

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3489 of 2015 (O&M)

Date of decision: 15.03.2016

Subash Chander

.....Appellant(s)

Versus

Bachittar Singh

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

*** * ***

Present: Mr. TPS Tung, Advocate for the appellant.

Mr. Dheeraj Mahajan, Advocate for the caveator-respondent.

Darshan Singh, J.

1. This regular second appeal has been directed against the judgment and decree dated 28.4.2015 passed by the learned Additional District Judge, Gurdaspur vide which the appeal filed by the appellant-defendant against the judgment and decree dated 16.5.2013 passed by the learned Civil Judge (Jr. Division), Batala has been dismissed.

2. Plaintiff-respondent Bachittar Singh filed the suit for specific performance of agreement to sell dated 11.1.2006 with respect to the land measuring 18 Kanals 17 marlas being 1/4th share of the land measuring 75 kanals 7 marlas detailed and described in the heading of the plaint situated at Nanak Chak Hadbast No.309 Tehsil Batala.

3. As per the case of the plaintiff-respondent, the defendant-appellant executed the agreement to sell dated 11.1.2006 to sell the aforesaid land to him at the rate of ₹ 6,25,000/- per acre. At the time of

execution of agreement to sell, the defendant-appellant received ₹3,00,000/- as earnest money. The date for execution of the sale deed was stipulated to be 11.5.2006. Meanwhile, on 11.4.2006, the appellant-defendant requested for extension of date to 10.7.2006 and further received a sum of ₹1,60,000/- from the plaintiff as advance and earnest money against execution of the receipt. On the stipulated date i.e. 10.7.2006, the respondent-plaintiff came present in the office of Joint Sub Registrar Fatehgarh Churian with balance sale price and miscellaneous expenses but the defendant failed to turn up. The plaintiff got his presence marked by moving an application and affidavit. He has always been ready and willing to perform his part of contract. He also got served a registered notice dated 20.7.2006 but to no avail. Hence, the suit.

4. The appellant-defendant contested the suit on the grounds, inter alia, that the plaintiff-respondent has filed the suit on the basis of forged and fabricated documents. The defendant disputed his ownership qua the suit property, he also denied the execution of agreement to sell dated 11.1.2006, the receipt dated 11.4.2006 and receipt of the payment of ₹ 4,60,000/- and ultimately, prayed for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 15.11.2008:

“1. Whether the plaintiff is entitled for the relief of specific performance of the agreement to sell dated 11.1.2006? OPP

2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for? OPP

3. Whether the agreement to sell dated 11.1.2006 and receipt dated 11.4.2006 are forged and fabricated

documents? OPD

4. *Relief.”*

6. On appreciation of evidence and material on record, the learned trial Court decreed the suit filed by the plaintiff-respondent vide impugned judgment and decree dated 16.5.2013.

7. Aggrieved with the aforesaid judgment and decree, the appellant preferred the appeal which was also dismissed by the learned First Appellate Court vide impugned judgment and decree dated 28.4.2015. Hence, this regular second appeal.

8. I have heard Mr. TPS Tung, learned counsel for the appellant and Mr. Dheeraj Mahajan, Advocate for the caveator-respondent and have meticulously perused the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that the execution of the agreement to sell dated 11.1.2006 Ex.P1 and the receipt dated 11.4.2006 Ex.P2 is not proved. The agreement Ex.P1 was surrounded by various suspicious circumstances. He contended that Pawan Kumar, Nambardar, the attesting witness of agreement to sell Ex.P1, has not been examined. The learned trial Court has disbelieved the statement of PW2-Narinder Singh with respect to his presence at the time of execution of agreement to sell Ex.P1 and rightly so, as he has not signed the agreement to sell as a witness. Thus, in the absence of statement of PW-Pawan Kumar, Nambardar, the attesting witness of the agreement, the execution of agreement to sell Ex.P1 is not established. He further contended that PW-2 Narinder Singh is the real brother of the plaintiff-respondent so, he being an interested witness, cannot be relied upon to prove the execution of the receipt Ex.P2. He contended that once the

agreement to sell Ex.P1 is not established, the plaintiff-respondent was not entitled for the relief claimed in the suit. He further contended that the relief of specific performance is the discretionary relief. The conduct of the person claiming such discretionary relief is very material. In the instant case, there are many ifs and buts against the conduct of the plaintiff-respondent but all these circumstances have been ignored by the learned Courts below. Thus, he contended that the impugned judgments are not sustainable in the eyes of law.

10. On the other hand, learned counsel for the respondent contended that the agreement to sell is not a compulsorily attestable document. So, there was no necessity to examine Pawan Kumar, Nambardar. The receipt Ex.P2 has been duly proved wherein also the reference of agreement to sell Ex.P1 has been categorically given. Thus, he contended that the execution of agreement to sell Ex.P1 and the receipt Ex.P2 is fully established from the evidence adduced by the plaintiff-respondent. He has always been ready and willing to perform his part of contract. So, the suit filed by the plaintiff-respondent has been rightly decreed by the learned Courts below.

11. I have duly considered the aforesaid contentions.

12. This regular second appeal has been preferred against the concurrent findings recorded by the learned Courts below. The law is well settled that there is no scope of interference in the second appeal when there is no perversity in the approach of the learned Courts below. The powers of this Court while exercising the jurisdiction under Section 100 of the Code of Civil Procedure, 1908 (hereinafter called 'the CPC') are limited. Generally

the Court will not disturb the concurrent findings of fact. The interference can only be justified where the Courts below have failed to appreciate the oral and documentary evidence properly to record their findings which goes to the root of the matter.

13. The main plea raised by the learned counsel for the appellant is that as the execution of the agreement to sell Ex.P1 is not established due to non-examination of Pawan Kumar, Nambardar, the attesting witness, the plaintiff-respondent was not entitled for any relief claimed for in the suit but this plea raised by the learned counsel for the appellant is without any substance as mere non-examination of Pawan Kumar, Nambardar, the attesting witness of the agreement, is no ground to non-suit the plaintiff and to conclude that the execution of agreement to sell Ex.P1 was not proved. There is no dispute to the preposition of law that agreement to sell does not require any compulsorily attestation by the witness so, his non-examination is no ground to discard the other evidence available on record to prove the execution of the agreement to sell Ex.P1. Plaintiff-respondent Bachittar Singh has himself stepped into the witness box as PW-1 and he has deposed in detail about the execution of agreement Ex.P1 by the appellant in his favour.

14. The agreement to sell Ex.P1 is also corroborated by the receipt dated 11.4.2006 Ex.P2. The respondent has examined PW-2-Narinder Singh to prove the execution of the receipt Ex.P2 by the appellant. He has categorically deposed that on 11.4.2006, the appellant-defendant executed the receipt dated 11.4.2006 in favour of the plaintiff-respondent after receiving a sum of ₹ 1,60,000/- from him which was signed by him as a

witness. The receipt Ex.P2 is a very important document which depicts that the appellant has received a further sum of ₹ 1,60,000/- from the plaintiff in pursuance of the agreement to sell dated 11.1.2006. In the receipt Ex.P2, it is also mentioned that the appellant has received a total sum of ₹ 4,60,000/-. The date for execution of the sale deed has been extended to 10.7.2006. Thus, in the receipt Ex.P2, the appellant has categorically admitted the execution of the agreement to sell dated 11.1.2006 Ex.P1. If no such agreement was executed by him then it was incumbent upon the appellant to explain as to why the reference of the said agreement was given in the receipt Ex.P2. Instead of giving any plausible explanation, the appellant has simply denied the execution of agreement to sell as well as the receipt.

15. In rebuttal to the aforesaid evidence, there is only the solitary statement of the appellant. He has denied the execution of the agreement to sell Ex.P1 and the receipt Ex.P2. He did not dare to examine any handwriting expert to negate his signatures on the agreement to sell Ex.P1 and the receipt Ex.P2.

16. Thus, there is no escape from the conclusion that the plaintiff-respondent has successfully proved the execution of the agreement to sell dated 11.1.2006 Ex.P1 and receipt dated 11.4.2006 Ex.P2 by the appellant-defendant in his favour.

17. The fact that the plaintiff-respondent was ready and willing to perform his part of contract has not been challenged before this Court at the time of the arguments.

18. Thus, keeping in view the aforesaid discussion, I do not find any perversity in the approach of the learned Courts below. Consequently,

the concurrent findings recorded by the learned Courts below do not call for any interference by this Court while exercising the limited powers under Section 100 CPC.

19. Thus, no question of law, much less, the substantial question of law arises in the present appeal.

20. Resultantly, the present appeal being without any merit is hereby dismissed.

March 15, 2016
ps

(DARSHAN SINGH)
JUDGE