

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3132 of 2015

Date of Decision:17.10.2016

Ajit Singh

... Appellant

Vs.

Jasbir Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Sandeep Jain, Advocate,
for the appellant.

Amol Rattan Singh, J.

This appeal has been filed by the plaintiff in a civil suit, in which he sought possession of the suit property by way of specific performance of an agreement stated to have been entered into between him and the respondent-defendant, on 04.10.2010.

The learned Additional Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar, having decreed the suit of the appellant-plaintiff (hereinafter to be referred to as the plaintiff), the respondent herein, i.e. the defendant in the suit (hereinafter to be referred to as the defendant), filed an appeal before the learned District Judge, who modified the judgment of the learned lower Court and instead of granting the relief of specific performance of the agreement, by way of execution of the sale deed qua the suit property, instead granted the relief of recovery of the earnest money of Rs.19,000/- paid by the defendant to the plaintiff, with interest @ 12% per annum, running from the date of payment thereof, i.e. 04.10.2010, till the

date of actual realization of the amount. A time of three months was given to the defendant to pay the amount and in case of his failure to do so alongwith interest, within the said period, his appeal was ordered to be deemed to have been dismissed.

Consequently, against the aforesaid judgment and decree, only partially decreeing his suit, the plaintiff is now in appeal before this Court.

2. The facts, as taken from the judgments of the Courts below, are that the plaintiff had brought his suit stating therein that in terms of the aforesaid agreement dated 04.10.2010, one marla of land, being a 1/24th share of land comprised in Khata no.869/1073, Khasra nos.308 and 319, situated at Ladhana Jhikka, was agreed to be sold by the defendant to the plaintiff for a sale consideration of Rs.38,000/-, of which Rs.19,000/- was paid by way of earnest money on the date of the agreement itself, i.e. 04.10.2010.

It was further contended that in the agreement it was stipulated that the sale deed would be executed on 09.04.2011. However, as that date was a Saturday, the plaintiff contended that he remained present in the office of the Joint Sub-Registrar, Banga, on 11.04.2011, but the defendant did not turn up. The plaintiff got his presence marked before the Sub-Registrar by way of an affidavit.

Thereafter, the defendant having refused to admit the claim of the plaintiff, the suit was filed on 11.05.2011, stating therein that the plaintiff was still ready and willing to perform his part of the contract.

3. Upon notice issued to him, the defendant contested the suit and contended in his written statement that the agreement was a forged and fabricated document and in fact, he (the defendant), had incurred a loan of

Rs.10,000/- from the plaintiff in the year 2010, as the latter was engaged in the business of money lending and the defendant was in need of that money to meet his domestic needs.

It was further contended that in order to secure the loan, the plaintiff obtained the signatures and thumb mark of the defendant on blank papers, which were latter “forged into the agreement to sell in connivance with the scribe and the attesting witness”.

4. From the aforesaid pleadings of the parties, the following issues were framed by the learned Additional Civil Judge:-

- “1. Whether the defendant entered into an agreement to sell dated 4.10.2010 with the plaintiff, if so its effects? OPP
2. Whether the plaintiff is entitled to relief of specific performance of agreement to sell dated 4.10.2010? OPP
3. Whether the plaintiff has got no subsisting and reasonable cause of action to file the suit? OPD
4. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction and hence the plaint deserves rejection? OPD
5. Relief.”

5. To support his plaint, the plaintiff examined himself as PW1, reiterating his stand in the plaint as also what he stated on affidavit. He further examined one Sham Lal as PW2 who testified that he knew the parties to the *lis* presently and that on 04.10.2011 (seemingly a typographical error in the judgment, as the date of agreement is otherwise shown to be 04.10.2010), the defendant had executed an agreement to sell in favour of the plaintiff. This witness further testified that the agreement was scribed and typed by one Darshan Kumar Sareen, a deed-writer, at Banga, and that the contents of the agreement were read over and explained to the defendant

who signed and thumb marked it and an endorsement was made on the agreement by the scribe, and that the defendant received Rs.19,000/- from the plaintiff.

PW2 further stated that he and Mohinder Singh had attested the agreement, Ex.P1.

6. The defendant examined himself and his wife Kamaljit Kaur as witnesses, in support of the stand taken in the written statement.

However, on cross-examination, he admitted that the agreement bears his photographs and signatures. His wife too, admitted the signatures of her husband.

7. Having appraised the evidence and the pleadings and arguments before him, the learned Additional Civil Judge held that once the defendant had admitted his signatures on the documents, the onus to prove that the agreement itself was later scribed and was therefore a forged document, was upon him, but he had failed to lead any evidence either to show that no consideration was paid, or that any fraud had been perpetuated upon him, in the face of the evidence led by the plaintiff to the contrary. That was held to be especially so, with the defendant even having admitted to his photograph on the document and further that he had never lodged any complaint with the police with regard to any such fraud having been played upon him.

Consequently, the suit of the plaintiff was decreed by that Court, directing the defendant to execute the sale deed in favour of the plaintiff within a period of three months, failing which the plaintiff was at liberty to execute the sale deed through the Court.

8. In the first appeal filed by the defendant before the learned District Judge, after noticing the facts and the evidence led, the findings of

the lower Court, to the effect that the execution of the agreement stood proved, were upheld by the first appellate Court also, on the same reasoning. However, it was observed that the house in question was the only residential house with the defendant, where he and his family resided. It was further observed that if the plaintiff was really in need of the house, he would have, under normal circumstances, immediately gone for its purchase, instead of deferring the date of execution of the sale deed for one year. (Actually the sale deed was to be executed six months after the agreement to sell was executed and obviously the judgment is erroneous to that extent).

Further, noticing that the plaintiff was not a resident of the village where the house was located and that it could not be proved that actually he needed a house in that village, it was obvious (as held by that Court) that the agreement was really by way of a collateral security, to secure a loan taken by the defendant from the plaintiff.

A judgment of the hon'ble Supreme Court in **S.Rangaraju Naidu v. S. Thiruvarakkarasu** 1995 Suppl. (2) SCC 680, was cited by the learned District Judge, to hold that where an agreement is only actually by way of a collateral security, the relief of specific performance should normally not be granted. In that case, in fact, the judgment of the High Court and the Courts below had been reversed by their Lordships.

Further, the judgment in **Kanshi Ram v. Om Parkash Jawal** 1996 SCC (4) 593, was also cited by the lower appellate Court, wherein it was held that in certain circumstances, instead of ordering specific performance, the alternative relief of damages should be granted.

Other judgments to that effect were also cited by the learned District Judge.

9. Consequently, the judgment and decree of the Additional Civil Judge was modified, by partly decreeing the suit of the plaintiff, granting him the alternative relief, as already noticed.

10. Before this Court, Mr. Sandeep Jain, learned counsel for the appellant, very strenuously argued that once the first appellate Court also came to the conclusion that the agreement to sell had been actually executed between the parties, with no challenge in any case to that aspect by the respondent-defendant, it was not justified that the relief of specific performance should be modified to simply that of the alternative relief of refund of the earnest money with interest.

In this regard, Mr. Jain cited a judgment of a co-ordinate Bench of this Court in Dayal Singh v. Avtar Singh and another 2014 (4) Civil Court Cases 499.

He, therefore, submitted that the judgment of the first appellate Court needs to be set aside and that of the learned Additional Civil Judge restored.

11. Having considered the aforesaid, though otherwise the argument of learned counsel would not have been without merit at all, but what is seen by this Court that the suit land is stated to be one single marla of land, i.e. about 30 square yards. The learned lower appellate Court having recorded a finding that it was the sole residential plot on which the defendant had constructed a house and was living there, I find no reason to interfere in that finding, without anything to the contrary having been pointed out. No doubt, in the judgment of this Court cited by Mr. Jain, i.e. *Dayal Singhs'* case (supra), it was held that simply because the appellant in that case (vendor) had no other living house, would be no reason to deny the relief of specific

performance. In the present case, however, in the opinion of this Court, it seems very obvious that with the size of the suit plot being what it is, the learned District Judge correctly assessed the agreement to be one only by way of a collateral security for a loan taken by the defendant from the appellant-plaintiff, further holding that it was odd as to why the sale deed had to be put off by about six months.

No doubt, 50% of the sale consideration stipulated in the agreement still remained to be paid and as such, though in the opinion of this Court, 6 months granted for execution of the sale deed was not such a long period, however, considering all factors together, to the effect that the suit land is only a 30 square yard plot, which the learned lower Court recorded to be the sole residential house of the defendant, I find myself unable to interfere in the judgment of that Court, in refusing to exercise the discretionary relief of decreeing a suit of specific performance, and instead decreeing only the alternative relief of refund of the earnest money, alongwith 12% interest thereupon.

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

17.10 2016
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes