IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.4439 of 2009 (O&M)
Date of decision: 02.05.2016

Raj Kumar ..Appellant

Versus

Fatey Mohammad ..Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashish Gupta, Advocate for
Mr. Rakesh Gupta, Advocate
for the appellant.

Mr. Gaurav Sharma, Advocate for
Mr. R. K. Sharma, Advocate
for the respondent.

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Jitendra Chauhan, J.

In this regular second appeal, the appellant-plaintiff has challenged the judgment and decree dated 11.06.2009 of District Judge, Faridabad partly allowing the appeal filed by the respondent-defendant against the judgment and decree dated 31.10.2008 of Civil Judge (Jr. Divn.), Faridabad, decreeing the suit of the appellant-plaintiff for specific performance of agreement to sell dated 21.10.2003.

It is contended by learned counsel appearing on behalf of the appellant that the signatures on the agreement to sell, Ex.P1 and receipt, Ex.P2 are duly admitted and proved by the respondent. There is no averment or allegation raised by the respondent that any forgery was committed by the appellant. The learned counsel states that the appellant had always been ready and willing to execute the agreement to sell.

The learned counsel for the respondent states that the appellant is a money lender and the respondent being a small farmer, used to secure loan from the appellant. He refers to Ex.D6 and Ex.D7, agreements executed in the years 2000 and 2005, respectively, between the parties with regard to the same property. Further, states that as against asserted amount of Rs.77,000/- as earnest money, in fact the respondent raised a loan of Rs.40,000/-.

I have heard the learned counsel for the parties and perused the entire record on file.

The learned trial Court decreed the suit of the plaintiff for specific performance while placing reliance upon an agreement to sell, Ex.P1. However, the learned Ist Appellate Court after reappraisal of the oral and documentary evidence reached at the conclusion that the appellant is a money lender and used to get documents purported to be agreements for sale from the loanee and when the loan amount was not repaid, he would use it and file a suit. The dispute pertains to the agreement to sell, Ex.P1. The appellant alleged that he had entered into an agreement with the respondent for a total sale consideration of Rs.2,12,000/- on 21.10.2003 and paid Rs.77,000/- as earnest money. The target date was finalized to be 27.10.2004. On reappraisal of the evidence, this Court feels that the assertion made by the learned counsel for the respondent is not without any basis. Similar agreements pertaining to the years 2000 and 2005 (Ex.D6 and Ex.D7), were entered into between the parties, which make it amply clear that the parties had no intention to execute the agreement to sell rather it was a loan transaction like the previous years.

In view of the categoric findings that the appellant is a money lender and the fact that the similar agreements had been entered into between the parties, the arguments put forth by the learned counsel for the appellant to the extent of readiness and willingness do not hold any ground. This Court is not oblivious of the fact that very often the money lenders exploit the poor illiterate farmers. The documents, Ex.D6 and Ex.D7 are clearly suggestive of the fact that there was no intention to transfer the land in question. Relief of specific performance of contract is a discretionary relief. Such relief is not automatic. In **Tejram Vs. Fati Ram Bhau**, AIR 1997 (SC) 2702, Hon'ble the Supreme Court held as under:

> "Where there were many transactions between the appellant and the respondent and

> the respondent being a money lender had taken documents purporting to be agreements for sale from the loanee in that case, the respondent waited for three years for issuing notice and filing a suit, it was held that the ends of justice would be met if the amount so received was directed to be repaid."

The facts of the instant case are squarely covered by the ratio of law laid down in **Tejram Vs. Fati Ram Bhau (supra)**. In this view of the matter, this court is of the considered opinion that the suit of the appellant for specific performance of the agreement has been rightly dismissed by the Ist Appellate Court, therefore, the judgment and decree dated 11.06.2009, passed by the learned Ist Appellate Court for recovery of Rs.40,000/- along with interest at the rate of 7.5% per annum are hereby affirmed with modification to the extent that it shall be from the date of filing the present appeal to its realization. The learned counsel for the appellant undertakes to make the entire payment within three months from the receipt of the certified copy of the judgment.

The judgment and decree of the learned Ist Appellate Court are modified to the extent indicated above.

02.05.2016 **(JITENDRA CHAUHAN)**
ashok **JUDGE**