

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.4317 of 2013 (O&M).
Decided on:-February 21, 2015.

Sat Narain.Appellant.

Versus

Charan Singh.Respondent.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. Arun Nehra, Advocate
for the appellant.

Mr. C.B. Goel, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

Plaintiff Charan Singh, respondent herein, had filed a suit for specific performance of the registered agreement to sell dated 17.4.2006 qua the land in dispute which was agreed to be sold @ Rs.65,000/- per acre, whereby total sale consideration came to Rs.4,12,500/-. It was claimed that a sum of Rs.2 lacs was paid as earnest money and possession of the land was also delivered to the plaintiff at the spot on the date of execution and registration of the agreement i.e. 17.4.2006 though the sale deed was to be executed by 15.4.2008 after making balance payment of Rs.2,12,500/-. The defendant in the meanwhile, was to clear the loan taken on security of the disputed land and was to produce 'No Dues Certificate' prior to execution and registration of the sale deed.

2. When the plaintiff found that the defendant-owner was out and out to alienate the suit land and was to dispossess the plaintiff therefrom, a suit for seeking a decree of permanent injunction was filed. Since the relief of specific performance had become available, withdrawing the said suit for permanent injunction, the suit for seeking specific performance of the agreement was then instituted by the plaintiff. Before filing the suit, even a legal notice was served on the defendant through his counsel on 21.12.2007 calling upon the defendant to execute the sale deed. Service of said notice was refused by the defendant.

3. The defendant, on the other hand, making a contest tooth and nail claimed the disputed land to be ancestral of the defendant and pleaded that since he had no other land, he was not interested to sell the same. It was claimed that agreement to sell was a product of fraud and misrepresentation. It was explained that Rattan Singh, brother of the plaintiff on 11.10.2005 had got executed one agreement to sell in respect of disputed land in his favour for a sale consideration of Rs.1,85,000/- and the sale deed was to be executed by 18.4.2006. When the defendant had come to know of the said agreement, he had made a complaint against Rattan Singh and had asked him for cancellation of the said agreement. It is claimed that for the purposes of cancellation of the said agreement, Rattan Singh, brother of the plaintiff had claimed that certain documents were to be prepared and thus, taking undue advantage of the defendant, the plaintiff had got the present agreement prepared under the garb of cancellation of the earlier agreement of 11.10.2005. Prayer for dismissal of the suit was made.

4. To adjudicate rival claims of the parties, the lower court had framed following issues on 20.3.2009:

1. Whether the defendant had executed an agreement to sell

dated 17.4.2006 in favour of the plaintiff on the grounds as alleged in the plaint? OPP

2. Whether the plaintiff has no locus-standi nor any cause of action to file the present suit? OPP
3. Whether the suit of the plaintiff is time barred? OPD
4. Whether the the suit of the plaintiff is not maintainable the present form? OPD
5. Relief.

5. After receiving oral as well as documentary evidence from the parties and providing a hearing to their respective counsel, deciding all the issues in favour of the plaintiff, his suit for specific performance of the agreement to sell dated 17.4.2006 was decreed by the lower court calling upon the defendant to execute the sale deed in favour of the plaintiff after receiving the balance sale consideration from him vide judgment and decree dated 12.6.2012.

6. Aggrieved with this judgment and decree, the defendant-owner Sat Narain had preferred an appeal on 17.7.2012 which was decided against him on 22.3.2013 by the first appellate court. Against the concurrent findings of the two courts below, the present regular second appeal has been preferred by the defendant-owner wherein it is claimed that the agreement to sell Ex.P3 was result of fraud and forgery but overwhelming evidence on this count available on record was ignored by both the courts and thus, caused grave prejudice to the defendant. It is further claimed that no source has been shown by the respondent-plaintiff as to from where the amount of Rs.2 lacs was paid by him to the appellant-defendant on 17.4.2006. It is also averred that even possession of the suit land continues with the appellant-defendant and there was no delivery of possession either. It is urged that specific performance of the earlier agreement to sell of 11.10.2005 was never sought by Rattan Singh brother of the respondent-plaintiff and this

circumstance alone was sufficient to prove that agreement to sell of 11.10.2005 in favour of the respondent-plaintiff was a fraudulent document.

7. Castigating the findings of the first appellate court in judgment and decree dated 22.3.2013, it is canvassed that no independent appreciation and evaluation of evidence was made and affirmation of findings of the lower court was made in a casual manner. It is urged that when agreement to sell Ex.P3 does not show volitional execution thereof, specific performance of the same could not have been ordered.

8. For decision of this appeal, following substantial questions of law arise for determination by this Court:

1. Whether, in the facts and circumstances, the agreement to sell dated 17.4.2006 (Ex.P3) was prepared by playing fraud on the defendant-appellant and same is null and void in view of the law laid down by the Hon'ble Supreme Court in 1992(1) SCC 534 Shrisht Dhawan Vs. M/s Shaw Brothers; 1994(1) SCC 1 S.P. Chrugalvarya Naidu Vs. Jagannath (dead) by LRs; 2002(1) SCC 100 Roshan Deen Vs. Preeti Lal; 2003(8) SCC 311 Ram Preet Yadav Vs. U.P. Board of High School; 2005(6) SCC 149 State of A.P. Vs. Suryachandra Rao; 2007(2) RCR (Civil) 431 A.V. Pappaya Sastry Vs. Govt. of A.P. Etc.; 2010(2) RCR (Civil) 207 Santosh Vs. Jagat Ram?
2. Whether the judgment and decree of the lower appellate court is perverse as the court failed to refer and consider the relevant and material evidence led by the parties?
3. Whether non-filing of the suit by Rattan Singh (brother of the plaintiff-respondent) for specific performance of agreement to sell dated 11.10.2005 (Ex.DW4/B) which had purportedly been executed between Rattan Singh and Sat Narain-appellant whereunder the sale deed had to be executed on or before 18.4.2006 having not been filed and on the other hand another agreement dated 17.4.2006 (Ex.P3) having been executed between Sat Narain-defendant/appellant and Charan Singh-plaintiff/

respondent regarding the same very land for lower consideration and giving 3 years time for execution of sale deed shows that fraud was committed?

9. Execution of the agreement to sell dated 17.4.2006 (Ex.P3) is not disputed. It is, however, claimed that a fraud was played upon the appellant. Receipt of Rs.2 lacs as earnest money has also been denied by the appellant.

10. Notwithstanding the fact that there are concurrent findings on all the issues against the appellant returned by both the courts below, counsel for the respondent has urged that even when evidence and attending facts and circumstances are evaluated independently even once more, neither fraud nor misrepresentation, as claimed by the appellant-defendant, is in existence even in whispers and it is urged that this appeal has been preferred by the appellant-defendant merely to gain time, though it has no merit.

11. When the rival claims of the parties as also the substantial questions of law needing determination by this Court are gone through in the interface of grounds of this appeal, it emerges that once execution of agreement to sell dated 17.4.2006 (Ex.P3) is not disputed by the appellant-defendant, he was to prove fraud alleged by him.

12. Fraud when taken as a ground of attack against a document is to be proved like a charge in a criminal case. In short, evidence beyond doubt is required to sustain such plea of fraud and preponderance of evidence which is the normal rule of proof in civil cases, does not hold good in case of ground of fraud. Support in this regard may be sought from ***Har Narain and another Versus Revti Parkash and others 2012(2) PLR 409 (P&H)*** and ***Santokh Singh and another Versus Sukhwinder Singh and others 2013(1) PLR 209 (P&H)***.

13. Merely because Rattan Singh, brother of the plaintiff had earlier entered into an agreement to sell with the appellant-defendant on 11.10.2005 (Ex.DW4/B) and sale deed was to be executed on or before 18.4.2006 but neither the agreement was cancelled nor any suit for specific performance of the said agreement was filed ipso-facto is no ground to establish fraud with the appellant-defendant. Contention of counsel for the appellant that in agreement to sell of 11.10.2005 (Ex.DW4/B), sale consideration was fixed at Rs.1,85,000/- per acre whereas in a subsequent agreement to sell (Ex.P3) purported to have been entered into with the respondent-plaintiff, sale consideration is shown as Rs.1,65,000/- per acre. It is urged that there was no occasion for the sale price to fall in six months.

14. When this plea of the appellant-defendant is considered, it is found that the appellant-defendant has not even owned the earlier agreement of 11.10.2005 (Ex.DW4/B) allegedly entered into for sale of his land with Rattan Singh, brother of the plaintiff.

15. Merely because the defendant has no other land except the present one is not a fact which can be construed in favour of the appellant-defendant that he never intended to sell the land and a fraud was played upon him.

16. The agreement to sell dated 17.4.2006 (Ex.P3) is a registered document, due execution of which has been proved by Lamberdar Kundan (PW2) and Om Parkash (PW3), the attesting witnesses. Scribe Jagat Singh has also entered the witness box as PW4 and has proved entry Ex.P14 in his register which independently proves participative association of the defendant. There is no evidence of the defendant to rebut this overwhelming evidence produced by the plaintiff. If we go through the pleadings of the defendant, it is clear therefrom that the defendant had never been ready and

willing to perform his part of the contract whereas the plaintiff has clearly proved his readiness and willingness as on the relevant date fixed for execution of the sale deed, he was present in the office of Registrar and had also deposed on oath about his presence there for getting the sale deed registered with balance amount as also for meeting the stamp duty and miscellaneous expenses as per affidavit Ex.P4. He waited for the whole day in the office of Sub-Registrar, Bhiwani but the defendant never turned up. Thereafter, legal notice Ex.P5 dated 23.7.2008 was also sent by the plaintiff to the defendant calling him upon to execute the sale deed in his favour.

17. Even in his pleadings as also in his statement made on oath as PW1, the plaintiff has clearly deposed that he continued to be ready and willing to perform his part of the contract. The lower court was right in coming to the conclusion that the plaintiff, respondent herein, has always been ready and willing to perform his part of the contract. The document being registered one also add sanctity of payment of receipt of Rs.2 lacs as earnest money by the plaintiff from the defendant. Legality and validity of the agreement cannot be disputed merely because an earlier agreement executed between the defendant and Rattan Singh, brother of the plaintiff had not resulted in sale. The appellant-defendant had miserably failed to bring on record the facts and circumstances by unimpeachable evidence that it was a case of fraud. If it was so, agreement to sell was executed on 17.4.2006. Payment of Rs.2 lacs was made as earnest money. Complaint could have been made to the police by the appellant-defendant and case could have been registered against the respondent-plaintiff. Even a civil suit for seeking declaration that agreement to sell of 17.4.2006 (Ex.P3) being allegedly laced with fraud and forgery was null and void but no such civil suit was filed by the defendant. Even when the suit was instituted by the plaintiff for specific performance of the agreement on 21.5.2008, the matter

could have been reported to the police or cancellation of the agreement by way of civil suit could be sought but no such steps were taken. Mere non-filing of a suit for execution of the sale deed pursuant to agreement to sell dated 11.10.2005 Ex.DW4/B by Rattan Singh, brother of the respondent-plaintiff ipso-facto would not be a ground to substantiate the claim of the appellant-defendant that the present registered agreement to sell proved by unimpeached evidence was result of a fraud.

18. Merely because the first appellate court has not re-appreciated and re-evaluated the evidence but was convinced with evaluation made by the lower court and had recorded such finding in clear and categorical terms, does not constitute a circumstance to set aside judgment of the first appellate court. There is neither misreading of evidence nor omission by the courts below to consider the relevant and material evidence led by the parties. As such, all the aforementioned three substantial questions of law are answered against the appellant-defendant.

19. Keeping in view the facts and circumstances, as mentioned earlier, no ground to interfere with the concurrent findings recorded by the courts below is made out. As such, affirming the impugned judgment and decree dated 12.6.2012 of the lower court as well as judgment and decree dated 22.3.2013 of the first appellate court, this regular second appeal, being devoid of any merit, is dismissed. Decree sheet be prepared.

(Dr. Bharat Bhushan Parsoon)
Judge

February 21, 2015
'Yag Dutt'

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