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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.2238 of 2013 (O&M)
Date of Decision: 20.11.2015

Dr. Vijay Sharma

.....Appellant

vs

Charan Dass

....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Vijay Sharma, Advocate
for the appellant.

****

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

RAJ MOHAN SINGH, J.

CM No.6097-C of 2013

For the reasons mentioned in the application, the same is allowed. The deficiency in court fee is made good.

CM No.6298 -C of 1013

For the reasons mentioned in the application, delay of 20 days in re-filing the appeal is condoned.

Main case

[1]. Plaintiff is in second appeal against concurrent judgments and decrees passed by the Courts below in a suit for specific performance.

[2]. Plaintiff filed suit for specific performance of agreement to sell dated 20.05.2005 and in the alternate for recovery of Rs.9,00,000/- along with interest @ 18% per annum from the execution of agreement to sell dated 20.05.2005 till actual realisation of the amount. Further the plaintiff has sought restraint order against the defendant from selling, transferring, alienating the house along with the shop.

[3]. Plaintiff alleged that the defendant is owner in possession of the suit land. He agreed to agreement to sell dated 20.05.2005 to sell the property in question along with shop to the plaintiff for a total sale consideration of Rs.5,00,000/-. He received the amount of Rs.4,50,000/- as earnest amount and fixed 20.05.2007 as a date for execution of sale deed. The agreement was witnessed by two witnesses and was signed by the defendant as well.

[4]. On 20.05.2007, the plaintiff approached the defendant for execution of sale deed after receiving balance consideration of Rs.50,000/-. On 20.05.2007, it was Sunday, therefore, the plaintiff went to the office of Sub-Registrar on 21.05.2007 along with balance sale consideration. Having waited till 5.00 p.m. defendant did not turn up and the plaintiff got his presence marked before the Sub-Registrar. Plaintiff showed his readiness and willingness and, thereafter filed the suit in question.

[5]. Suit was contested by the defendant and he denied the execution of agreement to sell, nor he received any earnest amount to the tune of Rs.4,50,000/- from the plaintiff, nor agreed to get the sale deed executed in the manner as suggested by the plaintiff. Agreement to sell has been claimed to be forged. Infact defendant took a loan for a sum of Rs.25,000/- from the plaintiff at the rate of 2% per month in the year 2005 and the plaintiff had obtained signature of the defendant on blank papers, stamp papers and also got the blank cheques issued from the defendant. Plaintiff got the same in custody as security documents.

[6]. Defendant returned the loan amount to the plaintiff along with interest, however plaintiff demanded a sum of Rs.50,000/- more from the defendant. Plaintiff misused the cheque and got the same dishonoured from the Bankers of the defendant. A legal notice dated 12.10.2005 was issued to the defendant by the plaintiff. Subsequently defendant approached the plaintiff and paid Rs.25,000/- to him. Defendant requested the plaintiff to return the blank papers and cheques, but plaintiff put off the matter on one pretext or the other and did not return the documents which were given to him as a security. Plaintiff used the said blank papers in the present agreement to sell.

[7]. Defendant had already mortgaged the suit land with

Punjab & Sind Bank on 05.09.2003 and the original title deeds were already lying pledged with the Bank. The shops were in the name of wife of the defendant.

[8]. After filing of the replication, following issues were framed by the trial Court:-

> *"1. Whether the defendant agreed to sell the suit property to the plaintiff by agreement to sell dated 20.05.2005? OPP.*
>
> *2. Whether the plaintiff is ready and willing to perform his part of the agreement? OPD.*
>
> *3. Whether the plaintiff is entitled to possession of the suit property by way of specific performance of agreement to sell? OPP.*
>
> *4. Whether the agreement is forged and fabricated? OPD.*
>
> *5. Whether the plaintiff has got no cause of action to file the present suit? OPD.*
>
> *6. Whether the suit is bad for non-joinder and mis-joinder of the necessary parties? OPD.*
>
> *7. Whether the plaintiff has not come to the court with clean hands? OPD.*
>
> *8. Relief."*

[9]. Both the parties led their respective evidence to prove their case on the aforesaid issues.

[10]. Trial Court dealt issues no.1 to 3 jointly and came to the conclusion that there are number of suspicious circumstances in the context of execution of agreement to sell and passing of consideration. Trial Court dismissed the suit. Plaintiff remained unsuccessful in the appeal before the lower Appellate Court. Therefore, the present appeal came to be filed in this Court.

[11]. In view of Full Bench judgment of this Court in ***Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I,*** framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[12]. The appellant has formulated the following substantial questions of law in para 12 of the grounds of appeal:-

"I. Whether the judgments & decrees dated

22.10.2012 passed by the Addl. District Judge Patiala and the judgment and decree dated 27.09.2010 passed by the Civil Judge (Jr. Division) Patiala are perverse, illegal and result of misreading of evidence?

II. Whether the courts below erred in observing that execution of agreement to sell is not proved?

III. Whether the Courts below erred in dismissing the suit more particularly when court has concluded that agreement to sell is not forged and fabricated.

IV. Whether the courts below erred in not granting alternate relief of recovery of amount?

[13]. I have heard learned counsel for the appellant and have gone through the case file.

[14]. The question of execution of agreement to sell remained a hotly contested issue between the parties. Agreement to sell Ex.P-1 was executed on 20.05.2005. The area involved in the agreement to sell is 80 sq. yards which was agreed to be sold to the plaintiff. The suit property is consisting of house and shops. The defendant has got proved the site plan Ex.DW-1/A. The total area of which comes to be 123.34 sq. yards. The area in the name of defendant-respondent is only 80 sq. yards whereas the area in the name of the Geeta Gaur is 40

sq. yards. A prudent man normally checks veracity of documents before producing the same. Documents of title were not examined by the plaintiff.

[15]. DW-4 Bhupinder Singh has been examined along with Nachattar Singh as DW-3. Both these witnesses have deposed on record that property is lying mortgaged with the Bank by way of equitable mortgage and original sale deeds are lying with the Bank. No effort has been made by the plaintiff to explain as to whether at the time of execution of agreement to sell he had seen the original title deeds of the property or not? Moreover the property in question was mortgaged in the year 2003 whereas agreement to sell allegedly came to be executed in the year 2005.

[16]. The original sale deeds were not available with the defendant, nor were made available to the plaintiff at any point of time of execution of alleged agreement to sell. Question of showing the original title deeds to the plaintiff does not arise at all. The perusal of stamp papers of Ex.P-1 reveals that the same were purchased in the name of defendant. The signature of the defendant are not found present at the back of the stamp papers.

[17]. Stamp vendors used to mention the fact at the time of purchase of stamp paper, if more than one stamp sheets is

involved. There is no mention at the back of the stamp papers as to how many sheets were purchased by the vendor. Second stamp sheet of agreement to sell shows that only signatures of the stamp vendor Jit Singh is present and the same does not find mention about Charan Dass at the back of the second sheet of the stamp paper. Agreement to sell further reveals that name of the vendor, vendee and one of the attesting witness are typed, but name of second attesting witness is not typed and the same is written with a pen. It gives an inference that the second attesting witness was not present when the agreement to sell was executed.

[18]. A sum of Rs.4,50,000/- was allegedly paid as earnest amount. The agreement to sell was executed on 20.05.2005. The suit land was agreed to be sold for consideration of Rs.5,00,000/-. Only a sum of Rs.50,000/- was remained to be paid at the time of execution of sale deed. The sale deed was to be executed on 20.05.2007 i.e. after the period of two years. It is quite glaring to presume that for an amount of Rs.50,000/- out of total sale consideration of Rs.5,00,000/-, a time schedule of two years was fixed even after receiving major part of sale consideration. If this event is co-related with the story behind the cheque, then it gives only irresistible conclusion that agreement to sell is a manipulated affair and no such consideration was

passed over to the defendant at any time.

[19]. The plaintiff is a retired Civil Surgeon and is a qualified person having held high post in Government job. A ordinary prudent man would not have waited for two years after having paid Rs.4,50,000/- out of Rs.5,00,000/- as earnest amount. The plaint is conspicuously silent about past monetary transactions between the parties.

[20]. The stand of the defendant is that he had borrowed the sum of Rs.25,000/- and had returned the same. At the time of borrowing defendant had issued blank stamp papers and blank cheques to the plaintiff as security. Despite return of the amount, plaintiff demanded Rs.50,000/-. Plaintiff had misused the cheque which was subsequently dishonoured.

[21]. Plaintiff also issued legal notice which has been proved on record by DW-7 S.P. Verma, Advocate. The borrowing of amount has been proved on record by DW-7 S.P. Verma, Advocate who once issued legal notice on behalf of plaintiff. There is admission on the part of the plaintiff that defendant borrowed a sum of Rs.50,000/- and the same was subsequently paid being a separate transaction. Cheque issued by the defendant in favour of the plaintiff has been proved on record as Ex.DW-7/1. The notice was issued on 12.10.2005. Perusal of notice Ex.PW-7/1 shows that cheque was dated 31.03.2005 and

was dishonoured on 28.09.2005. Agreement to sell was executed on 20.05.2005 i.e. two months after issuance of said cheques. In case cheque dated 31.03.2005 in a sum of Rs.50,000/- was in existence at the time of agreement to sell dated 20.05.2005, the same could have been adjusted and there was no need to fix target date for execution of sale deed two years thereafter. No explanation has come forth on record as to why plaintiff did not get the sale deed executed, rather got the date of two years for execution of sale deed. The plaintiff could have adjusted the amount of Rs.50,000/- and could have asked the defendant to get the sale deed executed once the cheque was with him. In the absence of such an explanation from the side of the plaintiff, the entire transaction becomes suspicious.

[22]. Lachman Dass PW-2, the attesting witness of agreement to sell Ex.P-1 though supported the case of the plaintiff, but it seems that he is the man of plaintiff. Said witness had already appeared as witness on behalf of the plaintiff in a civil suit No.189-T of 27.08.2001. Statement of Lachman Dass given in the said case has been proved on record as Ex.D-Y. The agreement to sell of said civil suit has been proved on record as Ex.DZ. Lachman Dass is proved to be an interested witness. The agreement to sell in the present case is proved to

be shrouded with suspicious circumstances and passing of consideration is not proved by any legal evidence.

[23]. Question No.1 as formulated cannot be answered in favour of plaintiff as the judgments and decrees are not found to be perverse or the result of any misreading of evidence in the light of aforesaid facts.

[24]. Learned counsel for the appellant has contended that the lower Appellate Court has considered wrong dates in arriving at same conclusion drawn by the trial Court. Wrong mentioning of dates at some point are the result of clerical omissions and no prejudice is caused to the appellant in such a situation, particularly when the plaintiff's case has been scrutinised clinically with reference to evidence on record.

[25]. The agreement to sell is proved to be suspicious and passing of consideration is not proved by any legal document and the explanation on record in the context of loan, agreement to sell and availability of cheque with plaintiff at the relevant time are the necessary documents which have their own meanings in a given situation.

[26]. Learned counsel for the appellant relied upon findings recorded under issue No.4 by the trial Court to contend that once document is not proved to be forged and fabricated, an alternate decree of recovery should have been granted by the

trial Court. Once it is found that the agreement to sell is a manipulated affair, the transaction cannot be even held to be loan transaction. Advancing of earnest amount to the tune of Rs.4,50,000/- cannot be proved as the plaintiff would not have agreed to a period of two years for execution of sale deed once amount of Rs.4,50,000/- was paid and there was a cheque available with the plaintiff for a sum of Rs.50,000/-. Therefore, for a balance amount of Rs.50,000/-, plaintiff was not supposed to wait for two years and would have enforced the agreement to sell in the form of sale deed by adjusting the amount of cheque in balance sale consideration.

[27]. Since in the entire process, conduct of the plaintiff remained suspicious, therefore, passing of consideration in the form of earnest amount to the tune of Rs.4,50,000/- is not proved on record, therefore, alternate decree of recovery cannot be granted in favour of the plaintiff.

[28]. Both the Courts below have thrashed the material on record by way of lawful appreciation.

[29]. In considered opinion of this Court, re-appreciation in Regular Second Appeal is not possible. Material on record does not suggest that the Courts below have misread the same, rather the impugned judgments and decrees are the result of proper appreciation of evidence. Question No.2 as framed does

not arise. Execution of agreement to sell with reference to material on record is not proved, nor passing of consideration is proved. Question No.3 has its own explanation in the context of finding the circumstances in which it has been held by both the Courts below that even if forgery in execution of agreement to sell is not proved, but the agreement to sell is found to be shrouded with suspicious circumstances and is not found to have been executed, nor the consideration in the form of earnest amount is proved to have been passed over. All these events have been discussed with reference to evidence to conclude that agreement to sell was not executed and there was no passing of consideration to the tune of Rs.4,50,000/-. In view of that even, if it was observed by the Courts below that the agreement to sell is not forged and fabricated, still the agreement to sell being shrouded with suspicious circumstances cannot be enforced.

[30]. Both the Courts below have appreciated the aforesaid facts in the light of material on record which cannot be otherwise found to be suffered with any misreading of evidence or perversity of any nature.

[31]. In view of aforesaid, question No.4 has also to be answered that there cannot be any ground of alternate decree of refund of the amount. Accordingly, this Court is of the view

that no illegality or perversity have come on record in the impugned judgments and decrees passed by the Courts below.

[32]. Resultantly, this appeal is found to be totally bereft of merit and the same is accordingly dismissed in *limine*.

November 20, 2015 **(RAJ MOHAN SINGH)**
Atik **JUDGE**