

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

R.S.A No.1393 of 2016(O&M)
Date of decision :30.11.2016

Bhagat Ram

.....Appellant

Versus

Sonu

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Jarnail Singh Saneta, Advocate
for the appellant.

DARSHAN SINGH, J. (Oral)

The present appeal has been directed against the judgment and decree dated 27.11.2015 passed by the learned Additional District Judge, Karnal, whereby the appeal filed by the appellant-plaintiff against the judgment and decree dated 09.09.2014 passed by the learned Civil Judge (Jr. Division), Karnal, has been dismissed.

2. The appellant-plaintiff has filed the suit for declaration with possession with consequential relief of mandatory and permanent injunction on the grounds *inter alia* that he is owner of the plot in dispute comprised of khasra no.54/18/36, measuring 3 Marlas vide allotment letter dated 15.06.1976. He was in need of money for his treatment and other domestic purposes. Defendant assured him that he will get a loan of ₹ 15,000/- from some bank sanctioned in his favour, but he has to mortgage his plot with the bank. For that purpose, the plaintiff and his sons were brought to the Tehsil Complex Nilokheri. Defendant obtained his signatures/thumb impressions on some documents. Some photographs of the plaintiff were also taken by

the defendant. It is further pleaded that the defendant forcibly occupied the plot in dispute and started raising construction on the pretext that he has purchased the same from the plaintiff in the month of June 2007. Though, he has never sold the said plot to the defendant at any time. In-fact, the defendant has played the fraud with the plaintiff on the pretext of arranging the loan from some nationalized bank and obtained his thumb impressions on the documents. It is further pleaded that he requested the defendant to get cancelled the alleged agreement to sell which he had obtained fraudulently and dishonestly in order to grab his property, but the defendant remained adamant and raised the construction of a room forcibly and illegally in the plot in dispute. Now, he is in unauthorized possession over the property in dispute. Hence, the suit.

3. Defendant-respondent contested the suit on the grounds inter alia that the plaintiff was in need of money. He offered to sell his plot to the defendant in the presence of his sons and other family members and executed the agreement to sell dated 04.06.2007 and sold the aforesaid plot for a sum of ₹ 56,000/-. He received the entire sale consideration of ₹ 56,000/- from the defendant from his sons. The possession of the plot in dispute was also delivered to him at the time of execution of the agreement to sell dated 04.06.2007. As per the terms of the agreement to sell, the defendant was at liberty to get the sale deed executed and registered from the plaintiff as and when he desires. After the purchase of the suit property, he raised the construction of the house therein and he is in legal possession of the suit property being *bona fide* purchaser. With these pleas, the defendant-respondent pleaded for dismissal of the suit.

4. From the pleadings of the parties, the following issues were

framed by the learned trial Court vide order dated 12.12.2012:-

1. Whether the plaintiff is entitled to a decree of declaration, possession and mandatory injunction as prayed for?OPP
2. If issue no.1 is proved, whether the plaintiff is entitled to the consequential relief of permanent injunction as prayed for?OPP
3. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD
4. Whether the plaintiff has not come to the Court with clean hands and has suppressed the true and material facts from this Court? OPD
5. Whether the suit of the plaintiff is not maintainable in its present form?OPD
6. Relief.

5. On appreciation of the evidence and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the plaintiff vide impugned judgment and decree dated 09.09.2014.

6. Aggrieved with the aforesaid judgment and decree, the appellant-plaintiff preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Karnal, vide impugned judgment and decree dated 27.11.2015. Hence this Regular Second Appeal.

7. I have heard Mr. Jarnail Singh Saneta, Advocate, learned counsel for the appellant and have carefully gone through the record of the case.

8. Initiating the arguments, learned counsel for the appellant contended that defendant has played fraud with the plaintiff. The plaintiff was in need of a sum of ₹ 15,000/- for his treatment and other domestic purposes. The defendant assured him that he will arrange the loan from the nationalized bank and under that pretext he obtained the signatures/thumb impressions of the plaintiff on some blank documents, which were later on manipulated as agreement to sell dated 04.06.2007. Thus, he contended that the agreement to sell dated 04.06.2007 is illegal, null and void and is not binding on the rights of the plaintiff and he is entitled for possession of the suit property.

9. I have duly considered the aforesaid contentions.

10. As per the case of the appellant-plaintiff, the agreement to sell dated 04.06.2007 was obtained by the defendant from the plaintiff on the pretext of arranging loan for him from some bank as he was in need of money for his treatment and other domestic purposes. Plaintiff-Bhagat Ram has himself stepped into the witness box as PW-1 and admitted in the cross-examination that he is fit and does not suffer from any disease. He even admitted that he was also fit in the year 2007 and was not suffering from any disease at that time. So, the plea of the appellant that he was in need of money for his treatment stands negated from his own admission in the cross-examination. He has also admitted that he has gone to Tehsil Nilokheri along with defendant on the date of the agreement. He also admitted that defendant has built his house on the suit property.

11. On the other hand, defendant-Sonu stepped into the witness box as DW-1. He has deposed in detail about the execution of the agreement to sell dated 04.06.2007 by the plaintiff in his favour for the sale of the plot for a sum of ₹ 56,000/-. He also deposed that the entire sale consideration was paid by him to the plaintiff. His testimony is also corroborated by DW-2-Om Parkash, the attesting witness of the agreement. He also deposed that the plaintiff has affixed his thumb impression on the agreement to sell after understanding the contents thereof. DW-3-Ram Kashyap, the stamp vendor has also deposed that the stamp paper for preparing the agreement Ex.D-1 dated 04.06.2007 was purchased from him by Bhagat Ram. All these witnesses have been duly cross-examined, but their testimonies could not be shattered. So, there is nothing to negate the execution of the agreement to sell dated 04.06.2007 by the plaintiff.

12. The agreement to sell Ex.D-1 further shows that the plaintiff has received the full sale consideration of ₹ 56,000/- from the defendant. The said agreement to sell was also acted upon and possession of the plot in dispute was also delivered to the defendant. He has even raised the construction therein to the knowledge of the plaintiff.

13. At the time of arguments, a query was put to learned counsel for the appellant that if the signatures of the plaintiff were obtained by the defendant on the pretext of arranging the loan for him, then how the possession of the plot in dispute was transferred by the plaintiff to the defendant. But, he could not offer any satisfactory reply to this query.

14. It is an admitted fact that earlier also the plaintiff has filed the suit for mandatory injunction and permanent injunction for issuance of direction to the defendant for restoring him the possession of the suit property. The said suit was dismissed vide judgment Ex.P-2 holding that plaintiff has failed to prove his plea of fraud. Those findings were never challenged by the plaintiff by way of appeal, so those findings have attained finality. Thus, the appellant-plaintiff has failed to establish that the agreement to sell dated 04.06.2007 is illegal, rather from the evidence on record it is proved to have been executed by the defendant for the sale of his plot after receiving the full sale consideration. Consequently, the possession of the defendant over the plot in dispute cannot be stated to be illegal and the appellant-plaintiff is not entitled for the declaration and consequential relief of possession and injunction, which have been rightly declined by the learned Courts below.

15. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned

Courts below.

16. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

17. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

30.11.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No