

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

107

Regular Second Appeal No.1721 of 2014 (O&M)

Date of Decision: December 17, 2015

Raj Kumar

...Appellant

Versus

Sushil Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Pritam Saini, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Naraingarh, dated 19.02.2011, whereby the suit for a decree for specific performance by execution and registration of the sale deed in terms of the agreement dated 12.09.2003 in respect of land measuring 2 kanals 3 marlas as described in the head note of the suit, land measuring 1 kanal 13 marlas and 1 kanal 14 marlas further described in the head note of the suit, in all measuring 5 kanals and 10 marlas along with other attachments to the land, situated in village Naraingarh, Hadbast No.88, Tehsil Naraingarh, District Naraingarh, for a total consideration of ₹8,25,000/- and on payment of the balance consideration of ₹7,00,000/- with consequential relief, stands decreed, appeal against which preferred by the appellant-defendant stands dismissed by the Additional District Judge, Ambala, on 07.11.2013.

2. It is the contention of learned counsel for the appellant that the agreement to sell dated 30.07.2004 is a forged and fabricated document as the said agreement has been got prepared by the respondents-plaintiffs on blank papers on which signatures were taken of the appellant-defendant on

the pretext of enlarging him loan of ₹25,000/-. He contends that the agreement to sell Exhibit P-1 which has been placed on record, is a laminated document, where backsides of the two papers have been pasted and got laminated. His assertion is that on the backside of the first page of the stamp paper, there was a receipt executed by the appellant-defendant that he had received an amount of ₹25,000/- as loan from the respondents-plaintiffs. He contends that an application was also moved for removal of the lamination so that the truth could be exposed before the trial Court but the said application has been dismissed. This plea was taken in the Lower Appellate Court also but the same has not been duly considered. Since, this aspect goes to the root of the stand of the appellant-defendant, the Court should have taken appropriate steps to find out the truth. He contends that the appellant-defendant has been denied the benefit of bringing out the truth by the action of the Courts below. That apart, he contends that the suit of the respondents-plaintiffs is delayed and filed after a period of almost two years five months from the date which was fixed for the execution of the sale deed and this also indicates that in fact loan had been given to the appellant-defendant and when he was unable to pay the said loan, the blank stamp papers have been converted into an agreement to sell and the suit filed. He accordingly contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. I have given my thoughtful consideration to the arguments, as has been raised by the counsel for the appellant and with his able assistance, have gone through the impugned judgments and the summoned records of the Courts below but do not find any merit in the same.

4. The first contention, as has been raised by the counsel for the appellant, is that the appellant-defendant has, in fact, taken a loan of ₹25,000/- from the respondents-plaintiffs on 12.09.2003 for which he had executed a receipt on the backside of the stamp paper which was bought by him. This contention of learned counsel for the appellant could have been considered had this been a specific stand with reference to the agreement to sell dated 12.09.2003 Exhibit P-1 from the very inception. Learned counsel for the appellant has referred to the application dated 01.02.2011 which had been moved by the appellant-defendant before the trial Court. A perusal of the same does indicate that such an assertion was made but the order dated 19.02.2011, as has been passed by the trial Court, speaks for itself as to why the said application was not allowed. The same reads as follows:-

“4. Issues in this case were framed on 7.3.2007 and the evidence of the plaintiff was concluded on 15.12.2009. Thereafter case was fixed for evidence of defendant. Evidence of defendant was closed on 13.12.2010 and thereafter the case was fixed for rebuttal evidence and arguments. No such plea was taken earlier. When the case was fixed for rebuttal evidence it was at this stage the present application for issuing directions to plaintiff to remove lamination was filed. Defendant has moved this application in anticipation that there may be some writing on the back of agreement showing payment of Rs.25000/-. No such application is maintainable at this stage. Defendant has failed to convince the court how this fact which is purely matter of knowledge was not within his knowledge that receipt was executed earlier. Therefore, the present application is nothing the process to delay the proceedings and accordingly stand dismissed”.

After going through this order, the counsel for the appellant was requested to take the Court to the cross-examination of the plaintiff No.1-Sushil Kumar, who appeared as PW-6 to confirm as to whether in

cross-examination any question has been put to him with regard to the said document and on the backside of the front page of the stamp paper having an executed receipt, as has been asserted by the appellant-defendant in the grounds of appeal and the application which was moved before the trial Court but there is no such question put to the respondent-plaintiff No.1. This clearly shows that it is an afterthought of the appellant-defendant. The argument, thus, of the counsel for the appellant, cannot be accepted as regards the document Exhibit P-1.

5. As regards the assertion of the counsel for appellant that there has been delay on the part of the respondents-plaintiffs in filing the present suit, suffice it to say that the said suit is well within limitation as the limitation prescribed under the statute is three years from the date fixed for execution of the sale deed which was 30.07.2004, whereas the suit has been filed on 24.12.2004.

6. The assertion of the counsel for the appellant that the appellant-defendant had not executed the agreement to sell, cannot be accepted in the light of the fact that the respondents-plaintiffs have been able to prove the due execution of the agreement to sell and the receipt of a sum of ₹1,25,000/- as earnest money on the basis of the statement of the attesting witnesses namely Bachan Singh PW-1 and Desh Bandhu PW-2 apart from his own assertion.

7. That apart, a suit No.172 was preferred by the son of the appellant-defendant Raj Kumar for permanent injunction restraining the appellant-defendant from alienating, transferring or mortgaging the land as is the subject matter of the present suit on 21.07.2004 Exhibit P-4, wherein in para 2 thereof, it was specifically mentioned that the appellant-defendant

had entered into an agreement to sell with regard to the property in dispute in favour of the respondents-plaintiffs herein and the due execution on the basis of an agreement to sell. The said agreement to sell has not been disputed or denied in the written statement dated 16.08.2004 Exhibit P-8 filed by the appellant-defendant herein, rather in para 4 of the written statement, he has pleaded that he being owner in possession of the property, can alienate the same and in para 8 thereof, it is mentioned that his son Ravi Garg and others, who had preferred the suit, has no cause of action against him. This clearly establishes the due execution of the agreement to sell dated 12.09.2003 Exhibit P-1.

8. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

9. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.4217-C of 2014, stands disposed of as infructuous.

December 17, 2015

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**