

RSA No.5037-2015

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

RSA No.5037-2015 (O & M)

Date of Decision: 14.01.2016

Brij Lal

... Appellant (s)

Versus

Phool Singh

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Rakesh Kumar Sharma, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J. (Oral)

CM-11999-C-2015

Allowed, as prayed for. For the reasons mentioned in the application, delay of 108 days in re-filing the instant appeal is condoned.

RSA No.5037-2015 (O &M)

This regular second appeal of defendant is directed against the judgment and decree dated 20.03.2012 passed by learned Civil Judge (Sr. Divn.), Palwal whereby suit for specific performance and permanent injunction filed by the respondent-plaintiff has been decreed and against the judgment and decree dated 06.09.2014 passed by learned Additional

RSA No.5037-2015

District Judge (I), Palwal whereby appeal preferred by the appellant-defendant has been dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in the plaint.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff filed suit for specific performance with consequential relief of permanent injunction with the averment that the defendant agreed to sell the land measuring 8 kanals situated within the revenue estate of village Dostpur, Palal, to the plaintiff, vide agreement to sell dated 18.12.2006 for a sale consideration of ₹3,00,000/- and received a sum of ₹1,55,000/- from the plaintiff as earnest money. The agreement to sell was also got registered in the office of the Sub Registrar, Palwal on the same day. The plaintiff was already in possession of the suit land as mortgagee vide mutation No.271 dated 05.10.2004 and the factum of mortgage has also been mentioned in the agreement to sell. The sale deed was agreed to be executed and registered upto 21.05.2007 on receipt of balance sale consideration of ₹1,45,000/-. The plaintiff was and has been, always ready and willing to perform his part of the contract, but the defendant refused to perform the same on one pretext or the other. On 21.05.2007 i.e. the stipulated date for execution and registration of the sale deed, the plaintiff reached the Office of Sub Registrar, Palwal along with balance

RSA No.5037-2015

sale consideration of ₹1,45,000/- and other necessary amount for purchase of stamp papers, but the defendant did not turn up. The plaintiff also got his presence marked in the office of Sub Registrar, Palwal by way of affidavit. The plaintiff requested the defendant to perform his part of the agreement, but to no avail. Hence, suit was filed.

Upon notice, the defendant resisted the suit and filed written statement taking various preliminary objections. It was pleaded that the defendant never entered into an agreement with the plaintiff to sell his land vide alleged agreement dated 18.12.2006. Both the agreement and receipt are false and fictitious documents prepared by the plaintiff to defraud the defendant. On 18.12.2006, the defendant appeared before the Sub Registrar, Palwal to get his land redeemed which was under mortgage with the plaintiff and paid him ₹3,00,000/- towards redemption of the mortgage. However, the plaintiff in collusion with the deed writer and the witnesses prepared agreement to sell the suit property of the defendant by way of fraud and misrepresentation. Thus, the agreement to sell is not binding upon the defendant. As the defendant never entered into an agreement to sell his land, therefore, question of receipt of earnest money and to get the sale deed executed and registered on 21.05.2007 does not arise at all. Other averments in plaint were denied and dismissal of suit was prayed for.

On the basis of pleadings of parties, the Court of first instance framed following issues:

RSA No.5037-2015

- “1. *Whether plaintiff is entitled to the decree for specific performance with regard to the suit land detailed in para no.1 of the plaint, as per agreement to sell dated 18.12.2006?OPP*
2. *Whether the plaintiff is entitled to the decree of permanent injunction, as prayed for?OPP*
3. *Whether suit of the plaintiff is not maintainable in the present form?OPD*
4. *Whether the plaintiff has no locus standi/cause of action to file the present suit?OPD*
5. *Whether plaintiff is estopped from filing the present suit by his own act and conduct?OPD*
6. *Relief.”*

After appreciating the evidence, the Court of first instance decreed the suit vide impugned judgment and decree dated 20.03.2012. Feeling aggrieved, the defendant preferred an appeal which has been dismissed by the lower Appellate Court. Hence, this second appeal.

I have heard learned counsel for the appellants and perused the record.

Learned counsel for the appellants has referred to following substantial questions of law formulated in the grounds of appeal for consideration by this Court:

- (i) *As to whether the impugned judgments and decrees passed by the courts below suffers from illegality and irregularities?*
- (ii) *As to whether the plaintiff has been able to prove the passing of valid consideration to the defendant in the light of evidence produced by*

RSA No.5037-2015

him?

- (iii) *As to whether without passing of consideration, a suit for specific performance can be decreed?*
- (iv) *As to whether there is a misreading of evidence and pleadings by the learned courts below?*
- (v) *As to whether the plaintiff has been able to prove his possession over the suit land as alleged by him?*
- (vi) *As to whether the suit of the plaintiff is false, frivolous and has been filed to grab the suit property?*

I have heard learned counsel for the appellant and perused the record.

Learned counsel for the appellant submitted that both the courts below have not properly appreciated the evidence and there is misreading of material evidence by the courts below. The suit land was mortgaged with the plaintiff vide mutation No.271 dated 05.10.2004. The plaintiff promised that the defendant can get the suit land redeemed, therefore, the defendant went to the office of Sub Registrar, Palwal to get his land redeemed from mortgage and paid a sum of ₹3,00,000/- to the plaintiff as redemption money, but the plaintiff in collusion with the deed writer and the attesting witnesses got an agreement to sell executed in respect of the suit land by way of fraud and misrepresentation. Since the defendant never executed the alleged agreement to sell, therefore, question of receiving the earnest money does not arise. The plaintiff has also failed to prove his readiness and

RSA No.5037-2015

willingness to perform his part of the contract. The plaintiff was not having sufficient funds to get the sale deed executed and registered.

I have considered the contentions of learned counsel for the appellant.

Both the courts below have concurrently held that the agreement to sell was duly registered with the Sub Registrar, Palwal and, therefore, a presumption of correctness is attached to the same. Perusal of receipt Ex.P-3 reveals that on receipt of a sum of ₹1,55,000/-, the defendant not only signed the same but also put his thumb impression. The endorsement Ex.P-2 made by the Sub Registrar also makes it clear that a sum of ₹1,55,000/- was paid by the plaintiff to the defendant in the presence of Sub Registrar. Since it is mentioned in the agreement to sell that land is mortgaged with the plaintiff, therefore, there is no need to get the land redeemed before execution and registration of sale deed in favour of plaintiff being mortgagee. Further, perusal of the affidavit Ex.P-4 makes it clear that on 21.05.2007, the plaintiff was present in the office of the Sub Registrar, Palwal during the office hours which shows the readiness and willingness of the plaintiff to perform his part of contract and it was the defendant who did not appear to perform his part of the contract. Both the courts below have concurrently held that the plaintiff was also having sufficient funds to make the payment of balance sale consideration and the stamp charges etc.

Learned counsel for the appellant has failed to show that

RSA No.5037-2015

findings recorded by the courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, the concurrent findings recorded by the courts below do not warrant interference in regular second appeal. No question of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed in limine.

14.01.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge