

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4766 of 2013(O&M)
Date of Decision: May 06, 2015

Gurbachan Singh

...Appellant

Versus

Tej Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Namit Gautam, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-defendant Gurbachan Singh has filed this regular second appeal against Tej Ram respondent-plaintiff, challenging the impugned judgment and decree dated 27.08.2013 passed by learned Addl. District Judge, Ambala, vide which the findings given by learned Addl. Civil Judge (Senior Division), Naraingarh in the judgment and decree dated 29.9.2011 granting alternative relief of ₹45,000/- to the plaintiff, are set aside/modified and suit of the plaintiff was decreed for specific performance of the agreement to sell.

The brief facts of the case are that Tej Ram plaintiff-respondent filed a suit against Gurbachan Singh for possession by way of specific performance of agreement to sell dated 12.10.2001 regarding 1/8th share out of total land measuring 8 kanals 0 marla as

fully described in the head note of the plaint with a consequential relief of permanent injunction restraining the defendant from creating charge, mortgaging, selling or alienating the suit land.

The case of the plaintiff is that defendant executed an agreement to sell dated 12.10.2001 with the plaintiff and received ₹45,000/- as earnest money and the sale deed was to be executed on 12.10.2002. The defendant after execution of the agreement, demanded ₹2000/- from the plaintiff with the understanding that this amount shall be adjusted at the time of final payment. As 12.10.2002 was Saturday and Sub Registrar Office remained closed, therefore, plaintiff requested the defendant to execute the sale deed on or before 11.10.2002 and on 11.10.2002 and 14.10.2002, plaintiff remained present in the office of Sub Registrar Naraingarh but defendant did not turn up. Later on, plaintiff came to know that the defendant had already mortgaged the land with the Bank as per rapat dated 01.02.1999.

On the other hand, the case of the defendant-appellant in the written statement is that he was in need of some financial assistance and he took a sum of ₹45,000/- from the plaintiff for one year with a promise to return the same along with interest and plaintiff as a security of the repayment of said loan, got the signatures of the defendant as well as signatures of witnesses on some blank papers. It is also the case of the defendant that in October 2002, after settling the account, ₹60,000/- was paid to the plaintiff (i.e. ₹45,000/- as principal amount and ₹15,000/- as interest). It is also stated that the

plaintiff used those blank stamp papers for preparing agreement to sell of the plot in question, which is only residential house of the defendant.

Learned Addl. Civil Judge (Senior Division), Naraingarh, decreed the suit for alternative relief of recovery of ₹45,000/- with interest @ 8% per annum. The plaintiff-respondent filed an appeal before the District Judge, Ambala and learned Addl. District Judge, Ambala decreed the suit of the plaintiff for specific performance of the agreement to sell vide judgment and decree dated 27.08.2013.

At the time of arguments, learned counsel for the appellant again argued as per the version given in the written statement that the agreement is result of fraud and signatures of the appellant-defendant were obtained on blank papers and he has returned the amount borrowed from the plaintiff.

After hearing learned counsel for the appellant and after going through the record, first of all, I find that against the findings of learned Addl. Civil Judge (Senior Division), Naraingarh, decreeing the suit of the plaintiff for alternative relief, no appeal was filed by the defendant-appellant before learned District Judge, Ambala. No cross-objections have been filed before learned Addl. District Judge by the defendant. Even in the grounds of appeal, appellant-defendant has not challenged the judgment and decree passed by learned Addl. Civil Judge. Only the judgment and decree passed by learned Addl. District Judge, Ambala has been challenged.

The perusal of the record shows that defendant-appellant

is admitting receiving of ₹45,000/- from the plaintiff-respondent. He is also admitting his signatures on the agreement to sell and stated in the written statement that these signatures were obtained on blank papers along with the signatures of witnesses. It is also in the evidence and discussed by learned Addl. District Judge, Ambala that stamp papers were purchased by the defendant. DW-2 Gurbachan Singh, in cross-examination admitted that he had purchased stamp papers and received the amount from Tej Ram. There is no documentary evidence on record regarding returning the amount as stated by defendant in the written statement. Furthermore, plaintiff-respondent has examined one attesting witness and other attesting witness has been examined by the defendant-appellant. DW-1 Paramjit Singh, attesting witness to the agreement, in cross-examination has admitted that Gurbachan Singh took ₹45,000/- from Tej Pal. He specifically stated that ₹45,000/- were given by Tej Ram to Gurbachan Singh after scribing and reading the agreement Ex.P1 in his presence as well as in presence of another attesting witness Randhir. DW-1 also stated in cross-examination that two conditions which were settled, were also scribed in Ex.P1, which means that defendant's own witness has admitted that this agreement to sell has been already scribed when it was signed and it was also read over to the defendant. In a suit for specific performance regarding immoveable property, generally it is to be decreed for specific performance of the agreement. There is no reason or ground as to why specific performance was declined by learned Addl. Civil Judge

(Senior Division), Naraingarh.

In view of the evidence discussed by learned Addl. District Judge, Ambala, it is clear that learned Addl. Civil Judge (Senior Division), Ambala while granting alternative relief, has not appreciated the evidence in right perspective. The perusal of the judgment and decree passed by learned Addl. District Judge, Ambala shows that the findings have been given as per the evidence and law. There is no cogent evidence on record regarding hardship as claimed by learned counsel for the appellant. The findings given by the First Appellate Court are correct, as per law and do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

May 06, 2015
Vgulati

(INDERJIT SINGH)
JUDGE