers and other blank papers were got signed from him which appeared to have been converted into agreement to sell. The appellant-defendant never received any sale consideration. He filed a suit for declaration that the alleged agreement to sell is illegal, null and void and not binding on the rights of the appellant-defendant. The agreement on the face of it, is illegal as it contained unreliable and unreasonable recital that the sale price of ₹3,40,000 out of total sale consideration of ₹3,60,000 was paid but the possession was allowed to remain with the appellant-defendant. The respondent-plaintiff has pleaded that no consideration was paid at the time of execution of agreement to sell dated 17.04.2000 or a year prior to the date of agreement. No documentary evidence regarding payment of ₹3,40,000 was placed on record and the respondent-plaintiff had neither come up with any date of payment of earnest money nor about the manner in which the payment was made. All the other averments of plaint were contested, controverted and denied.

Respondent-plaintiff re-asserted his case in the replication and pleadings of the parties led to the framing of issues as follows:-

(1) Whether plaintiff is entitled to a decree of possession of house in dispute by way of specific performance of agreement to sell dated 17.4.2000?OPP

(2) Whether the defendant executed agreement to sell dated 17.4.2000 in favour of the plaintiff ?OPP

(3) Whether the plaintiff was and is still willing to perform his part of contract ?OPP

(4) Whether the present suit is not maintainable ?OPD

(5) Relief.

Civil Judge (Junior Division), Ludhiana vide judgment dated 25.11.2010 decreed the suit filed by the respondent-plaintiff for specific performance of the agreement to sell dated 17.04.2000 and the appellant was also restrained from alienating the suit property. The appeal filed by the appellant-defendant was dismissed by Additional District Judge (Fast Track Court), Ludhiana and the decree passed by the lower court was rectified as follows:-

> "9. Resultantly there being no reason to interfere with the findings of the Ld.trial Court on the issues, as discussed above, but however relief being granted for possession by way of specific performance of agreement dated 17-4-2000 and no directions being issued qua the enforcement of agreement dated 17-4-2000, the relief is modified to the effect that suit filed by the plaintiff is decreed with costs and the appellant/plaintiff (sic defendant) is directed to get the sale deed executed in favour of the respondent/defendant (sic plaintiff) within a period of two months from today on receipt of balance amount of consideration failing which the respondent/plaintiff shall deposit the remaining amount of consideration within a period of two months from the expiration of the aforesaid period and get the sale deed executed through court and in case the respondent/plaintiff fails to deposit the amount as

> referred to above, the suit of the respondent/defendant (sic plaintiff) shall be deemed to have been dismissed and further the respondent/defendant (sic plaintiff) subsequently shall be entitled to possession thereof and further restrained from alienating the suit property except in due course of law."

Learned counsel for the appellant-defendant while referring to agreement to sell dated 17.04.2000 has argued that as per recital in this agreement no sale consideration was paid at the time of agreement. It was recited in the agreement that the amount of ₹3,40,000 had already been paid a year back but no mode, date, manner of receipt of the payment was either mentioned in the agreement or even disclosed at any later stage after filing the suit. The witnesses examined by the respondent-plaintiff were discrepant about the payment of earnest money and even projected that it was paid at the time of execution of agreement. The respondent-plaintiff while appearing as PW4 has stated that earnest money was paid in the presence of marginal witnesses when the agreement was executed. **Another factor disclosed by respondent-plaintiff was that the payment of ₹3,40,000 was made without receipt, as the appellant-defendant had agreed that he would return the amount and it was an oral advance.** This statement of respondent-plaintiff reflects that there was some loan transaction and towards that loan outstanding, agreement dated 17.04.2000 was got prepared. The plaintiff had stated that the payment was made in presence of Jaswinder Kaur, Balbir Singh and Harpal Singh in the office of Balbir Singh. He has further admitted that he never had any business joint with the appellant-defendant. Balbir Singh, the marginal witness of agreement to sell has stated that on 17.04.2000, when the agreement was executed, payment was made to the appellant-defendant by Swaran Singh in his presence and in the presence of other marginal witnesses. He had further clarified that the entire payment of ₹3,40,000 was made in cash on that day. Jaswinder Kaur PW3 has stated that the payment was made at the time of scribing the agreement Ex.P3 and some payment was made at her house on the day of execution of agreement to sell Ex.P3. The above statements of the witnesses refute the contention of respondent-plaintiff that the payment of ₹3,40,000 was made a year before the execution of agreement, at the office of Balbir Singh. The appellant-defendant while appearing as DW1 has specifically stated that he never purchased the stamp papers on which the agreement was scribed in the month of April 2000. He was called at CIA Staff at the instance of respondent-plaintiff and his signatures were obtained on blank stamp papers, which were later on converted as agreement. The facts, circumstances and the evidence on file support the contention of the appellant-defendant that he never agreed to sell the house.

Learned counsel for the respondent-plaintiff has argued that the execution of the agreement is duly proved. It was scribed by regular deed writer. Respondent-plaintiff Swaran Singh had acquaintance with the appellant-defendant and under oral agreement, appellant-defendant received ₹3,40,000 and agreed to execute the sale deed of the disputed house in favour of respondent-plaintiff. However, he did not honour the commitment and later on in lieu of sale consideration already received, he executed the agreement dated 17.04.2000. The marginal witnesses, stamp vendor and respondent-plaintiff in their statements have fully proved the agreement and both the Courts have rightly relied upon their statements while allowing the relief of specific performance of the agreement to sell.

I have given a careful thought to the submission of learned counsel for the parties and have perused the paper-book and the record of the Courts below with their assistance.

The substantial question of law which arises for determination in this appeal is as follows:-

"***Whether the findings of Courts below that the agreement dated 17.04.2000 was executed by the appellant-defendant and he received ₹3,40,000 as earnest money, are based on evidence on record or are the result of misreading and misinterpretation of statements of plaintiff's witnesses?***

Learned Civil Judge (Junior Division), Ludhiana while decreeing the suit has relied upon the statement of PW1 Harpal Singh, PW2 Balbir Singh and PW3 Jaswinder Kaur to reach the conclusion that agreement to sell Ex.P3 bears thumb impression and signature of appellant and the plea of the appellant-defendant that these were obtained by the officials of CIA Staff, was discarded. This led to the observations that the execution of the agreement is fully proved. The Appellate Court below also relied on the statements of aforesaid witnesses while reaching the conclusion that the execution of the agreement Ex.P3 is duly proved.

Before proceeding further, it will be relevant to take note of the fact that under Section 100 of the Civil Procedure Code, an appeal can be entertained by this Court only on a substantial question of law. But at the same time, if the findings of the Courts below on facts are contrary to the evidence on record and are perverse, such finding can be set aside by the High Court in appeal. The Apex Court in case titled as ***Bondar Singh and Ors Vs. Nihal Singh [2003(4) SCC 161]***, while evaluating the scope of interference by a High Court in appeal under Section 100 CPC has observed as follows:-

> "4. .... An appeal under Section 100 C.P.C. can be entertained by the High Court only on a substantial question of law. There can be no quarrel with this legal proposition. The scope of powers of High Court under Section 100 C.P.C is a matter of settled law. The learned counsel for the appellant cited several judgments in support of his contention. We do not consider it necessary to discuss these decisions because so far as the question of powers of High Courts under Section 100 C.P.C. is concerned, it needs no discussion. If the findings of the subordinate courts on facts are contrary to evidence on record and are perverse, such finding can be set aside by the High Court in appeal under Section 100 C.P.C. A High Court cannot shut its eyes to perverse findings of the courts below. In the present case the findings of fact arrived at by the lower appellate court were contrary to evidence on record and, therefore, perverse and the High Court was fully justified in setting aside the same resulting in the appeal being allowed and suit being decreed."

On perusal of the lower Court file, it transpires that both the Courts below have committed grave error of law while looking into the facts that have come on record. It is a settled principle of law that no amount of evidence beyond pleading can be looked into. The respondent-plaintiff came up with a specific plea that the agreement was executed in lieu of the payment of ₹3,40,000 already made a year ago to the appellant-defendant. If the statements of witnesses examined by the respondent-plaintiff on this point are examined the facts that have come up on the file speak otherwise.

Agreement Ex.P3 was executed on 17.04.2000. As per the recital in agreement, the payment of ₹3,40,000 out of sale consideration of

₹3,60,000 was made a year ago i.e. somewhere in April, 1999. There is no receipt of payment made to the appellant-defendant. Balbir Singh and Harpal Singh are the marginal witnesses of the agreement. Harpal Singh has been examined as PW1. In his affidavit Ex.PX tendered in his examination-in-chief, he has stated that the payment of ₹3,40,000 was made to the appellant at the time of oral agreement in between the parties and this fact was admitted when the agreement was scribed on 17.04.2000. However, in cross-examination, he has stated that **appellant-defendant and respondent-plaintiff Swaran Singh both were involved in the business of property dealer. A dispute has arisen between them and the matter reached the *Panchayat* where it was settled. Under the settlement before the *Panchayat* the agreement Ex.P3 was written. Regarding the payment of sale consideration, he has stated that no payment was made in his presence. He was told by Swaran Singh respondent-plaintiff that on settlement of account, a sum of ₹3,40,000 was found due towards the appellant-defendant.** However, this fact was not mentioned in the agreement Ex.P3 that amount of ₹3,40,000 was found due towards the appellant-defendant towards the business dealings of the appellant-defendant and respondent-plaintiff.

Respondent-plaintiff Swaran Singh while appearing as PW4 has categorically stated that he had never done any business jointly with the appellant-defendant. This refutes the testimony of PW1 Harpal Singh and rendering him unworthy of reliance.

Respondent-plaintiff Swaran Singh while appearing as PW4 has come up with a new version about the payment of ₹3,40,000 to the appellant-defendant. While appearing as PW4, he has stated as follows:-

> *"Payment of the agreement amounting to Rs.3,40,000/- was paid (sic made) in cash to the defendant one year prior to the agreement.* ***The agreement was not scribed one year prior when the payment of Rs.3,40,000/- paid (sic made) to the defendant as he agreed that he will return the amount to me. It was also oral.*** *The payment of Rs.3,40,000/- was paid (sic made) to the defendant in the presence of Bibi Jaswinder Kaur councillor and Balbir Singh and Harpal Singh at the office of Balbir Singh."*

The above statement reflects as if the amount of ₹3,40,000 was given to the appellant-defendant as loan which he had to return. As per the appellant, the payment was made at the office of Balbir Singh. Here also, Jaswinder Kaur PW3 has refuted the statement of respondent-plaintiff. While appearing as PW3, she has stated that some payment was made at her house on the day of execution of agreement to sell Ex.P3 and an amount of ₹1 lac was to be paid at the time of execution of sale deed, as per her knowledge. The matter does not end here. She further shatters the case of respondent-plaintiff qua the payment of earnest money and execution of agreement when she states that payment of ₹3,40,000 was made at the time of scribing agreement Ex.P3. The above part of her testimony is extracted as follows:-

> "*I do not know about the account of the plaintiff and the defendant with regard to their business. No settlement took place between the plaintiff and the defendant about their business in my presence. The payment was made at the time of scribing the agreement Ex.P-3. I do not remember the amount of the earnest money which was paid by the plaintiff to the defendant at the time of execution of the agreement to sell Ex.P-3."*

Now, we are left with the testimony of most important witness of the respondent-plaintiff namely Balbir Singh PW2. He had also stated that '***both the plaintiff and defendant were doing the same business and had good relations and good faith of each other'*** *and* '***agreement dated 17.04.2000 was executed to avoid any legal complication in lieu of payment of Rs.3,40,000/- made earlier'***. However, there is a contradiction in the testimony of this witness as put forth in the affidavit tendered in the examination-in-chief and in his cross-examination. In cross-examination, he has specifically stated that '***on 17.04.2000, on the day of execution of the agreement, payment was made by plaintiff Swaran Singh to Surjit Singh in my presence and that amount was Rs.3,40,000/-. The other marginal witness was also present when the said amount of Rs.3,40,000/- was paid to Surjit Singh. All the said amount was made (sic paid) in cash on the said date. The total sale consideration was Rs.3,60,000/- as settled between them. The remaining amount of Rs.20,000/- was to be paid on 17.04.2001.'*** This witness, as such, also shatters the case of the respondent-plaintiff about the manner of payment of the earnest money.

From the above evidence on record, it can be safely inferred that on 17.04.2000, there was no transaction between the appellant-defendant and respondent-plaintiff Swaran Singh about the sale of the house. From the testimony of respondent Swaran Singh, it appears that at some point of time, there was money transaction between the appellant-defendant and respondent-plaintiff Swaran Singh. In order to settle that transaction, the agreement Ex.P3 was got scribed. This fact was reflected from the testimony of Swaran Singh plaintiff himself, when he has stated that no agreement was scribed at the time of payment of ₹3,40,000 as appellant had agreed that he will return the amount to him. Here, the cat has come out of the bag and entire story and circumstances leading to the execution of agreement to sell got unfolded. If the appellant-defendant had agreed to sell the disputed house to respondent-plaintiff, in that eventuality, there was no occasion for the respondent-plaintiff to expect the return of money. This is a strong indicator towards the fact that agreement was got executed at later stage to pressurize the appellant to return the amount. Even Harpal Singh while appearing as PW1 has stated that there was a *Panchayat* which got the agreement effected. He has stated that the amount of ₹3,40,000 was found due towards the appellant-defendant on settlement of business account. However, this fact was not mentioned in the agreement Ex.P3. The above statements are a clear pointer towards the fact that agreement Ex.P3 was executed by the appellant but the same was not for the sale of disputed house but was on account of settlement of business outstandings between the appellant-defendant and respondent-plaintiff. The appellant-defendant has admitted his thumb impressions and signatures on the agreement Ex.P3 but alleged that these were taken on blank papers under police pressure. His silence for a long period of more than a year after the alleged obtaining of signatures and thumb impressions puts this Court to caution while accepting his version. It is proved on file that a sum of ₹3,40,000 was outstanding towards the appellant-defendant and the respondent-plaintiff in order to secure payment of that amount got executed agreement Ex.P3 which neither was an agreement to sell nor there was payment of any earnest money. Only purpose disclosed behind the execution of agreement was to secure payment of ₹3,40,000 received by the appellant.

The facts discussed above, which have come prominently in the statements of witnesses of the respondent-plaintiff, were not looked into by the Courts below while allowing the relief of specific performance of the agreement Ex.P3. The Courts below were duty bound to analyse the evidence on record and then reach the conclusion as to whether the facts and circumstances of the case entitle the respondent-plaintiff to the relief of specific performance. The finding of fact arrived by the Courts below are blatantly contrary to the evidence on record and therefore, are perverse and sustainable. In the facts and circumstances of the case and keeping in view the statements of respondent-plaintiff and his witnesses, the relief of recovery of ₹3,40,000 could be allowed to the plaintiff.

The substantial question of law as framed in this case is accordingly decided in favour of the appellant-defendant and against the respondent-plaintiff.

As a sequel of my above discussion, plaintiff-respondent is not entitled to the relief of specific performance of the agreement dated 17.04.2000 and this appeal is partly accepted. The judgment and decree of the Courts below are modified to the extent that the respondent-plaintiff is entitled to recover ₹3,40,000 with interest @ 9% per annum from the date of agreement till the date of filing of the suit and with pendent lite and future interest at the same rate till the realization of entire decretal amount. Keeping in view the peculiar facts and circumstances of the case, parties are left to bear their own costs.

(SURINDER GUPTA)
JUDGE

February 24, 2015.
Sachin M.