

In the High Court for the States of Punjab and Haryana, at
Chandigarh

...

RSA-369-2015(O&M)

Date of decision: 30.01.2015

Joginder Singh

Appellant

Versus

Palwinder Singh and another

..Respondents

Coram: **Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Mr. J.S.Brar, Advocate
for the appellant.

Mahavir S.Chauhan, J.(Oral)

Judgment/decreed dated 23.9.2014 of the learned Additional District Judge, Ferozepur (for short,"first Appellate Court") allowing appeal of respondents herein which was brought by them against judgment/decreed dated 30.5.2013 decreeing their suit for recovery of amount instead of grant of decree for specific performance is under challenge in this Regular Second Appeal brought by the vendor (defendant).

I have heard learned counsel for the appellant.

Learned counsel for the appellant has argued that there is ample evidence on record to show that the agreement to sell dated 19.5.2003 is a forged and fabricated document and there is no evidence whatsoever to show that the vendees (plaintiffs) have been ready and willing to perform their part of the agreement. According to learned counsel, the learned first Appellate Court has wrongly

exercised its discretion to grant relief of specific performance of the aforesaid agreement by ignoring the above stated facts.

A perusal of the judgments/decrees recorded by the courts below would reveal that the plaintiffs had approached learned Additional Civil Judge (Senior Division), Zira for possession of the suit property by specific performance of agreement of sale dated 19.5.2003 by alleging that the vendor (defendant) vide aforesaid agreement had agreed to sell the suit property to them for a consideration of Rs. 1,27,500/- and had received an amount of Rs.1,00,000/- as earnest money at the time of execution of the agreement. The necessary sale deed was agreed to be executed and registered on 1.6.2004 which was later on extended up to 1.6.2006 but on the appointed day, the vendor did not come present to perform his part of the agreement whereas vendees remained present in the office of Sub Registrar along with sufficient amount of money to pay the balance amount of consideration and to meet expenses of execution of the sale deed.

The suit was contested by the vendor by filing a written statement wherein it was, inter alia, stated that the agreement of sale put up on behalf of the vendees was false and forged document as the defendant did not execute any such agreement.

Learned trial Court formulated issues. Parties adduced evidence and were heard by the learned trial Court. While returning findings in favour of the vendees as regards due execution of the agreement dated 19.5.2003 by the vendor(defendant), learned trial

Court came to the conclusion that the vendees were not able to prove their readiness and willingness to perform their part of agreement and accordingly vide judgment/decreed dated 30.5.2013 while declining relief of specific performance of the agreement to sell, decreed vendees suit for recovery of amount of earnest money along with interest at the rate of 6% per annum. The matter was taken in appeal by the vendees and learned first Appellate Court vide judgment/decreed dated 23.9.2014 came to the conclusion that the vendees had proved execution of the agreement; plea of readiness and willingness of the other side was not available to the vendor and accordingly decreed the suit of the vendees for specific performance of the agreement to sell dated 19.5.2003.

In view of the fact that the findings were recorded by the learned trial Court in favour of the vendees as regards execution of agreement to sell dated 19.5.2003 by the vendor(defendant) and were not challenged by them by filing cross-appeal or cross objections, the contention with regard to execution of the said agreement to sell, in my opinion, is not available to the appellant.

Learned counsel for the appellant has relied upon ***Thiruvengada Pillai*** versus ***Navaneethammal & Anr.***,2008(2) R.C.R. (Civil) 262 to contend that in this case though no appeal was filed by the defendant-vendor against the judgment/decreed of the learned trial Court, the Hon'ble Supreme Court reversed the findings recorded by the High Court as regards execution of the agreement to sell. The judgment, in my view, is of no help to the plea of the

appellant for the simple reason that in this case, suit of the plaintiff was dismissed by the learned trial Court after having come to the conclusion that the agreement of sale put forth by plaintiff was false and must have been created after the sale on 11.2.1980 in favour of second defendant, by using some old stamp papers in his possession and that being so, there was no occasion for the defendant to file an appeal against the judgment of trial Court.

In the case, in hand to the contrary, a very specific finding has been recorded by the learned trial Court as regards execution of the agreement to sell by the appellant in favour of respondents and by not filing an appeal/cross appeal/cross objections, the appellant is deemed to have accepted the correctness of findings so recorded by the learned trial Court. This, in my view, cannot be reopened in regular second appeal.

As regards readiness and willingness of the vendees, suffice it to say that in a case where vendor-defendant denies, execution of the agreement to sell, plea of readiness and willingness of the other side is not available to him and mere statement of the plaintiff that he is ready and willing to perform his part of the agreement is sufficient to reach the conclusion about readiness and willingness of the vendee to perform his part of the obligation.

Nothing to the contrary is shown during the course of hearing of the appeal. Furthermore, the appeal is not shown to involve any question of law; much less a substantial one.

Consequently, I regret my disinclination to interfere with

the findings of the first appellate Court.

Dismissed.

No costs.

January 30,2015
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(MAHAVIR S.CHAUHAN)
JUDGE