115.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.5587 of 2015 (O&M)
Date of decision:21.10.2015

Ram Singh ... Appellant

versus

Ram Kumar .... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Parduman Yadav, Advocate, for the appellant.

K.Kannan, J. *(Oral)*

1. The plaintiff, who secured a decree for specific performance, suffered a setback in the appellate court in the appeal filed by the defendant. The appellate court declined the relief of specific performance and provided for refund of the amount which was stipulated as having been received by the defendant. In so doing, the appellate court found that the real relationship between the parties was only that of a creditor and debtor and not as a purchaser and vendor. The particular facts giving rise to such inference are as follows.

2. The suit was for an enforcement of an agreement of sale executed on 12.06.2004 in respect of 16 kanals of land for a consideration determined at ₹2 lakh per acre. As per the recitals in the document, an amount of ₹1,20,000/- had been paid as advance

and the balance was required to be paid on or before 15.09.2004. The plaintiff did not get the sale on the date fixed but allowed himself an extension after making a further advance of ₹30,000/-. The time was extended was performance upto 15.06.2005. Again, the sale was not taken on that date and the plaintiff had paid a further advance of ₹20,000/- and took an extension upto 15.01.2006. The plaintiff would contend on the date which was fixed for payment of the balance, the plaintiff was ready and willing but the defendant did not come present and hence, the plaintiff felt constrained to sue for specific performance.

3. The defence was that even on the date on 12.06.2004 for the amount as specified under the document, namely, ₹1,20,000/- was paid by the plaintiff to the defendant. The defendant's contention was that even earlier the defendant had borrowings with the plaintiff and on 29.11.2002 when the defendant had borrowed ₹1 lakh, he had obtained an agreement of sale and that was brought to trial as Mark A. The defendant's contention was that he repaid ₹50,000/- in July, 2003 and made a further repayment of ₹30,000/- in August. He could not repay the entire amount borrowed with interest as stipulated at 2% interest per annum and for a further borrowing of ₹50,000/- made on 23.10.2003, the plaintiff obtained yet another agreement. This agreement was also not enforced and on 12.06.2004, the plaintiff calculated the amounts outstanding as

due and payable by the defendant at ₹1,20,000/- and got the suit agreement executed.

4. To prove the contention that no amount was paid on 12.06.2004, the defendant relied on the admissions of PW2-Puran Ram, Lambardar, who in the cross-examination admitted that no money transaction took place between the plaintiff and the defendant in his presence. PW3 Puran Chand had also admitted that there was no money transaction that took place in his presence. If the amounts had not been paid on the day on 12.06.2004, it only proved what the defendant was contending for, namely, that the liability recited in the document was a culmination of liability that arose out of the initial borrowing of ₹1 lakh on 29.11.2002. That there was a nexus between the transactions was also clearly brought out by the production of two earlier agreements dated 29.11.2002 and 23.10.2003. The existence of all these documents showed that the plaintiff was merely using an agreement as an instrument in terrorem and to ensure that the defendant felt compelled to offer the property itself as security for the loan.

5. The appellate court made reference to the existence of earlier documents on 29.11.2002 and 23.10.2003 as proof of the defendant's indebtedness between the plaintiff and the defendant commencing from 2002 itself and that the fact that no amount had been paid on 12.06.2004 was being vouched by the evidence of the

plaintiff's witnesses PW2 and PW3. The court found, therefore, that there was no reason to extend the discretionary relief for specific performance to the plaintiff and treating the amounts recited as constituting the liability by the defendant that was still established provided for a decree for a return of money only.

6. I do not find that the the judgment of the court below contains any error in appreciation for a favourable consideration to the plaintiff. The learned counsel argues that the agreement does not state anywhere that the amount was for advances as security. I would reckon this to be a naïve argument, for, the person, who obtains an agreement, will not foolishly allow a recital as though it is a bond or a debt instrument for security. We can only gather from the attendant circumstances that a document styled as an agreement was not intended to be acted upon as such and that it was an instrument for recovery of money in terrorem. There was sufficient circumstance that allowed for such inference which we have already outlined above.

7. The judgment of the lower appellate court is correct and the discretion has been correctly applied. I will see no scope in second appeal. Second appeal is dismissed.

(K.KANNAN)
JUDGE

21.10.2015
sanjeev