

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2630 of 2009 (O&M)

Date of decision:15.05.2017

Habib

... Appellant

Vs.

Kamdar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ravi Gakhar, Advocate
for the appellant.

Mr. Sudhir Aggarwal, Advocate
for respondents No.1 & 2.

RAMESHWAR SINGH MALIK, J. (ORAL)

Plaintiff No.1 is in regular second appeal against the impugned judgment of reversal dated 17.03.2009 passed by the learned Additional District Judge, whereby first appeal of the defendants was allowed, setting aside the judgment and decree dated 25.09.2008 of the learned trial Court, in a suit for possession by way of specific performance.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that the plaintiffs filed a suit for possession by way of specific performance of contract alleging therein that the defendants being owner in possession of the suit land, detailed in para 1 of the plaint, entered into an agreement to sell their land with the plaintiffs on 15.05.1998 for a sale consideration of Rs.1,20,000/-. A sum of Rs.70,000/- was paid to the defendants as earnest money at the time of execution of the agreement and the remaining amount of Rs.50,000/- was agreed to be paid at

the time of execution and registration of the sale deed, which was to be executed on or before 05.05.1999. The stamp and registration charges were to be borne by the plaintiffs. It was alleged that the plaintiffs had always been and were ready and willing to perform their part of contract, but the defendants failed to perform their part of contract. On 05.05.1999, the plaintiffs had come present in the office of Sub-Registrar, Nagina to perform their part of contract with remaining sale consideration, stamp and registration charges, but the defendants did not turn up to get the sale deed executed. The plaintiffs asked the defendants several times to execute the sale deed in terms of the agreement to sell, but the defendants turned dishonest and refused to perform their part of contract.

Having been served in the suit, defendant No.1 did not appear and was proceeded against ex-parte by the learned trial Court vide its order dated 01.06.2000. Defendants No.2 and 3 appeared and filed their contesting written statement, taking more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs are entitled to relief of specific performance of the agreement of sale deed dated 15.05.1998 from the defendants in respect of suit land detailed in para 1 of the plaint? OPP
2. Whether the plaintiffs have always been ready and willing to perform their part of contract? OPD
3. Whether the suit is not maintainable? OPD
4. Whether plaintiffs have no locus standi to file the present

suit? OPD.

5. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD
6. Whether the suit is liable to be dismissed as plaintiffs are concealing true and material facts from the Court? OPD
7. Relief.

In order to prove their respective stands taken in their pleadings, both the parties produced documentary as well as oral evidence. After going through the evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that the plaintiffs have duly proved their case for possession by way of specific performance of agreement to sell dated 15.05.1998 Ex.P1. Accordingly, suit of the plaintiffs was decreed, vide judgment and decree dated 25.09.2008. Feeling aggrieved, defendants filed their first appeal, which came to be allowed by learned Additional District Judge, vide impugned judgment and decree dated 17.03.2009. Hence this regular second appeal at the hands of plaintiff No.1, against the impugned judgment of reversal.

The appeal was admitted for regular hearing vide order dated 21.09.2011. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

It has gone undisputed before this Court that the suit land, which was allegedly intended to be sold by the defendants vide agreement to sell dated 15.05.1998 Ex.P1, as well as the land sold by the plaintiff-appellant by way of two separate registered sale deeds of even date i.e. 15.05.1998 Ex.D1 and Ex.D2, whereby they sold land in favour of the defendants, was situated in the

same revenue estate of Village Umri. It is also so established from a bare reading of these three material documents Ex.P1, Ex.D1 and Ex.D2. The land sold by the plaintiffs by way of sale deed dated 15.05.1998 Ex.D1 was measuring 13 kanal 16 marla. Again, the land sold by the plaintiff-appellant by way of sale deed dated 15.05.1998 Ex.D2 was measuring 03 kanal 06 marla.

In this view of the matter, it becomes crystal clear that had the defendants intended to sell their land measuring 08 kanal 12 marla to the plaintiffs vide agreement to sell dated 15.05.1998 itself, there would have been no difficulty, whatsoever, for both the parties to enter into an exchange of respective areas of their land by way of one registered exchange deed, instead of executing two sale deeds and one agreement to sell. That is what has been held by the learned Additional District Judge, while rightly allowing first appeal of the defendants. Having said that, this Court feels no hesitation to conclude that the learned trial Court misdirected itself, while completely misreading and misunderstanding the abovesaid documentary evidence, available on record, before decreeing the suit of the plaintiffs, whereas the learned Additional District Judge was well within his jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

Again, it is pertinent to note here that if at all the defendants were intending to sell their land measuring 08 kanal 12 marla, by way of agreement to sell dated 15.05.1998 Ex.P1, for an amount of Rs.1,20,000/- and they have also received an amount of Rs.70,000/- as earnest money from the plaintiffs, the plaintiffs would have certainly insisted and could have easily got executed the sale deed itself on the same day i.e. 15.05.1998, particularly when the plaintiffs have received sufficient amount from the defendants on that very day, as a

consequence of registration of two sale deeds by the plaintiffs in favour of the defendants vide abovesaid Ex.D1 and Ex.D2. That was also not done for undisclosed reasons best known to the plaintiff-appellant.

In fact, no plausible explanation is forthcoming as to why the parties to this litigation would indulge in multiple transactions, particularly when these were not at all necessary, because only one transaction i.e. exchange deed would have easily served the purpose of both the parties, had the defendants also intended to sell their land measuring 08 kanal 12 marla, as claimed by the plaintiffs. It seems that the plaintiff-appellant tried to play smart, while getting prepared the agreement to sell Ex.P1. The defendants never intended to sell their land measuring 08 kanal 12 marla to the plaintiffs. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate Court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

It goes without saying that the appellant, being the plaintiff, onus was on the plaintiffs to prove their case, by leading cogent and convincing evidence. However, they failed to explain and also to reconcile existence of all these documents Ex.P1, Ex.D1 and Ex.D2 on the same day i.e. 15.05.1998 and between the same parties, which does not appeal to reason at all. It is also the settled proposition of law that plaintiff must stand on his own legs and should not depend on the alleged weakness of the case of the defendants. It is equally important to note that pleadings alone would not be sufficient to decree the suit, until the plaintiff has proved his case.

In view of the peculiar fact situation obtaining on record of the

present case, referred to hereinabove, present one was not a case, wherein the defendants would have intended to sell their land measuring 08 kanal 12 marla vide agreement to sell dated 15.05.1998 Ex.P1, particularly when they, as a matter of fact, purchased more than 17 kanals of land from the plaintiffs on the same day i.e. 15.05.1998 by way of abovesaid two separate sale deeds Ex.D1 and Ex.D2. Under these circumstances, it is unhesitatingly held that since the learned first appellate Court was well justified in setting aside the patently illegal judgment of the learned trial Court, the impugned judgment and decree dated 17.03.2009 passed by the learned Additional District Judge deserve to be upheld, for this reason as well.

Before arriving at his judicious conclusion, learned Additional District Judge rightly appreciated true facts of the case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in paras 15 and 16 of the impugned judgment, which deserve to be noticed here, read as under: -

“In addition to this if agreement Ex.P1 was genuine document then there was no necessity of agreement Ex.P1 rather the sale deed could be executed on the very day as according to Ex.P1 the transaction was for Rs.1,20,000/- only whereas under the sale deeds Ex.D1 and D2 the plaintiffs had received Rs.1,50,000/- from the defendants as under sale deed Ex.D1 the plaintiffs received Rs.1,20,000/- before Sub-Registrar whereas under sale deed D2 another sum of Rs.30,000/- was received in cash and as such on 15.05.1998 the plaintiffs were having Rs.1.5 lakh cash with them and as such instead of getting agreement Ex.P1, executed the sale

deed could be directly executed because according to PWs, the plaintiffs had brought Rs.70,000/- shown as earnest money in Ex.P1 from their home and as such on the date of agreement Ex.P1, the plaintiffs were having Rs.2,20,000/- in cash with them and if agreement was for genuine transaction, certainly the plaintiffs could get the sale deed executed from the defendants when the plaintiffs executed sale deeds Ex.D1 and D2 in favour of the defendants and as such, it is not appealable to reason or logic that Ex.P1 is a genuine transaction as since the time of replication, the plaintiffs are suppressing the execution of the sale deeds executed by them in favour of the defendants and when the scribe of all these documents i.e. agreement and sale deeds is the same person to remove the suspicion regarding due execution, it was bounden duty of the plaintiffs to have examined Sh. O.P. Mangla, Advocate who could be the best person to prove that Ex.P1 was a genuine document.

Since the time of written statement till evidence the stand of the defendant appellant is that when the sale deeds Ex.D1 and D2 were being prepared the plaintiffs were successful in procuring agreement Ex.P1 and when the plaintiffs are suppressing the execution of the sale deeds while examining PWs 1 and 2 and while filing replication, certainly the defendants' stand is strengthened. Though PW4 Habib one of the plaintiffs has admitted the execution of the sale deeds and receipt of Rs.1,50,000/- but again PW4 Habib plaintiff could not give any

plausible explanation that what necessitated the plaintiffs to have agreed to purchase the land of the defendants on a day when the plaintiffs themselves had sold their land to the defendants.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment and decree passed by the learned first appellate Court. He also could not refer to any question of law, much less substantial question of law, which is sine qua non for entertaining the regular second appeal at the hands of this Court, while exercising the appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

15.05.2017

vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No