

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

**Regular Second Appeal No.1867 of 2015 (O&M)
Date of decision : 13.05.2015**

Ram Swarup

....Appellant

versus

Ramdev

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. J.P. Sharma, Advocate,
for the appellant.

RITU BAHRI, J.

Plaintiff-appellant has come up in regular second appeal against the judgments and decrees dated 12.10.2012 and 27.02.2015 passed by the Additional Civil Judge (Senior Division), Narnaul and Additional District Judge, Narnaul respectively, whereby his suit for specific performance of the agreement to sell dated 11.06.2001, has been dismissed. However, the defendant was directed to pay the amount of Rs.1,25,000/- to the plaintiff-appellant along with interest @ 12% per annum from 12.6.2003 till its realization within a period of three months.

Plaintiff-appellant filed a suit for specific performance alleging therein that the defendant-respondent had executed an agreement to sell dated 11.06.2001 with regard to the land measuring 10 Kanals for a consideration of Rs.1,60,000/-, out of which, Rs.1,25,000/- were paid as

earnest money in the presence of attesting witnesses. The remaining amount of Rs.35,000/- was agreed to be paid on the date of execution of the sale deed i.e. 12.06.2003. It was further agreed that in case the defendant returned the amount of Rs.1,25,000/- to the plaintiff-appellant before the date of execution of the sale deed, then the agreement to sell in question would stand cancelled. On 12.06.2003, the plaintiff-appellant was present in the office of the Sub Registrar along with balance sale consideration and stamp papers etc., but the defendant had failed to appear and execute the sale deed in his favour. A legal notice dated 10.05.2006 was issued upon the defendant to get executed the sale deed within 15 days, but to no avail.

Upon notice, defendant-respondent appeared and filed separate written statements while controverting the allegations levelled by the plaintiff in his suit. The execution of the agreement to sell dated 11.06.2001 was specifically denied. It was submitted that the defendant used to take loan from the plaintiff and his brother Dev Karam before 1995-96 on interest. The plaintiff by taking advantage of weak financial condition illiteracy of the defendant, used to take his signatures on stamp papers, pronote and other blank papers. It was stated that about 1½ years ago, the defendant had returned the loan amount to the plaintiff, whereupon the plaintiff told him that an amount of Rs.33,000/-was still remained to be paid on account of interest. The defendant agreed to pay the said amount, whereupon the plaintiff made him to sign on blank papes, forms and stamp papers etc. Thereafter, the plaintiff forged the agreement to sell dated 11.06.2001. The defendant never intended to sell his land in favour of the plaintiff.

From the pleadings of the parties, following issues were

framed:-

1. Whether there was an agreement to sell dated 11.06.2001 for a valuable consideration and sale deed was to be executed on or before 02.03.2003 as alleged? OPP
2. Whether the plaintiff has been ready and willing to perform his part of contract on payment of balance sale consideration as prayed for? OPP
3. Whether the plaintiff is entitled to decree of specific performance of contract as prayed for? OPP
4. Whether the present suit is not maintainable? OPD
5. Whether present suit is hopelessly time barred? OPD
6. Whether plaintiff has no locus standi to file the present suit? OPD
7. Whether plaintiff has no come in the Court with clean hands and concealed the true and material facts? OPD
8. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
9. Relief.

Both the Courts have dismissed the suit filed by the plaintiff-appellant and returned the concurrent findings of fact that the agreement to sell dated 11.06.2001 (Ex.P1) was the result of loan transaction, wherein a condition was stipulated that in case the defendant-respondent returns back Rs.1,25,000/- up to 12.06.2003, the agreement (Ex.P1) would stand cancelled. There was no intention of the parties to carry out the agreement to sell dated 11.06.2001 and the presence of the appellant-plaintiff before the Sub Registrar, as per affidavit (Ex.P2) attested by the Executive

Magistrate, Nangal Chaudhary, would not be sufficient to prove that the agreement (Ex.P1) was entered into by the parties for the purpose of sale deed qua the land in question. Both the Courts have taken into consideration the earlier loan transactions between the parties. Legal notice dated 03.05.1999 which was sent by the defendant-respondent to the plaintiff shows that one agreement to sell dated 16.03.1996 was executed by the present defendant in which it was agreed that the defendant-respondent would alienate 18 Kanals of land for a sum of Rs.3,59,000/-. It was also agreed that in case the present defendant-respondent paid his debt, then the agreement to sell dated 16.03.1996 would stand cancelled. While giving reply to the said notice, the plaintiff-appellant had admitted that the agreement to sell dated 16.03.1996 stood cancelled and the defendant had executed a fresh agreement to sell dated 22.06.1998 for sale of 16 Kanals of land for a sum of Rs.2,50,000/- in which, it was again agreed that in case defendant-Ramdev returned the earnest money of Rs.1,76,000/- to the plaintiff, then the said agreement would stand cancelled.

The above agreements show that earlier also, the defendant-respondent and the plaintiff-appellant had loan transactions and similar conditions were imposed in the earlier agreements to sell that on repayment of the amount taken, the agreements would stand cancelled.

The agreement to sell (Ex.P1) was executed on 11.06.2001 and the stipulated date for returning the amount was fixed 12.06.2003. In the plaint itself, the plaintiff-appellant had admitted the factum of earlier transactions between the parties. Hence, the agreement (Ex.P1) was merely a loan transaction document and suit for specific performance has been rightly dismissed by both the Courts below.

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

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

13.05.2015
ajp