

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

RSA No. 4554 of 2016 (O&M)

Date of Decision: 17.11.2016

Subhash Chander

.....Appellant

Vs.

Bijender Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sandeep K. Sharma, Advocate,
for the appellant.

AMOL RATTAN SINGH, J.

This is the second appeal of the defendant after the suit filed by the respondent-plaintiff, seeking specific performance of a contract, was decreed in his favour and the first appeal filed by the present appellant was also dismissed by the learned lower appellate Court.

2. As per the case of the plaintiff, the appellant-defendant (hereinafter to be referred to as “the appellant”) was recorded as the owner of a shop which he agreed to sell to the plaintiff vide an agreement of sale dated 23.11.2001, with the sale consideration fixed at Rs.1,20,000/-. A sum of Rs.90,000/- was stated to have been paid on that date itself, with a receipt in that regard also issued and possession of the shop was also stated to have been handed over to the plaintiff by the appellant.

The date fixed for execution and registration of the sale deed was 22.10.2002, but as contended by the plaintiff, though he remained present in the office of the Sub-Registrar on that date, the appellant did not

turn up to execute the sale deed. It was further contended that on 23.01.2003, the appellant met the plaintiff and demanded the remaining sale consideration of Rs.30,000/- and on payment of the said amount, he was stated to have executed a fresh agreement on that date “and transferred the ownership rights to the plaintiff” (as stated in the judgment of the learned Civil Judge (Jr. Divn.), Rohtak).

It was further contended in the plaint that since “execution of sale-deeds were banned in Haryana at that time”, the sale deed could not be executed even thereafter and it was therefore agreed that it would be executed and registered as and when the ban would be lifted by the Government.

After that, despite the plaintiff allegedly having made requests to the appellant to do the needful, he avoided doing so on one pretext or the other and in fact, the appellants' wife made a “false complaint to the SSP Rohtak” against the plaintiff, alleging that he had taken possession of the shop simply on account of Rs.80,000/- borrowed by the appellant from him.

The plaintiff is then stated to have filed a suit seeking permanent injunction against the appellant, which was still pending at the time of the institution of the suit in the current *lis* seeking specific performance of the contract. A legal notice was also stated to have been issued to the appellant on behalf of the plaintiff on 25.07.2005, requesting him to execute the sale deed on 03.08.2005 but with the present appellant still not having appeared before the Registrar on that date, the suit in the present *lis* was instituted on 28.08.2005.

3. Upon notice issued to him, the present appellant filed a written statement taking preliminary objections of maintainability, cause of action

and locus standi.

On merits, it was contended that he had never executed an agreement for the sale of the shop in question, nor had he received any amount of Rs.90,000/- as earnest money from the plaintiff.

In fact, it was contended that he had availed of a loan of Rs.80,000/- on or about 23.11.2001, which he had repaid the plaintiff but on obtaining his signatures in respect of advancement of the loan, the papers were then fabricated to create an agreement of sale.

It was further contended that the suit property was of a value of more than Rs.10 lacs and therefore, the appellant-defendant could not be expected to sell it for Rs.1,20,000/- only and in fact he and his wife had filed several applications to various authorities against the plaintiff.

It was also contended that the suit seeking permanent injunction against the present appellant was also filed on false and frivolous allegations.

Consequently, the suit for specific performance was also prayed to be dismissed.

4. A replication having been filed by the plaintiff to controvert the stand in the written statement, the following issues were framed by the learned Civil Judge:-

“1. Whether any agreement to sell the suit property detailed in Para no.1 of the plaint was executed by in favour of plaintiff on 23.11.2001 for sale consideration of Rs.1,20,000/-?
OPP

2. Whether any part payment of sale consideration was received by defendant from the plaint?OPP

3. Whether the plaintiff had always remained ready and dealing to perform his part of contract if so to what effect?OPP

4. Whether the plaintiff is entitled to the decree of specific performance of contract?OPP

5. Whether the suit is maintainable in the present form?OPD

6. Relief.”

5. The plaintiff examined himself and one Anil Kumar, Balraj Singh, Satyadev Malik and a finger print expert, V.B. Kashyap, as PWs 1 to 5 respectively and also tendered various documents in evidence, including the agreement of sale in question, the plaintiffs' attendance proof before the Sub-Registrar, the second agreement dated 23.01.2003, a receipt, a legal notice, report and photographs.

The appellant examined first his son, Anil Kumar, as DW-1 and himself as DW-2.

6. Upon appraisal of the evidence, the learned Civil Judge found that other than the plaintiff himself, who testified in respect of what he stated in his plaint, PW2 Anil Kumar also testified that one agreement of sale was executed on 23.11.2001 between the parties and an amount of Rs.90,000/- was paid on that date and that the plaintiff had signed the receipt after reading and understanding it.

As per this witness, the document writer, PW-4 Satyadev Malik, had read over the contents of the agreement to the present appellant also.

The aforesaid Satyadev Malik also testified to the same effect, further stating that in fact the agreement had been prepared on the asking of the present appellant and had been read over to the parties as also to the witness to the deed, who had thereafter signed it. It was also found that the document writer had entered the execution of the agreement in his register, stating therein that Rs.90,000/- had been received by the appellant from the plaintiff and that the date fixed for execution of the sale deed was 22.10.2002.

7. As opposed to the aforesaid testimonies, it was found by the learned Civil Judge that in fact the appellant wholly denied his signatures on the agreement dated 23.11.2001, despite the fact that he had contended that his signatures had been obtained on account of the loan of Rs.80,000/- alleged to have been taken by him from the plaintiff.

Thus, instead of proving the alleged fraud perpetuated upon him by the plaintiff, as earlier contended, he wholly denied his signatures on the agreement.

The appellant also denied his signatures and thumb impression on the second agreement dated 23.01.2003, on which it was stated that the remaining consideration of Rs.30,000/- had been received and that the possession of the shop had been handed over to the plaintiff and that the sale deed would be registered when the (alleged ban) was lifted by the Government.

The appellant-defendant even denied his signatures not only on the receipt with regard to Rs.90,000/- having been received by him, but also on his own affidavit filed in the Court (Ex.DW-2/A). Further, he even denied his signatures on the power of attorney (Vakalatnama) issued in

favour of his counsel on 14.05.2011.

In the aforesaid situation, the learned Civil Judge held that the evidence of the hand-writing and finger print expert, PW-5, to the effect that the signatures on Ex.P2 and P-4, i.e. the two agreements of sale dated 23.11.2001 and 23.01.2003, were seen to be matching with each other and with the specimen signatures of the appellant, as also with the signature on the receipt dated 23.01.2001, Ex.P-8.

Thus, on the basis of the aforesaid evidence, oral and documentary, it was held that the agreement in question had actually been executed by the present appellant with regard to the sale of the shop.

8. As regards the issue of whether the plaintiff remained ready and willing to perform his part of the contract, it was found that on Ex.P-3, was a noting of the Sub-Registrar, Rohtak, to the effect that the plaintiff was present in his office on 22.10.2002 and that thereafter another agreement dated 23.01.2003 had been executed (which was already held to be proved), it showed that the plaintiff was ready and willing to perform his part of the contract by even going to the office of the Registrar again on 03.08.2005, to execute the sale-deed.

9. On the aforesaid findings, and citing some case law with regard to decreeing a suit for specific performance in such circumstances, the suit of the respondent herein was decreed in his favour, directing the present appellant to execute the sale deed in favour of the plaintiff within one month from the date of the judgment, failing which he (plaintiff) would be entitled to get it executed through the Court.

10. In the first appeal filed by the present appellant, the learned Additional District Judge, Rohtak, duly noticed the averments pleaded on

both sides and the issues framed by the learned Civil Judge, as also the argument raised before him (the lower appellate Court), to the effect that as the plaintiff had earlier already filed a suit for permanent injunction and the pleas taken by him in the present lis had been available to him at that time also, the second suit was barred under Order 2 Rule 2 CPC.

Another argument was also noticed, to the effect that in fact Clause 8 of the agreement dated 23.11.2001, specifically stipulated that the possession of the shop would be delivered at the time of registration of the sale deed, whereas it was the contention of the plaintiff that he was already in possession of the shop. Thus, it was argued that the stand was obviously contradictory to the said agreement.

It was also contended that PW-2, Anil Kumar, had admitted in his testimony that the plaintiff is in the business of advancing loans to people and therefore, the appellant-defendants' plea that his signatures were actually obtained in respect of a loan advanced, should have been discarded.

Thereafter, another argument is seen to have been raised before the first appellate Court, that even DW-1, i.e. the son of the appellant, had denied that Ex.P-2 (dated 23.11.2001) did not appear to carry the signatures of his father. That was also stated by the appellant himself, as DW-2.

11. On the aforesaid arguments on behalf of the appellant, thereafter noticing the counter arguments made on behalf of the respondent-plaintiff, the learned lower appellate Court found that the pleadings made in the previous suit filed by the plaintiff, seeking injunction against the appellant-defendant, had not been led by way of evidence and therefore, the plaintiffs' contention that the previous suit was on a completely different cause of action, could not be discarded, to accept the contention to the

contrary, made by the counsel for the appellant-defendant. This was further elaborated upon by stating that the previous suit was actually with regard to the complaint filed by the appellants' wife to the SSP, Rohtak, and therefore, the bar of Order 2 Rule 2 would not apply.

Thereafter, holding that the execution of the agreement dated 23.11.2001 and receipt of earnest money of Rs.90,000/- by the appellant, duly having been proved, with the possession of the shop being with the plaintiff for the past 8-10 years, also duly proved by the admission of both the appellant and his son as DWs 2 and 1 respectively, the reasoning of the trial Court that the plaintiff had always remained willing to perform his part of the contract was also upheld by the first appellate Court, as was the finding with regard to the second agreement dated 23.01.2003 having been executed by the appellant receiving the remaining sale consideration of Rs.30,000/-.

12. On the aforesaid findings, the first appeal filed by the present appellant was dismissed by the learned Additional District Judge.

13. In this second appeal, learned counsel for the appellant submitted that there was a considerable delay in fixing the date for execution of the sale, when Rs. 90,000/- out of Rs. 1,20,000/- had already been paid at the time of the execution of the first agreement on 23.11.2001.

He further submitted that there was no reason for the parties to enter into another agreement on 23.01.2003, after the sale deed had not been executed on the date originally fixed, i.e. 22.10.2002, especially with no specific date fixed for execution of the sale deed.

Yet further, he submitted that there being no date fixed for execution of the sale deed in the second agreement dated 23.01.2003, with

no evidence led that there was actually any ban on registration, due to which no such date was fixed (as was stated in the said agreement), all circumstances point to the fact that it was actually a loan transaction and not an agreement of sale.

14. Having considered the aforesaid arguments, I am not in agreement with the contentions of learned counsel, in view of the fact that firstly, possession of the suit property is stated to have been admitted to be that of the respondent-plaintiff, at least since the time of execution of the second agreement dated 23.01.2003.

As regards the fact that there was no need for a second agreement, the contention is without merit, in view of the fact that once the first agreement had not been honoured, a second agreement for execution of the sale deed, though still on an undetermined date, was entered into, with the entire sale consideration having been paid by them.

The aforesaid facts have to be seen also in the light of the fact that the appellant, in his testimony, denied his signatures on every single document including his own affidavit filed before the courts, as has been recorded in the judgment of the learned Civil Judge. Thus, obviously, he was simply trying to get out of any kind of commitment ever made by him.

Further, the learned Courts below having recorded concurrent findings of fact based on oral and documentary evidence led by the respondent-plaintiff, that the agreements dated 23.11.2001 and 23.01.2003 were actually executed between the parties, in respect of which other than the witnesses to the agreement, the deed writer also testified, also proving the entries made in his register with regard to the first agreement as also receipt of earnest money of Rs.90,000/-, there would be no reason to hold

those findings to be perverse in any manner, especially in the face of the fact that the appellant on the other hand took a wholly contradictory stand, to the effect that, firstly, he contended that his signatures had been obtained on separate papers in respect of a loan advanced to him, and thereafter having completely in fact denied those signatures, further even denying his signatures on his own affidavit and Vakalatnama.

Though learned counsel for the appellant would seem to be right as regards no evidence having been led on the reason for non-fixation of a date, i.e. that there was actually any ban on registration of sale deeds, which is otherwise also not wholly believable; however, even if it be taken that the agreements were entered into as a security for the loan advanced, with possession also having been with the plaintiff for 8 to 10 years as held by the lower appellate Court, then even if it was actually a transaction by way of security, with the appellant not having returned the loan over such a long period, I find no ground to interfere with the judgments of the Courts below, even if that contention were to be accepted, in the circumstances. It is to be stated here that though where an agreement is seen to be only a security instrument, in lieu of a loan taken, the Court is generally reluctant to decree the suit of a person claiming to be a prospective vendee, however, since possession of the plaintiff for such a long period has been established by the Courts below, with the loan not seen to have been returned, the judgment of the lower appellate Court is not found

to be in error.

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

(AMOL RATTAN SINGH)
JUDGE

November 17, 2016
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Whether speaking/reasoned	Yes
Whether Reportable	Yes