

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

**R.S.A No.536 of 2016(O&M)
Date of decision :09.11.2016**

Gurmej Singh

..... Appellant

Versus

Nirmal Singh

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms. Samiya Singh, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 14.08.2015 passed by the learned Additional District Judge, Bathinda, whereby the appeal filed by plaintiff-defendant against the judgment and decree dated 27.11.2014 passed by the learned Civil Judge (Jr. Division), Bathinda, has been dismissed.

2. Plaintiff-respondent filed the suit for recovery of Rs. 4,20,000/- on the grounds *inter alia* that the appellant-defendant alleging himself to be the owner in possession of the land measuring 14 kanals comprised in khewat/khatoni no. 363/1140 situated in the revenue estate of village Pathrala entered into agreement to sell dated 19.07.2008 with the plaintiff for the sale of the aforesaid land at the rate of Rs. 2,25,000/- per acre to the plaintiff-respondent. Appellant-defendant received Rs. 1,95,000/- as earnest money from the plaintiff in the presence of the witnesses. At the time of execution of the agreement, it was settled that

defendant shall execute and get the sale deed registered in favour of the plaintiff up to 03.02.2009 after receiving the balance sale consideration. On 22.01.2009, defendant approached the plaintiff and requested him to pay Rs. 15,000/- which were paid vide writing dated 22.01.2009 in the presence of the witnesses. It is further pleaded that plaintiff was always ready and willing to perform his part of contract. He went to the office of Sub-Registrar, Bathinda on 03.02.2009 along with remaining sale consideration and funds for registration charges and waited for the defendant, but he did not turned up. Now, the plaintiff has come to know that the appellant-defendant is not owner of the suit property. Rather, he has already sold the said property to one Nirmal Jindal, wife of Jagdish Rai Jindal and was not competent to execute the agreement to sell. He has intentionally cheated and defrauded the plaintiff. The plaintiff is entitled to get back the amount of Rs.2,10,000/- i.e. the earnest money paid by him along with the consolidated damages of Rs. 2,10,000/- along with interest. Hence, the suit.

3. In the written statement, appellant-defendant denied the execution of the agreement to sell dated 19.07.2008 and its term. It was further pleaded that he has already sold the suit property much prior to the date of the execution of the agreement. The said agreement is forged and fabricated document prepared by the plaintiff in connivance with the witnesses. In fact, appellant-defendant had borrowed a sum of Rs. 1.5 lacs in cash from the plaintiff on interest. At that time, the plaintiff obtained the signatures of the appellant-defendant on blank signed stamp papers as security. He denied that he has received a sum of Rs. 1,95,000/-

as earnest money. He also pleaded that the price of the land was more than Rs. 5 lacs per acre. So, the question does not arise to sell the said land at a throw away price of Rs. 2,50,000/- per acre. With these pleas, he pleaded for dismissal of the suit.

4. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for recovery on the basis of agreement of sale dated 19.07.2008 as prayed along with interest?OPP
2. Whether the suit is maintainable?OPP
3. Whether plaintiff has not come to the Court with clean hands? OPD
4. Whether plaintiff has got no locus standi and cause of action to file the suit?OPD
5. Whether the suit is within limitation?OPD
6. Relief.

5. On appreciation of the evidence and the contentions raised by learned counsel for the parties, the learned trial Court vide impugned judgment and decree dated 27.11.2014 decreed the suit filed by the plaintiff-respondent for recovery of Rs. 2,10,000/- along with interest at the rate of 12 % per annum from the receipt of amount i.e. 19.07.2008 till realization.

6. Aggrieved with the aforesaid judgment and decree, appellant-defendant preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Bathinda vide impugned judgment and decree dated 14.08.2015. Hence this Regular Second Appeal.

7. I have heard Ms. Samiya Singh, Advocate, learned counsel for the appellant and have carefully gone through the paper book.

8. Initiating the arguments, learned counsel for the appellant

contended that the appellant-defendant has not executed any agreement to sell dated 19.07.2008 in favour of the plaintiff-respondent. In fact, he has borrowed a sum of Rs. 1.5 lac in cash from the plaintiff in the year 2005. At that time, the plaintiff has obtained the signatures of the defendant on blank stamp papers as security. The factum regarding the loan has been categorically admitted by PW-1 Jagdish Singh, the attesting witness of the writing dated 22.01.2009 (Ex.P-1). He specifically stated that the defendant had borrowed some money i.e. Rs.1.5 lac from Nirmal Singh-plaintiff in the year 2005, but he does not know the rate of interest. The admission in the cross-examination of PW-1 Jagdish Singh, the attesting witness of the writing supports the stand of defendant.

9. She further contended that the execution of the agreement to sell dated 19.07.2008 is not established. The plaintiff-respondent was fully aware that on that date the defendant was not the owner of the land in dispute as he has already sold the same. This fact also supports the plea of defendant that the said agreement was procured only as a security to the loan.

10. She further contended that the learned trial Court has awarded the excessive rate of interest. Thus, she pleaded that the suit filed by the plaintiff-respondent has been wrongly decreed by the learned Courts below.

11. I have duly considered the aforesaid contentions.

12. Though, in the written statement, the appellant-defendant has disputed the execution of the agreement to sell dated 19.07.2008 and receiving of the earnest money of Rs. 1,95,000/-. But, from the evidence

adduced by the plaintiff and the some admissions of the defendant, the conclusion arrived at by the learned Courts below with respect to the due execution of the agreement to sell cannot be interfered with. Plaintiff-Nirmal Singh has himself stepped into the witness box as PW-2 and deposed in detail about the execution of the agreement to sell dated 19.07.2008(Ex.P-2) by the appellant-defendant in his favour and with respect to advancement of the earnest money. He has further deposed that vide writing dated 22.01.2009 (Ex.P-1), the appellant-defendant further received a sum of Rs. 15000/- . This version of the plaintiff-respondent is fully corroborated from the testimonies of PW-5-Ninder Singh, the attesting witness of the agreement to sell and PW-4-Kewal Krishan, its scribe. Both these witnesses have consistently deposed about execution of the agreement to sell dated 19.07.2008 (Ex.P-2) by the appellant-defendant in favour of the plaintiff with respect to the payment of the earnest money by the plaintiff to the appellant-defendant in their presence. PW-1-Jagdish Singh has proved the writing dated 22.01.2009 (Ex.P-1), whereby the appellant-defendant has further received the payment of Rs. 15000/-. The execution of writing Ex.P-1 and receipt of Rs. 15000/- by the appellant further corroborates the execution of the agreement to sell by the appellant-defendant in favour of the plaintiff-respondent.

13. The stand taken by the defendant-appellant that his signatures were obtained by the plaintiff-respondent on the blank stamp papers as a security when he borrowed a sum of Rs. 1.5 lacs from the plaintiff does not appeal to the reasons. Mere admission in the cross-

examination of PW-1 Jagdish Singh that appellant-defendant has borrowed a sum of Rs. 1.5 lacs from plaintiff-respondent in the year 2005 is no ground to negate the execution of the agreement to sell, as the appellant-defendant has not been able to establish any connection between the alleged transaction of loan and the agreement to sell dated 19.07.2008. The case of the plaintiff has been fully supported by the attesting witness and the scribe of the agreement as well as the subsequent writing dated 21.01.2009 and its attesting witness that on the date of agreement, the appellant-defendant has received earnest money of Rs. 1,95,000/- and further Rs.15000/- vide writing Ex.P-1. There is absolutely no challenge to the writing Ex.P-1. The allegations regarding forgery are only qua the agreement to sell dated 19.07.2008 (Ex.P-2). The learned Courts below have rightly observed that if the plaintiff-respondent had forged the agreement to sell by misusing the signatures of the appellant on the blank stamp papers, he must have taken some legal action against the appellant-defendant. But, even after filing of the suit, the appellant-defendant has kept mum. On the other hand, the plaintiff-respondent has got registered FIR No. 48 dated 10.05.2010, under Sections 420, 465, 467, 468 and 471 of Indian Penal Code against the appellant-defendant. The testimonies of the witnesses examined by the defendant are also no ground to ignore the oral as well as the documentary evidence adduced by the plaintiff.

14. Thus, plaintiff-respondent has been able to establish the due execution of the agreement to sell dated 19.07.2008 (Ex.P-2) and the writing dated 22.01.2009 (Ex.P-1) by the defendant-respondent and the

payment of the total amount of Rs. 2,10,000/- to him.

15. It is an admitted case of the appellant-defendant that he was not the owner of the land which he had agreed to sell. So, certainly he was liable to refund the money received by him from the plaintiff. Learned counsel for the appellant has not assailed the evidence adduced by the plaintiff-respondent to show his readiness and willingness. Consequently, the plaintiff-respondent has been rightly held to be entitled to recover Rs. 2,10,000/- along with interest from the appellant-defendant. The learned trial Court has awarded the interest at the rate of 12% per annum, which cannot be stated to be excessive or unreasonable.

16. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

17. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

18. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

November 09, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No