

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1330 of 2015(O&M)

Date of decision: 23.04.2015

Tejinder Pal Singh

.....Appellant

Versus

Shimla Rani

.....Respondent

CORAM:- HON'BLE MR.JUSTICE SHEKHER DHAWAN

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Present: Mr. Vikas Singh, Advocate for the appellant.

SHEKHER DHAWAN, J. (Oral)

The present Regular Second Appeal against judgment and decree dated 21.03.2015 whereby appeal filed against judgment and decree dated 10.01.2014 passed by the Additional Civil Judge (Sr. Divn.), Patiala was dismissed.

For convenience sake, hereinafter, reference to the parties is being made as per their status in the Civil Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that plaintiff-Smt. Shimla Rani had filed suit for specific performance of the

agreement to sell dated 29.07.2005. A sum of ₹1.5 lacs was paid as earnest money and balance amount of ₹2.5 lacs was to be paid on 01.10.2005. Despite legal notice, the defendant did not come forward to get the sale deed executed and, as such, the suit before the Court of first instance.

The defendant contested the suit taking the plea that Raj Kumar, husband of the plaintiff was good friend of the defendant and they used to take friendly loans from each other. On 29.07.2005, the defendant had taken a loan of ₹1.5 lacs from Raj Kumar in the presence of Harvinder Singh and Harish Kumar and in lieu thereof as a security, the plaintiff obtained signatures of the defendant without disclosing the contents of alleged document. The alleged agreement of sale is a forged document and result of fraud and mis-representation and prayed that suit be dismissed.

From these facts, the Court of first instance settled the following issues and put the parties to trial:

- “1. Whether the plaintiff is entitled to the specific performance of the contract/agreement dated 29.7.2005 regarding the suit property? OPP
2. Whether the suit is not filed by a competent authorized person? OPD
3. Whether the plaintiff is still ready and willing to perform his part of the agreement? OPP
4. Whether the suit is barred u/s 2 Rule 2 CPC? OPD

5. Whether the agreement in question is fraudulent and result of undue influence? OPD
6. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
7. Relief."

The Court of first instance after appreciating the oral as well as documentary evidence came to the conclusion that agreement Ex.P-1 was duly executed and suit for specific performance was decreed.

The defendant contested the suit before the Court of first appeal but remained un-successful. Hence, the present Regular Second Appeal.

Mr. Vikas Singh, learned counsel for the appellant took the plea that the present case was a benami transaction as Shimla Devi took the plea that the property was being purchased by her for her son-in-law and such a benami transaction cannot be protected. In support of his arguments, learned counsel for the appellant placed reliance upon judgment from Hon'ble Madhya Pradesh High Court in case of **Jagdish Prasad Agarwal and another Vs. Raj Kumar**, 2006(3) RCR (Civil) 394 wherein observations made by Hon'ble Madhya Pradesh High Court.

Per contra learned counsel for the appellant, as per Section 2 of the Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as 'the Act'), benami

transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person. As in this case, Smt. Shimla Devi was to purchase the property for her son-in-law, it was a case of benami transaction and such an agreement cannot be legally ordered to be specifically enforced.

Learned counsel for the appellant also took the plea that the payment was made in dollars and, as such, it was not a case of legal tender. There was no readiness and willingness on the part of the plaintiff but both the Courts below completely ignore these facts.

Having considered the contentions raised by learned counsel for the appellant, this Court is of the considered view that the execution of agreement has not been denied because the defendant admit his signatures on agreement Ex.P-1. Learned Courts below have rightly recorded the findings that the defendant estopped from challenging the capacity of the plaintiff especially when the agreement Ex.P-1 was duly executed. The plea regarding benami transaction was not taken. More so, it was not a case of benami transaction as the defendant never came forward to execute the sale deed in terms of compromise Ex.P-1 and the sale transaction had not taken place as yet.

As regards to payment of earnest money having

been made in dollars, the parties could object at the time of payment of money by way of earnest money but that has not been done. The readiness and willingness on the part of the plaintiff is evident from the record and both the Courts below have already appreciated these facts.

The concurrent findings recorded by both the Courts below do not make out a case for interference by way of the present Regular Second Appeal as no substantial question of law is involved in this case. It is a mere case of appreciation of facts and oral evidence available on the file and that has already been done by both the Courts below.

Hence, the present appeal is without any merit and stands dismissed.

April 23, 2015
jt

(SHEKHER DHAWAN)
JUDGE