IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No.1205 of 2015 (O&M)
Date of decision : 30.06.2015

Ram Saran Dass Uppal

....**Appellant**

versus

Ajmer Singh

...**Respondent**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Atul Goyal, Advocate,
for Mr. Parvez Chugh, Advocate,
for the appellant.

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RITU BAHRI , J.

This appeal has been filed against the judgment dated 30.09.2014 passed by the Additional District Judge, Ferozepur, dismissing the appeal filed by the plaintiff-appellant against the judgment and decree dated 27.01.2012 passed by the Civil Judge (Junior Division), Zira, whereby his suit for specific performance of agreement to sell has been decreed with regard to alternative relief by holding him entitled to recover a sum of Rs.2,00,000/-, which was paid as earnest money.

Ram Saran Dass Uppal-plaintiff (appellant herein) filed a suit for specific performance alleging that Ajmer Singh-defendant (respondent herein) had entered into an agreement to sell dated 27.05.2003 with regard to his land measuring 19 Kanals 10 Marlas being ½ share of land measuring 39 Kanals, for a sale consideration of Rs.1,80,000/- per acre and had received a sum of Rs.2,00,000/- as earnest money from him. The sale deed was to be executed on or before 30.06.2005. On the stipulated date i.e. 30.06.2005, the plaintiff-appellant went to the office of Sub Registrar, Zira along with balance sale consideration, but, the defendant-respondent did not come present. Thereafter, the plaintiff-appellant got his presence marked before the Sub Registrar, Zira. Thereafter, he approached the defendant-respondent several times, but he refused to execute the sale deed in his favour.

Upon notice, defendant-respondent filed written statement and controverted the allegations levelled by the plaintiff. He denied the execute of the agreement to sell and alleged that it was a forged and fabricated document prepared by the plaintiff, who was carrying on the business of commission agent under the name and style of M/s RSD Uppal and Co. Commission Agents, Zira, in connivance with scribe and witnesses. It was submitted that defendant-respondent was customer of the above said firm for the last more than 10 years. In routine, he used to take some amount in advance for fertilizers etc., which was adjusted at the time of sale of agriculture produce by him in every harvesting season. He sold his crops through the above said firm even on 08.04.2008. There was a dispute with regard to payment of interest between the parties. Thereafter, the defendant-respondent stopped selling his crops to the plaintiff-appellant. Due to this reason, the plaintiff misused the blank signed papers and created a forged and fabricated agreement to sell.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the defendant executed an agreement of sale dated 27.05.2003? OPP
2. Whether the plaintiff is entitled for possession by way of

specific performance of agreement of sale dated 27.05.2003? OPP

3. If issue No.2 is not proved, whether the plaintiff is entitled to the recovery of Rs.4,38,750/- as damages and compensation for breach of agreement of contract? OPP
4. Whether the plaintiff is entitled to interest, if so, at what rate and on what amount? OPP
5. Whether plaintiff is entitled to permanent injunction prayed for in the heading of plaint? OPP
6. Whether the suit is not maintainable in the present form? OPD
7. Whether the alleged agreement of sale is forged and fabricated document? OPD
8. Whether the plaintiff has no cause of action to file the present suit? OPD
9. Relief.

Both the Courts below, after going through the evidence led by the parties, came to a conclusion that the land which was subject matter of the agreement to sell dated 27.05.2003, was located in village Gadriwala and cost of the said land was not less than Rs.15,00,000/- per acre, whereas the price of land as per agreement to sell in question was Rs.1,80,000/- per acre, which was the minimum price fixed by the Punjab Government. The agreement was executed on 27.05.2003 and the suit was filed just before the expiry of limitation of three years. No witness from the office of Sub Registrar, Zira was examined to prove that the plaintiff-appellant had got his presence marked in the said office on the relevant date. The willingness and readiness of the plaintiff-appellant remained unproved. The defendant-respondent had been selling his crops through the commission agency of the plaintiff for the last 10 to 12 years prior to 2008. Nothing remained due towards the firm, as on the backside of Ex.D1 it was mentioned that defendant had received Rs.79,424.86 paise from the firm of plaintiff-Ram Saran Dass Uppal for his agricultural produce and the balance entry of 'nil' was made by the firm when he received the said amount. The agreement to sell, Ex.P1, was thus, executed as security by the defendant with the plaintiff and was not for the purpose of selling the land at a meagre rate of Rs.1,80,000/- per acre, which was the minimum rate fixed by the Government of Punjab for registration of sale deed. Till the year 2008, the defendant-respondent was selling his crops regularly to the plaintiff-appellant, who was a commission agent and there was no occasion for the defendant-respondent to sell his land at a meagre price of Rs.1,80,000/- per acre.

After going through the judgments passed by both the Courts below, no irregularity, much less perversity, has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

30.06.2015
ajp