

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3673 of 2015 (O&M)
Date of Decision : 16.03.2016

Lok Ram

....Appellant

Versus

Suresh

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sudhanshu Makkar, Advocate
for the appellant.

Surinder Gupta, J.

This is second appeal against the judgment of Additional Civil Judge (Senior Division), Bhiwani decreeing the suit of plaintiff-respondent for specific performance of agreement to sell dated 27.09.2004 in respect of land comprised in *khewat* no. 108, *khasra* no. 15//11/2 (3-14), 21/2 (2-19) total measuring 6 *kanals* 3 *marlas* situated in the revenue estate of village Umravat *Tehsil* and District Bhiwani on payment of balance sale consideration and the defendant-appellant was also restrained from alienating or transferring the suit land in any manner to any other person except plaintiff.

2. The case of plaintiff, in brief, is that the defendant vide agreement dated 27.09.2004 agreed to sell suit land @ ₹1,80,000/- per acre i.e. for a sum of ₹1,49,625/- and received ₹80,000/- as earnest money. The date for execution and registration of sale deed was fixed as 27.07.2005. On 27.07.2005, the date for execution and registration of sale deed was extended to 03.08.2006 and a writing to this effect was made on the back of said agreement of sale. Plaintiff was always ready and willing to

perform his part of the contract and on the stipulated date i.e. 03.08.2006, he remained present in the office of Sub-Registrar alongwith witnesses and balance sale consideration as well as other expenditure but the defendant did not turn up. Plaintiff got his presence marked by getting an affidavit attested from the Executive Magistrate, Bhiwani. Thereafter, the defendant was requested several times to execute the sale deed and a legal notice was sent to him through counsel but of no avail, hence this suit.

3. The defendant contested claim of plaintiff and denied execution of agreement to sell dated 27.09.2004. He alleged that previously he has sold his agricultural land to plaintiff and a sum of ₹1 lac was due towards him. Plaintiff made payment of ₹80,000/- and obtained his thumb impressions on one or two papers stating that mutation of the land purchased from him is to be got entered. Both the parties are neighbourers and relying on plaintiff, defendant put his signatures as well as thumb impressions on the papers. He alleged that value of land in village Umravat is approximately ₹20 lacs per acre, as such, there was no question of entering into an agreement with plaintiff to sell the same @ ₹1,80,000/-per acre.

4. On appraisal of evidence produced by parties, learned Additional Civil Judge (Senior Division), Bhiwani recorded finding that the defendant has not denied his signatures on the agreement and from the evidence on record it can be safely concluded that on 27.09.2004, he entered into agreement to sell the suit property to plaintiff and received ₹80,000/- as earnest money. It was also held as proved that plaintiff had always been

ready and willing to perform his part of the contract.

5. Not satisfied, the defendant filed appeal which was dismissed by the Ist Appellate Court and findings recorded by Additional Civil Judge (Senior Division), Bhiwani were affirmed.

6. I have heard learned counsel for the appellant and perused the paper-book and lower Court record with his assistance.

7. Learned counsel for the appellant has argued that execution of agreement was not duly proved under Section 68 of the Evidence Act. Marginal witness of the agreement, namely; Karan Singh, *namberdar* appeared as PW-4 and produced original agreement on record. When the statement of plaintiff was recorded only photocopy of agreement was produced. The onus was on plaintiff to prove execution of agreement dated 27.09.2004. In the absence of credible evidence to prove execution of agreement both the Courts below have committed grave error of law and fact while decreeing the suit of plaintiff. He has further argued that all the documents like agreement, notice, *jamabandies* etc. produced by plaintiff were marked and not exhibited, as such, were not admissible in evidence.

8. Firstly, I take argument of learned counsel for the appellant that agreement dated 27.09.2004 (Ex. P-7) was produced by the marginal witness PW-4 Karan Singh and not by plaintiff. This argument has no substance. Plaintiff while appearing as PW-1 has referred to agreement, photocopy of which was exhibited as P-1. In cross-examination, no suggestion was given to him that original agreement was not brought by him.

Photocopy of a document is neither admissible nor could be exhibited in the absence of original document. The fact that appellant never raised any objection to this effect that original of agreement (Ex. P-1) had not been brought, as such, copy of agreement could not be exhibited, shows that original document was there at the time of recording of statement of PW-1 Suresh Kumar-plaintiff. Even statement of PW-4 Karan Singh nowhere reflects that he had produced original agreement on file. This argument of learned counsel for the appellant, as such, is without substance, hence rejected. While referring to affidavit dated 03.08.2006, got attested by plaintiff from Executive Magistrate, Bhiwani on 03.08.2006 regarding his presence in his office, learned counsel for the appellant has argued that it was marked as mark 'A', as such, is not admissible in evidence. *Jamabandi* for the year 2000-2001 has been placed on record as mark 'B'. Notice given to the defendant-appellant through counsel is mark 'C' and postal receipt is also a marked document. These documents cannot be read in evidence, as such, plaintiff has failed to prove that he was present in the office of Sub-Registrar on 03.08.2006. Secondly, he has failed to prove his readiness and willingness to perform his part of the contract. Plaintiff while appearing as PW-1 tendered his affidavit (Ex. PW-1/A) in his examination-in-chief wherein he has referred to photocopy of agreement as Ex. P-1, affidavit, got attested from Executive Magistrate, Bhiwani as Ex. P-2, copy of notice sent to the defendant-appellant and postal receipt as Ex. P-3 and Ex. P-4. It appears that due to some mistake on the part of Court concerned, exhibits mentioned in the

affidavit, could not be recorded on these documents. Even exhibiting of documents was objected by counsel for the defendant-appellant on the ground that these were not duly proved. Learned counsel for the appellant has not argued that documents on record as mentioned above are not duly proved. He has tried to take benefit of the fact that exhibits of documents were not mentioned on these documents. The mere omission on the part of Court in no manner effect the admissibility of these documents, as such, I have no other option but to reject the above submission of learned counsel for the appellant to this effect.

9. Plaintiff in order to prove execution of agreement to sell examined its scribe Gyanshyam Dass, Deed Writer as PW-2, who has fully supported the case of plaintiff and proved execution of agreement by defendant-appellant. Plaintiff himself appeared as PW-1 and examined Vijay Kumar as PW-3, who has stated that date for execution and registration of sale deed was extended on 27.07.2005 to 03.08.2006. This witness has stated that this writing was executed by defendant-Lok Ram himself. PW-4 Karan Singh has stated that agreement dated 27.09.2004 (Ex. P-7) was executed by the defendant-appellant in favour of plaintiff-respondent, who signed the same at 'point A'. The defendant-appellant while appearing as DW-1 has stated that his signatures and thumb impressions were obtained on blank papers while making payment of ₹80,000/-, which were outstanding regarding the earlier sale made by him. He has stated that he sold 12 *kanals* of land to the mother of plaintiff-Suresh Kumar 2/3 years ago. The version put-forth by defendant is improbable and

unbelievable. If he had sold land to mother of plaintiff 2-3 years back, there was no reason for him to sign blank papers, go to scribe and sign in his register. Learned Additional Civil Judge (Senior Division), Bhiwani has committed no error of law while discarding statement of the defendant-appellant wherein he did not deny his signatures on the agreement to sell (Ex. P-7) but gave an evasive reply in this regard. Even otherwise a person who has entered into earlier dealing like sale of land to the mother of plaintiff, where he alleged that price of land was got recorded less than agreed, would not thumb mark/sign blank papers and gave it to a party who has already ditched him. Keeping the above facts in view, both the Courts below have committed no error of law and fact while reaching the conclusion that agreement dated 27.09.2004 (Ex. P-7) was executed by the defendant. This argument of learned counsel for the appellant that the agreement is not proved as per provisions of Section 68 of the Evidence Act, also has no force as the agreement is not a document which require by law to be compulsorily attested. Even otherwise, plaintiff has examined scribe and marginal witness of the agreement.

10. On perusal of judgments of both the Courts below, I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

March 16, 2016

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**(SURINDER GUPTA)
JUDGE**