IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3531 of 2013 (O&M)
Date of Decision : 08.02.2016

Bharat Lal ....Appellant

Versus

Subhash Chaudhary ....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rakesh Nagpal, Advocate
for the appellant.

Mr. Satbir Gill, Advocate
for the respondent.

Surinder Gupta, J.

Plaintiff-Subhash Chaudhary (now respondent) filed suit seeking the relief of symbolic possession of suit land measuring 9 *kanals* i.e. 180/1697 share of land measuring 84 *kanals* 17 *marlas*, as fully described in the headnote of plaint, through specific performance of agreement to sell dated 31.10.2007, executed by the defendant (appellant) in his favour. The suit was decreed by Civil Judge (Junior Division), Sirsa allowing alternate relief of refund of earnest money with interest. Plaintiff as well as defendant filed appeals, which were decided by the Additional District Judge, Sirsa whereby relief allowed by the Civil Judge (Junior Division) was modified and the suit of plaintiff was decreed for specific performance of agreement, giving direction to the defendant to get the sale deed executed and registered in favour of plaintiff. He was also restrained him from alienating the suit land to any other person except plaintiff and also from creating any charge or lien over it in any manner.

The appeal of defendant was dismissed by the Ist Appellate Court. Not satisfied, the defendant has filed this appeal challenging the judgment and decree passed by the Courts below.

2. In later part of judgment, parties will be referred as 'plaintiff' and 'defendant' as per civil suit.

3. Case of plaintiff, in brief, is that the defendant vide agreement dated 31.10.2007 agreed to sell 9 *kanals* of his land situated in village Chhatriya, *tehsil* and District Sirsa @ ₹2,50,000/- per acre and received ₹2,70,000/- as earnest money. Possession of the land agreed to be sold was delivered to plaintiff, who was allowed to cultivate the same. The date for execution and registration of sale deed was fixed as 28.02.2008. Plaintiff had always been ready and willing to perform his part of the contract. On 28.02.2008, he contacted the defendant and told him to execute the sale deed. The defendant was apprised about availability of funds for purchase of stamp papers, registration/miscellaneous expenses and balance sale consideration. Plaintiff remained present in the office of Sub-Registrar, Sirsa from 09.00 a.m. till 04.30 p.m., but the defendant did not turn up. An affidavit was got attested regarding his presence in the office of Sub-Registrar. Thereafter, the defendant was requested several times to get the sale deed executed but of no avail, hence this suit.

4. The defendant denied execution of agreement dated 31.10.2007 and all the other averments of plaintiff. He alleged that plaintiff is real nephew of the defendant. Due to some family

differences he wants to usurp the land/property of the defendant by committing fraud and by adopting other coercive methods. Earlier, father of plaintiff had prepared such an agreement dated 09.09.2003 regarding the suit land @ ₹1,30,000/- per acre. The date for execution and registration of sale deed was fixed as 10.06.2004 and ₹85,000/- were shown as earnest money but no further steps were taken on the basis of that agreement and in the same manner, plaintiff had got prepared the impugned agreement by playing fraud on the defendant with *mala fide* intention

5. The defendant alleged that signatures on the alleged agreement were false, fabricated and manipulated. The witnesses on the agreement are not known to the defendant. The prevailing rate of land at the relevant time was more than ₹5 lacs to ₹6 lacs per acre while in the agreement, transaction was @ ₹2.50 lacs per acre. All the averments in the plaint were contested, controverted and denied. The pleadings of parties led to framing of the issues as follows:-

(i) Whether the defendant entered into an agreement to sell the suit land to the plaintiff on 31.10.2007 for a consideration of ₹2,50,000/- per acre and received an amount of ₹2,70,000/- as earnest money from the plaintiff? OPP.

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

(iii) Whether the plaintiff is entitled to specific performance of agreement dated 31.10.2007 as prayed for? OPP

(iv) Whether the suit of the plaintiff is not maintainable in the present form? OPD

(v) Whether the plaintiff has no cause of action to file the presence suit? OPD

(vi) Whether the plaintiff has concealed true and material facts from the Court? OPD

(vii) Whether the suit for the plaintiff is false and frivolous and is liable to be dismissed with special costs? OPD

(viii) Relief.

6. Learned Civil Judge (Junior Division), Sirsa while recording findings on issue no. 1 observed that execution of agreement dated 31.10.2007 and receipt of ₹2,70,000/- as earnest money is duly proved. It was held as proved that plaintiff was ready and willing to perform his part of the contract and is still ready and willing to do so. However, learned Civil Judge (Junior Division) allowed alternate relief for recovery of ₹2,70,000/- with interest @ 18% per annum and denied the relief for specific performance of agreement on the ground that agreement dated 31.10.2007 was not registered document. In appeal judgment and decree passed by learned Court below was modified by Ist Appellate Court and suit of plaintiff was decreed allowing the relief of specific performance of agreement to sell dated 31.10.2007.

7. Learned counsel for the appellant has put-forth three arguments to support the plea of appellant that agreement dated 31.10.2007, was not legal and valid. Firstly, that the agreement was signed by only one marginal witness; secondly, plaintiff has not examined any document and handwriting expert to prove that the agreement bear signatures of the defendant; and, thirdly, the payment of sale consideration was not proved as the

scribe has stated that no payment was made before him and the marginal witness has also not stated about payment of earnest money before him.

8. Both the Courts below, on appraisal of evidence, have reached the conclusion that execution of agreement dated 31.10.2007, is duly proved. On the agreement, name of two witnesses, namely; Sunil Kumar son of Nand Lal and Kashmir Sachdeva son of Mangat Ram were typed, but it was signed by Kashmir Sachdeva only. Learned counsel for the appellant could not cite any law which require that the agreement must be signed by two witnesses. Kashmir Sachdeva while appearing as PW-3 has stated that the defendant was known to him for the last 10 to 12 years and has stated that the agreement was executed by the defendant in his presence. The defendant had got scribed in the agreement about the payment of ₹2,70,000/-. He and defendant have signed in the register of deed-writer against the entry of agreement therein. Deen Dayal scribe of the agreement appeared as PW-2 and has stated that after scribing the agreement he read over and explained the same to parties, who on admitting the same put their signatures. The defendant had written in his own handwriting about the receipt of ₹2,70,000/-. He has explained that witness Sunil Kumar could not sign the agreement and has corroborated his statement by producing the copy of his register where the agreement was entered at serial no. 731, which entry was also signed by the defendant. While appearing as DW-1 defendant denied his signatures on the agreement and also in the register of deed-

writer. In his cross-examination, he has admitted that he had also entered into an oral agreement with father of plaintiff but earnest money of that agreement was returned. Plaintiff, marginal witness and scribe have stated in one voice that the agreement and entry in the register bear signatures of the defendant. He has also written on the agreement in his own handwriting that he had received ₹ 2,70,000/- as earnest money. In view of direct evidence on record, plaintiff was not required to examine any handwriting expert to prove the signatures of defendant on agreement. It was for the defendant-appellant to examine a handwriting expert to rebut their statements. Scribing on agreement in his own handwriting by the defendant that he has received ₹2,70,000/- as earnest money, duly proves passing of consideration.

9. No other argument has been raised by learned counsel for the appellant.

10. In view of above facts and circumstances, submissions by learned counsel for the appellant are devoid of any merit. On perusal of lower Court record and judgments of Courts below, I find no legal or factual infirmity therein calling for any interference. No substantial question of law, requiring determination, arises in this appeal, which has no merits.

Dismissed.

February 08, 2016 **(SURINDER GUPTA)**
jk **JUDGE**