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

CM No.4239-C-2013 in/and
RSA No.1593 of 2013
Date of Decision :25.04.2016

Leeladhar ....Appellant

Versus

Mohan Lal and Others ....Respondents

Coram Hon'ble Mr. Justice Amol Rattan Singh.

Present: Mr.Zorawar Singh, Advocate, for the appellant.

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Amol Rattan Singh, J.

This is the second appeal of the plaintiff who filed a suit for specific performance of an agreement to sell, entered into between him and respondent-defendant No.1-Mohan Lal, on 31.08.1998.

As per the said agreement, the defendants are stated to have a 3/5th share of a house, the site plan of which is stated to have been attached with the plaint. It was the said 3/5th share that the agreement to sell was entered into, wherein respondent-defendant No.1 had a 1/5th share and the remaining part of the 3/5th share, is stated to be that of respondents-defendants No.2 and 3.

The total sale consideration was settled to be Rs.1,75,000/-, of which Rs.1 lac is stated to have been given in advance by the appellant-plaintiff to respondent No.1, at the time of entering into the agreement, on 31.08.1998. The sale deed was to be executed by 15.11.1998, upon payment of the remaining consideration of Rs.75,000/-.

As per the case set up by the appellant/plaintiff, he was always ready and willing to perform his part of contract, but with the respondents-defendants not willing to execute the sale deed, a legal notice is stated to have been got issued on behalf of the plaintiff on 09.11.1998, after which he is stated to have also gone to the office of the Sub-Registrar(Bawal) on 13.11.1998 and 16.11.1998, with 14.11.1998 and 15.11.1998 being holidays. The respondents however did not turn to execute the sale deed.

(2) Upon notice of the suit being issued by the learned Civil Judge, (Jr.Divn.) Rewari, respondent-defendant No.1 appeared and filed his written statement, taking preliminary objections with regard to the maintainability etc. and also taking a plea of estoppel, further contending that only an oral agreement with regard to the sale of 1/3rd share in the suit property had been entered into with the plaintiff, for which Rs.75,000/- still remained to be paid.

It was further contended that taking advantage of the relationship between the parties, the plaintiff in collusion with the witnesses, got the signatures of defendant No.1 on the agreement dated 31.08.1998.

(3) Upon the above pleadings filed, the following issues were thereafter framed by the learned Civil Judge:

(1) Whether the defendant No.1 on his behalf and defendants No.2 and 3 being their General Power of Attorney entered into the agreement to sell in favour of plaintiff on 31.08.1998 for the sale consideration of Rs.1,75,000/- as prayed for? OPP

(2) Whether the plaintiff is still willing and ready to perform his part of contract? OPP

(3) Whether the suit has been filed by duly authorized person? OPP

(4) Whether the sale is enforceable in the eyes of law? OPD

(5) Whether the present suit is bad for non-joinder of necessary parties? OPD

(6) Whether the plaintiff has got no cause of action to file the present suit? OPD

(7) Whether the suit of the plaintiff is liable to be rejected under Order 7 Rule 11 CPC? OPD

(8) Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD

(9) Whether the defendants No.2 and 3 have not executed any GPA in favour of defendant No.1 regarding their share in the suit land? OPD.

(10) Relief.

(4) After considering the evidence led on both sides, that learned Court came to the finding that though the plaintiff claimed that a power of attorney had been executed by respondents-defendants No.2 and 3 in favour of respondent-defendant No.1, no such power of attorney was proved and in fact, an FIR had also been registered by the appellant on that count, i.e. with regard to an allegedly fraudulent transaction having been entered into by the respondents.

Consequently, finding that there was no power of attorney with respondent No.1 to sell the share of respondents No.2 and 3, the suit of the plaintiff was dismissed.

(5) In the appeal filed before the First Appellate Court, by the present appellant-plaintiff, on appraising the same evidence, that Court also came to the same conclusion but reversed the judgment and decree of the lower Court to the extent that respondent-defendant

No.1-Mohan Lal was held bound to his part of the agreement to sell his $1/5^{th}$ share in the suit property to the appellant-plaintiff.

The entire sale consideration for the said share having been taken to be paid, being less than Rs.1 Lac paid as earnest money, for the said $1/5^{th}$ share, it was further held that the remaining amount as was, proportionately, over paid, would be refunded to the plaintiff-appellant by respondent-defendant No.1.

(6) Before this Court, learned counsel for the appellant submitted that the finding of the lower Court with regard to the relationship between the parties not being cordial is actually an incorrect finding and as such, the first respondent having entered into an agreement on behalf of respondents No.2 and 3, would not be an unnatural act, or an unnatural consequence of such relationship.

However, he is unable to deny the fact that no power of attorney executed by respondents No.2 and 3 in favour of respondent No.1, could be proved before the Courts below.

He further submits that because of the alleged fraud played upon him the appellant had registered an FIR against the first respondent, which further proved that there was actually an agreement to sell qua $3/5^{th}$ rather than only $1/5^{th}$ of the suit property.

(7) Having heard learned counsel, whereas, the criminal proceedings against respondent No.1 would take their natural course as per law, with regard to any fraud as alleged, if proved, however once it is proved that no power of attorney was ever executed by respondents No.2 and 3 in favour of respondent No.1, on the basis of which the first respondent could sell their share in the property, I find absolutely no

error in the findings of the learned lower appellate Court, by which respondent No.1 has been held liable to execute the agreement to sell in favour of the appellant/plaintiff, qua 1/5th of the suit property as falls to his share, further holding that is no privity of contract between the appellant and the said respondents.

Consequently, finding no merit in this appeal, it is dismissed in limine, with no order as to costs.

25.04.2016 **(Amol Rattan Singh)**
anil **Judge**