

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-1155-2016(O&M)

Date of decision : 25.10.2016

Rajiv Malhotra

... Appellant

Versus

Vinod Ajmani

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Vinod S. Bhardwaj, Advocate
for the appellant.

AMOL RATTAN SINGH, J.

This is the second appeal of the defendant in a suit filed by the respondent-plaintiff (hereinafter referred to as the “plaintiff”) seeking specific performance of an agreement of sale dated 12.10.2003, stated to have been entered into between the parties in respect of a property bearing house no.1683, Housing Board Colony, Sector 10, Ambala City, measuring 70 square yards. The plaintiff also sought a consequential relief of permanent injunction restraining the defendant-appellant herein(hereinafter referred to as the “appellant”) from alienating, transferring, or encumbering the suit property in any manner.

The suit having been decreed in favour of the plaintiff and the first appeal filed by the appellant having been also dismissed, this second appeal has been filed.

2. As per the plaintiff, the appellant being owner in possession of the suit property (a house), allotted to him in 1995 by the Housing Board,

Haryana, an agreement was entered into for the sale/purchase of the said property on 12.10.2003, with the consideration having been settled at Rs.2,20,000/-.

The agreement was stated to have been duly signed by the parties in the presence of witnesses and a sum of Rs.2 lacs was stated to have been paid by the plaintiff to the appellant, as part performance of the agreement, with a recital to the effect of receipt of the money, having been made at the end of the agreement itself.

Physical possession of the house was also stated to have been handed over to the plaintiff on the same date, i.e. 12.10.2003, with the last date of execution and registration of the sale deed fixed as 12.02.2005, on payment of the balance sale consideration of Rs.20,000/-.

3. However, it was further stated in the plaint, that on 10.02.2005, the appellant approached the plaintiff informing him that he was unable to obtain the no objection / transfer certificate in favour of the plaintiff, as he had not deposited the remaining installments with the Housing Board, Haryana, in respect of the suit property. The reason for the same was stated to have been given as some domestic problems with the appellant, who further is stated to have assured the plaintiff that he would obtain the certificate at the earliest.

Consequently, the date of execution of the sale deed was extended to 12.08.2006, with an endorsement to that effect made behind the instrument of agreement earlier executed on 12.10.2003.

It was still further contended that 12.08.2006 and 13.08.2006 being a weekend, the plaintiff went to the office of the Sub Registrar on 14.08.2006, after informing the appellant of the same vide a letter dated

28.07.2006. As such, it was contended that the plaintiff remained present in the office of Sub Registrar along with the balance sale consideration and other requisite expenses, but the appellant did not reach there and hence the plaintiff got his presence marked in the office, by making an application and executing an affidavit, which were allegedly returned to him (by the office of the Sub Registrar), on the ground that there was no such provision for marking the presence of any person, in the Registration Manual.

Thereafter, the appellant is stated to have been served with a legal notice also, but to no avail and therefore, contending that he was still willing to perform his part of the agreement, and having already requested the appellant to get the sale deed executed, with no response thereto, the suit was filed on 22.08.2007.

4. Notice having been issued to the appellant herein, he filed a written statement controverting the contents of the plaint and taking preliminary objections on maintainability, cause of action and the suit being false and frivolous.

The agreement dated 12.10.2003 itself was denied, as was any money stated to have been paid by the plaintiff.

On merits, the appellant denied being even willing to dispose of his house but admitted that he was its owner, in actual physical possession.

The agreement dated 12.10.2003 being forged and fabricated document was also alleged, further contending that the plaintiff is a financier and that the appellant had actually received only Rs.20,000/- as a loan, which had already been returned to the plaintiff, who obtained the signatures of the appellant on some blank papers and thereafter started blackmailing and harassing him.

Handing over of the possession of the house was also denied, as were other averments made in the plaint.

5. From the aforesaid pleadings the following issues were framed by the learned Civil Judge (Senior Division), Ambala:-

“1. Whether the plaintiff is entitled to the decree of possession by way of specific performance of agreement to sell dated 12.10.2003 in respect of the suit property detailed in the head-note of the plaint, as prayed for?OPP

2. Whether suit of the plaintiff is not maintainable in the present form?OPD

3. Whether the plaintiff has no cause of action to file the present suit?OPD

4. Relief.”

6. The plaintiff examined himself as PW1, one Ashok Bhutani as PW2 and Parmod Kumar as PW3. He also tendered various documents in evidence, including the agreement dated 12.10.2003, the notice dated 28.07.2006, the application and affidavit dated 14.08.2006, the legal notice dated 30.10.2006 and a receipt also of the same date, and further a letter issued under postal certificate, with the these documents being exhibited as Exs.P1 to P7 respectively.

7. The appellant examined one Baldev Singh, Special Assistant as DW1, himself as DW2, and one Surender Kumar as DW3.

By way of documentary evidence, he tendered a statement of account, a copy of a bank entry and a copy of a cheque return register, as Exs. DW1/A, 1/B and 1/C respectively.

In rebuttal evidence, the plaintiff further tendered two receipts,

a telegram and a letter as Ex.P8 to P11 and another receipt which was

simply taken on record as Mark A.

8. Having appraised the aforesaid evidence and pleadings and the arguments made before him, the learned Civil Judge found that the agreement, Ex.P1, had been proved by way of testimony of the plaintiff himself, as also by that of the two marginal witnesses to the agreement, who also testified in respect of the averments in the plaint, including the receipt of Rs.2 lacs as earnest money, further identifying the signatures on the agreement, as well as on the 'receipt' (Ex.PW2/B) pertaining to the extension of time.

Nothing that could shake their testimonies, was found even in the cross-examination, by that Court.

9. The application moved before the Sub Registrar and the affidavit executed by the plaintiff to that effect were also found to be proved, as was the legal notice, Ex.P5, issued on 30.10.2006, which was seen to have been posted under postal certificate, Ex.P7.

10. As regards the contention of the appellant that he had received a loan of Rs.20,000/- which he had returned to the plaintiff, which he had returned to the plaintiff but with the plaintiff having allegedly taken his signatures on some blank stamp papers at the time of giving him the loan, it was recorded by the Court that the defendant (present appellant) was not an illiterate person, but in fact was a school teacher. Further, neither the agreement nor the receipt in respect of extension of time, pointed to any evidence so as to accept that plea of the appellant. His signatures were found to have been appended at the end of the agreement as also on the revenue stamp with regard to having received Rs.2 lacs, and again at the time of extension of time for executing the sale deed.

It was consequently held that none of these showed that they were ever signed on blank papers (later on filled in).

Further recording that though DW3 had tried to show that he was present at the time when the appellant had signed the papers, however, in the written statement filed by the appellant, there was no mention that Surender Kumar (DW3) was present.

Another contention (not elaborated on by the Civil Judge), given in the testimony of DW1, was also rejected by that Court, it too not being a part of the written statement and thus being beyond pleadings.

11. On the aforesaid reasoning, the suit of the plaintiff was accepted and decreed in his favour by the first Court.

12. In the first appeal filed, the learned Additional District Judge, Ambala, after noticing the pleadings and the issues framed, thereafter took notice of the argument made before him on behalf of the appellant, to the effect that the property was actually in the ownership of the Housing Board, with the appellant as the “hirer thereof”, and therefore he not being in a possession to sell it without the consent of the Board, even in terms of the Hire Purchase Tenancy Agreement.

The said argument was rejected on the ground that in the agreement, Ex.P1, there was a clear recital that the appellant himself was to get a clearance certificate from the Housing Board, upon paying the remaining installments due to the Board, and as such, even though as per the Hire Purchase Tenancy Agreement there was a bar on alienating the house without the consent of the owner, i.e. the Board, however with the appellant having bound himself down to paying off the installments and obtaining the consent of the Board, the argument was not available to him.

The contention that no notice was served before filing the suit for specific performance was also rejected because the notice, Ex.P5, dated 30.10.2006, was found to have been sent by registered post, acknowledgment due, as also under postal certificate.

13. The contention with regard to a loan of Rs.20,000/- only having been taken by the appellant from the plaintiff, was rejected by the first appellate Court essentially on the same reasoning as that of the learned Civil Judge, to the effect that there was no evidence led, to prove that the signatures of the appellant were made on blank papers.

14. The contention that with possession stated to have been delivered, (as contended in the plaint), a registered deed was required to be executed in respect of delivery of possession, was also rejected in the light of the judgment of this Court in ***Didar Singh Vs. Nasib Kaur & Ors. 2012 (2) Civil Court Cases, 428.***

15. On the aforesaid reasoning, the first appeal filed by the appellant was also dismissed.

16. Before this Court, Mr. Vinod Bhardwaj, learned counsel for the appellant, has reiterated the arguments made before the Courts below, and on a query of the Court, has thereafter filed an application under Order 41 Rule 27 CPC, seeking to lead additional evidence in the form of various installments paid to the Housing Board by the appellant, from the time of allotment till 19.05.2012, when the suit was pending before the learned Civil Judge. A perusal of the chart tabulated in the application shows that a total of Rs.3,26,404/- has been paid by the appellant, towards the purchase of the suit property, to the Housing Board that had allotted it to him.

Mr. Bhardwaj argued that other arguments apart, as were made

before the Courts below, the appellant having also continued to pay the installments right till 2012, he was fully entitled to the suit property that had been allotted to him.

17. Having considered the argument of learned counsel, I find it difficult to accept it, especially with regard to the application now filed under Order 41 Rule 27 CPC, in as much as, it has been specifically held by the learned lower appellate Court that the agreement in question, Ex.P1, dated 12.10.2003, specifically contains a recital to the effect that the appellant himself was to pay off all installments to the Housing Board and to obtain a no objection / transfer certificate from it and thereafter execute the sale deed in favour of the plaintiff. That being so, even the payment of the installments up to 2012 would make no difference, whether they were part-payment up to 2012, or the entire amount due to the Housing Board was paid off. That would make absolutely no difference, the contract between the parties specifically being to the effect that all payment due to the Board, was to be made by the appellant.

Hence, I see no reason to even issue notice in the application seeking to lead additional evidence, which is consequently dismissed at the threshold, even though the query in that regard had been made by this Court, vide its order dated 23.08.2016.

18. Coming then to the other pleas made by Mr.Bhardwaj, in terms of the arguments made before the Courts below.

Both courts have come to a specific finding in the light of the evidence led, both documentary and oral, that nothing could be discerned from either the document itself, i.e. the agreement to sell, or the oral testimonies of the two witnesses to the agreement, that would support the

contention that the agreement was not actually signed as an agreement for sale/purchase of the suit property. The onus on the appellant to make good his contention that he had signed blank papers not having been substantiated by him in any manner, there would be no reason for this Court to overturn concurrent findings of fact, with no perversity in such findings pointed out before this Court, in any manner.

It is necessary to notice here that the finding of the learned lower appellate Court that there was a recital in the agreement that the appellant himself was to pay off all the remaining installments to the Housing Board, and to obtain a no objection certificate/ transfer certificate from it, has not been factually refuted before this Court.

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

(AMOL RATTAN SINGH)
JUDGE

October 25, 2016.
Davinder Kumar

Whether speaking / reasoned	Yes
Whether reportable	Yes