

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

**R.S.A No. 1115 of 2015(O&M)
Date of decision :19.01.2016**

Durga Parsad

..... Appellant

Versus

Bishan Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Naveen S. Bharadwaj, Advocate
for the appellant.

- 1. Whether Reporters of local papers may be allowed to see the judgement?Yes**
- 2. To be referred to the Reporters or not?Yes**
- 3. Whether the judgement should be reported in the Digest?Yes**

DARSHAN SINGH,J

The present appeal has been preferred by the appellant against the judgment and decree dated 16.08.2014 passed by the learned District Judge, Bhiwani, vide which the appeal filed against the judgment and decree dated 23.04.2012 passed by the learned Civil Judge (Jr. Division), Bhiwani, has been dismissed.

2. For the sake of convenience, the status of the parties shall be referred as in the original suit.
3. Plaintiff/respondent no.1 Bishan Singh filed a suit for

possession by way of specific performance of the agreement to sell dated 23.12.2003 executed by appellant-defendant no.1 in his favour for the sale of the double story house bearing Municipal Unit No. Q-162 (Old Municipal Unit No. Q-158,159) approximately measuring 350 sq.yards situated at Bartan Bazar, Bhiwani for a sale consideration of Rs.9 lacs. Rs.2 lacs were paid as earnest money. The sale deed was to be executed on 22.06.2004 on receiving of the balance sale consideration. It is further pleaded that defendant no.1 did not turn up on the targeted date for execution/registration of the sale deed. Though, the plaintiff remained present in the office of the Sub-Registrar. He also got issued a legal notice dated 06.03.2006 to the appellant-defendant no.1 through his counsel. He has always been ready and willing to perform his part of contract. But, the appellant-defendant no.1 utterly failed in this behalf. Rather, he transferred the house in question to defendants no.2 and 3 vide sale deed dated 10.03.2004, which was further transferred to defendants no.4 and 5 in active connivance with the appellant-defendant no.1. Defendants no.2 to 5 were also having the knowledge about the agreement to sell dated 23.12.2003, but they deliberately purchased the house in order to deprive the plaintiff of his rights. Hence the suit.

4. Appellant-defendant no.1 contested the suit on the grounds *inter alia* that plaintiff was a property dealer. He was aware of the fact that one Prabha Shankar Kedia, who was the brother of remaining defendants was in illegal possession of the suit property. The appellant-defendant no.1 was residing at Kolkata. Taking the advantage of his absence, the plaintiff colluded with Prabha Shankar Kedia and persuaded

him to sell the disputed property and handover the possession to them after receiving the sale consideration. Appellant-defendant no.1, Prabha Shankar Kedia and his brothers were having litigation about the property in Bhiwani. Plaintiff also had dealing with the husband of defendant no. 4 and persuaded Prabha Shankar Kedia to execute the sale deed in favour of defendants no. 4 and 5 on behalf of defendants no. 2 and 3. The defendants no. 2 to 5 in connivance with the plaintiff had sold the suit property for several lacs of rupees and plaintiff had played fraud upon the appellant and caused him a big loss. It was further pleaded that plaintiff never approached defendant no. 1 for completion of the agreement inspite of the fact that he rang up him several times, but in vain, which compelled the appellant to file the suit challenging the agreement, which was later on withdrawn on the assurance given by the plaintiff. It was further pleaded by the defendant no. 1-appellant that when the suit property was further sold and new construction was raised, the plaintiff kept mum. It is further pleaded that the appellant-defendant no. 1 never denied to execute the sale deed. Rather, the plaintiff had *malafide* intention and he filed the suit on the last date of limitation. With these pleas, defendant no. 1-appellant pleaded for dismissal of the suit.

5. Defendants no. 4 and 5 also filed their separate joint written statement.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court after filing of the replication by the plaintiff-appellant:-

1. Whether the plaintiff is entitled for relief of possession as

prayed for?OPP

2. If issue no.1 is proved, whether the plaintiff is entitled for the relief of permanent injunction as prayed for?OPP
3. Whether the suit of the plaintiff is not maintainable in the present for?OPD
4. Whether the plaintiff has no cause of action and no locus standi to file the present suit?OPD
5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
6. Whether the suit of the plaintiff is time barred/OPD
7. Relief.

7. The learned trial Court on appreciating the material on record decreed the suit filed by the plaintiff for the alternative relief of recovery of Rs. 2 lacs along with interest at the rate of 6 % per annum. The appeal filed by the appellant-defendant no. 1 was also dismissed by the learned District Judge, Bhiwani. Hence this Regular Second Appeal.

8. I have heard Mr. Naveen S. Bharadwaj, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

9. Learned counsel for the appellant contended that it is not established that the earnest money of Rs.2 lacs was ever paid by the plaintiff-respondent no.1 to the appellant-defendant no.1. In the absence of that proof, the learned Courts below were not justified in passing the decree for recovery of the alleged earnest money of Rs. 2 lacs. Thus, he pleaded that learned Courts below had committed mistake in passing the decree for recovery.

10. I have duly considered the aforesaid contentions.

11. As per the case of the plaintiff-respondent no.1, defendant

no.1 represented him to be the sole owner in possession of the suit property and executed the agreement to sell dated 23.12.2003 Ex.P1 in favour of the plaintiff for a sale consideration of Rs. 9 lacs. Appellant has admitted that he has put his signatures on the alleged agreement. But, he has denied that the same were put in presence of the witnesses or that the earnest money as alleged by the plaintiff has paid to him. Learned counsel for the appellant has also raised the plea before this Court that the payment of the earnest money was not proved. So, the decree for recovery could not have been passed by the Courts below. So, the question to be determined is as to whether the appellant had received the earnest money of Rs. 2 lacs as per the agreement Ex.P-1 or not.

12. Learned trial Court while discussing the evidence adduced by the parties observed as under:-

“Plaintiff when stepped into witness box has categorically stated that at the first instance the money was delivered to defendant no.1 in cash but when on being asked by Shri V. Acharya Advocate, the amount was delivered to the plaintiff in shape of demand draft. Similarly, PW1 who is attesting witness of agreement Ex.P1 has proved the agreement to the effect that defendant no.1 executed the agreement EX.P-1 in their presence. Whereas on the other hand DW-1 who has played a pivotal role in finalizing the deed in question had not stated specifically that the earnest money was not paid by the plaintiff. Though, he has stated that he signed the agreement Ex.P1 on being asked by Bishan i.e. plaintiff and Bishan did not pay any amount to Durga Parsad but this testimony is not believable as perusal of agreement Ex.P-1 in itself shows that the defendant no.1 has signed the agreement and it has been written on the agreement itself that Durga Parsad received an amount of Rs. 2 lacs. It is not the case of the defendant no. 1 that he being an illiterate person did not go through the contents of agreement rather defendant no. 1 had put his signatures in English which speaks that he is an educated person. Similarly, DW1 Shri Venktash Acharya, Advocate is the senior

most advocate of this bar and this plea that without receiving the amount the agreement was signed cannot be allowed to be put in the mouth of defendant no. or DW1 as an educated person is supposed to know what he is signing and advocate of long standing is supposed to know the legal consequences of such signatures. Furthermore, had the signatures been obtained without paying any amount then generally the defendant no.1 would not have kept quiet since 2003 till today or at least till the filing of the present suit and he would have either filed the civil suit for getting the agreement in question concerned or would have launched the prosecution against the plaintiff for obtaining the signatures on valuable document by playing fraud. As such, long silence of defendant no.1 speaks for itself.”

13. The learned First Appellate Court also affirmed the aforesaid findings of the learned trial Court with the following observations:-

“In order to prove valid execution of agreement to sell Ex.P1, the plaintiff has examined himself as PW1 Bishan Singh, who in his sworn affidavit Ex.PW1/A has reiterated the averments made in the plaint. The attesting witness of this agreement Ex.P1 has examined as PW2 Virender Singh, who has corroborated the statement of PW1 Bishan Singh as regards the execution of agreement Ex.P1 dated 23.12.2013 in favour of the plaintiff by appellant-defendant no.1 and receipt of earnest money of Rs.2/- lacs. It is worthwhile to mention here that Sh. V. Acharya Advocate is also attesting witness of this document Ex.P1, who has come in witness box as DW1. He deposed that he had signed agreement Ex.P1 at the instance of Bishan Singh i.e. plaintiff and Bishan Singh did not pay any amount to Durga Parsad. On perusal of agreement Ex.P1, it reflects that the defendant no.1 had signed the agreement and there is a recital that Durga Parsad received an amount of Rs.2/- lacs as earnest money. It appears from the signatures of the defendant no.1 that he was educated person and more so, DW1 Shri Vanketesh Acharya is the Senior Advocate of Bhiwani Bar and it cannot be believed that without receiving the amount, agreement was signed by this advocate witness as well as by defendant no.1. If any fraud has been played by the plaintiff upon defendant no.1, he did not challenge the agreement nor filed any criminal case against the respondent-plaintiff. Therefore, from the entire evidence produced on record, valid execution

of agreement Ex.P1 dated 23.12.2003 in favour of the plaintiff by the defendant no.1 has been established. It is also established that defendant no.1 received Rs.2/- lacs as earnest money and date for execution of sale deed was fixed between the parties on 22.6.2004.”

14. Thus, both the Courts below have returned the concurrent findings on the basis of the evidence available on record that the execution of the agreement to sell Ex.P-1 was duly established. It was also established that earnest money of Rs. 2 lacs was received by the appellant at the time of executing the agreement. There is also a clear recital in the agreement with respect to the payment of the aforesaid earnest money. So, the plea raised by learned counsel for the appellant, that the payment of Rs. 2 lacs as earnest money by plaintiff-respondent no. 1 to the appellant-defendant no. 1 is not established, carries no substance.

15. Thus, keeping in view my aforesaid discussion, the concurrent findings of fact recorded by the learned Courts below do not suffer from any illegality or perversity.

16. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal to invoke the limited jurisdiction under Section 100 CPC by this Court.

17. Consequently, the present appeal having no merits is hereby dismissed in *limine* with no orders as to costs.

January 19, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**