

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

RSA No.2646 of 2011 (O&M)

Date of Decision: 05.04.2017

Bajrang Lal and others

....Appellants

Versus

Rambilas and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.A. Sheoran, Advocate
for the appellants.

Mr. Jai Vir Yadav, Advocate
for respondent No.1.

DAYA CHAUDHARY, J.

Appellants, who were defendants before the trial Court, have filed the present Regular Second Appeal to challenge the judgment and decree dated 25.02.2010 passed by the Additional District Judge (Fast Track Court), Narnaul, whereby, the judgment and decree passed by the trial Court was upheld.

Briefly, the facts of the case are that plaintiff-Rambilas, who is respondent herein, filed a suit for specific performance on the ground that the defendants No.1 to 5 entered into an agreement on 12.07.1999 with the plaintiff. A sum of ₹ 95,000/- was paid as earnest money at the time of agreement and the balance amount was to be paid at the time of execution of sale deed. The date for executing the sale deed was fixed as 10.03.2000 but defendants No.1 to 5 executed the sale deed in favour of defendants No.6 to 9 on 15.03.2000 which was challenged by way of filing the suit. Written statement was filed, wherein, it was alleged that defendants No.1 to

5 entered into an agreement with defendants No.6 to 9 on 13.11.1997 for a consideration of ₹ 1,50,000/-, out of which, ₹ 1,30,000/- was paid as earnest money. Defendants no.1 to 5 took the plea that the plaintiff being the real brother-in-law of defendants No.1 to 5 were in need of ₹ 95,000/- and he advanced ₹ 70,000/-, whereas, defendants No.6 to 9 also took the plea that they were *bona fide* purchasers. The suit of the plaintiff was decreed and thereafter, the appeal was filed by the appellants, which was dismissed.

The appellants, after losing before two Courts below, have filed the present Regular Second Appeal.

Learned counsel for the appellants submits that as per agreement, the possession was delivered at the time of execution of agreement and once, the possession was delivered then the suit for specific performance was not maintainable and the suit was liable to be dismissed only on this ground. Learned counsel also submits that the appellants entered into an agreement on 13.11.1997 for a total consideration of ₹ 1,50,000/-, out of which, ₹ 1,30,000/- was paid as earnest money. The plaintiff, being brother-in-law, had prepared the forged agreement and the same has been relied upon by both the Courts below. Learned counsel also submits that there were contradictions in the statements of the plaintiff witnesses. As per statement of one of the plaintiff witness, the amount of consideration was passed in the house of Ramotar, whereas, the Numberdar, who appeared as PW, has specifically stated that the money was paid in the Court and the Deed Writer has deposed that no money transaction took place in his presence. Learned counsel further submits that both the Courts below have relied upon agreement dated 12.07.1999 in favour of the

plaintiff and ignored the agreement in favour of appellants which is Exhibit D-2. At the end, learned counsel for the appellants submits that both the judgments and decrees passed by the trial Court as well as lower Appellate Court are liable to be set aside.

Learned counsel for the respondents submits that both the judgments of the trial Court as well as of the lower Appellate Court are well reasoned and based on proper appreciation of evidence. The discrepancies which have occurred in the statement of witnesses are with regard to making of payment, which are minor and can be ignored. The entire case cannot be shattered only on the basis of minor discrepancies. Learned counsel also submits that the signatures/thumb impressions of defendants No.1 to 5 have not been disputed. It was averred in the statement that defendants No.1 to 5 never intended to sell the property, in dispute, in favour of plaintiff vide alleged agreement to sell. The defendant/appellants had only borrowed an amount of ₹ 70,000/- from the plaintiff being their close relative but subsequently, it was converted into an agreement to sell. Learned counsel also submits that it has also come on record that before filing the present suit, the plaintiff has also filed a suit for permanent injunction against defendants, which was proved on record as Exhibit P-4. The trial Court, vide its order dated 15.12.1999, had restrained the defendants from alienating the disputed property and also ordered to maintain *status quo*. Learned counsel also submits that out of so called attesting witnesses of Ex.D2, only one witness, namely, Mohan Lal-Numberdar, who was of the different village, was examined as DW-3, whereas, the other attesting witnesses, who belong to the same village where the property, in dispute, is situated, were not produced before the

Court. Learned counsel also submits that the statements of defendant witnesses, namely, Santosh and Bajrang, while appearing as DW1 and DW-2, are totally unreliable and doubtful. In cross-examination, he has stated that no suit was filed by the plaintiff against Santosh, Shiv Kumar and others, whereas, it was established from documents Exhibit P-5, P-6 and P-7. It has also come in the statement of Mohan Lal (DW-3) while admitting that the property, in dispute, was situated in Tehsil Mohindergarh, whereas, the agreement to sell (Exhibit D2) was executed at Narnaul and no Numberdar of Village Kurahwata could be arranged at the time of execution of agreement to sell. Learned counsel also submits that it was proved on record that Exhibit D-2 was the result of collusion between defendants No.1 to 9 and the purpose was to defeat the rights of the plaintiff-respondent No.1. Learned counsel further submits that the plaintiff-respondent No.1 was always ready and willing to get the sale deed executed in respect of property, in dispute, by virtue of agreement to sell Exhibit PW1/A dated 12.07.1999 for a sale consideration of ₹ 1,62,000/- after adjusting the earnest money of ₹ 95,000/-. It was only defendants No. 1 to 5 , who did not turn up in the Office of Sub Registrar, Mohindergarh on 10.03.2002. They in collusion with defendants No.6 to 9, got executed another document Exhibit D2, which was *ante dated* and executed sale deed Exhibit D1 in respect of the property, in dispute. Learned counsel for respondent No.1 also submits that as per The Punjab Stamp Rules, 1934, it is the requirement that the vendor, at the time of sale to the public is to write, with his own hand, in indelible ink in English or Urdu on the blank space left for this purpose on each adhesive Court-fee stamp, the name, caste, or tribe and surname (if any) and also the residence of the purchaser, the date of the sale

and the signature of the vendor. In case, the stamp is purchased by any person other than the principal, the said particulars in regard to both the agent and the principal not only the name are to be written but it is to be mentioned as married/unmarried. The vendor, in addition to the name and other particulars regarding such man or unmarried woman, write the name or his or her father. In case, the stamp is purchased for any person by a pleader or an advocate as agent, the vendor need only write the name and parentage of the principal and where the parentage cannot be conveniently ascertained, then the brief particulars of the case, together with a sufficient description of the agent is required. The entry in this regard is required to be mentioned in the vend register and the purchaser is to attest them by his signature or thumb impression or both. Even the purchaser is required to mention the purpose of purchasing stamp paper, value and nature of suit or appeal and also the name of person, against whom, the suit or appeal is to be instituted. At the end, learned counsel for the respondents submits that it was proved on record that the plaintiff-respondent had successfully been able to discharge the onus of issues No.1 to 3 and 9 and as such, the findings recorded by both the Courts below do not require any interference by this Court.

Heard the arguments of learned counsel for the parties and have also perused the documents available on file as well as the judgments of the trial Court and lower Appellate Court.

Facts relating to filing of suit before the trial Court by plaintiff-Rambilas; filing of written statement and passing decree in his favour and filing of appeal by the present appellants and thereafter, filing of Regular Second Appeal before this Court are not disputed.

Plaintiff-Rambilas filed a suit for specific performance of contract stating therein that he entered into an agreement to sell with defendant-respondents No.1 to 5 for selling their 7 kanals 7 marlas of land for a consideration of ₹ 1,62,000/-. An Agreement to Sell was executed on 12.07.1999 and an amount of ₹ 95,000/- was paid as earnest money and the balance amount of ₹ 67,000/- was to be paid at the time of execution of sale deed on 10.03.2000. As per case of the plaintiff, he was ready and willing to perform his part of the contract and was ready and willing to perform his part of contract but it was only defendants No.1 to 5, who failed to perform their part of contract. It was also pleaded in the suit that defendants No.1 to 5 executed an agreement to sell in the back date with regard to same property with defendants No.6 to 9 and sold that property to them vide sale deed No.4394 dated 15.03.2000. Written statement to the suit was filed and thereafter, the following issues were framed :-

- “1. Whether plaintiff is entitled for possession by way of specific performance of contract as alleged? OPP*
- 2. Whether plaintiff is ready and willing to perform his part of contract, if so to what effect? OPP*
- 3. Whether defendant has executed an agreement to sale dated 2.7.1999 in favour of plaintiff, if so to what effect? OPP*
- 4. Whether plaintiff has no right to file the present suit? OPD*
- 5. Whether suit is not maintainable in the present form? OPD*
- 6. Whether suit is time barred? OPD*
- 7. Whether plaintiff has no locus standi to file the present suit? OPD*
- 8. Whether plaintiff is estopped from filing the suit by his own act and conduct? OPD*

9. Whether defendants No.6 to 9 are bonafide purchaser for consideration? OPD

10. Whether the defendants are entitled for special costs under section 35A CPC? OPD

11. Relief.”

The plaintiff-respondent No.1, to prove his case, examined himself as PW-1, Ramotar as PW2, Chandgi Ram as PW-3, Prithvi Chand, deed writer as PW-4 and Banwari Lal Nambardar as PW-5.

Similarly, in defence, defendant No.1 examined himself as DW1, Bajrang Lal as DW-2, Mohan Lal Nambardar as DW-3, Jiwan Ram Sanghi, Deed Writer-Narnaul as DW4 and Gurdayal Sharma-deed writer, Mohindergarh as DW-5.

The trial Court decreed the suit by giving a finding that the plaintiff had succeeded in proving his case to the effect that defendants No.1 to 5 voluntarily entered into an agreement with plaintiff on 12.07.1999 for selling the property, in dispute, for a consideration of ₹ 1,62,000/-. It was defendants No.1 to 5, who did not turn up in the Office of Sub Registrar on the date, the sale deed was to be executed. The presence of the plaintiff in the Office of Sub Registrar on the date fixed was proved. An application dated 10.12.1999, which was marked as P-3, was given by Rambilas to SDO, Civil Mohindergarh for giving direction to Sub Registrar not to execute the sale deed relating to property, in dispute. Similar application marked as P-4 was given to Sub Registrar, Mohindergarh. After making attendance before Sub Registrar on 10.03.2000, the plaintiff served a notice of demand upon defendants No.1 to 5. Defendant no.1 to 5 executed the sale deed of the same property in favour of defendants No.6 to 9 on the basis of agreement to sell, which was in the back date. It has been proved on record

that the plaintiff entered into a valid agreement with defendants No.1 to 5 for a lawful consideration and he was also ready and willing to perform his part of contract. By recording these findings, the suit was decreed in favour of plaintiff.

Similarly, the lower Appellate Court while recording its findings, has held that in the document Exhibit D-2 relied upon by the defendant-appellants, neither there was any endorsement over any page of the stamp paper over which the alleged agreement to sell Exhibit D-2 was executed by defendants No.1 to 5 in favour of defendants No.6 to 9 on 13.11.1997 nor any purpose of purchasing stamp paper was written on its back side. Out of the total attesting witnesses, only one witness, namely, Mohan Lal Numberdar, who was from the different village, was examined as DW-3. Defendant-Santosh has appeared as DW-1 and Bajrang as DW-2. The testimony of DW-2 was found to be unreliable and doubtful as he had stated in cross-examination that no suit was filed by the plaintiff against Santosh, Shiv Kumar and others, whereas, this fact was proved on record from documents Exhibit P-5, P-6 and P-7. It has also come in the statement of DW-3 that the property, in dispute, was situated in Tehsil Mohindergarh, whereas, the agreement to sell Exhibit D-2 was executed at Narnaul and no Numberdar of Village Kurahwata could be arranged at the time of execution of agreement to sell. It has also been proved on the basis of statement of plaintiff witnesses that the plaintiff was ready and willing to get the sale deed executed in respect of property, in dispute for a sale consideration after adjusting the earnest money. It has also been proved that defendants No. 1 to 5 did not turn up in the Office of Sub Registrar, Mohindergarh on 10.03.2002 deliberately and executed the sale deed Exhibit D1 relating to

same property in collusion with defendants No.6 to 9. Accordingly, the plaintiff-respondent was successful in proving that he was ready to perform his part of the contract.

In view of the findings recorded by both the Courts below which are based on proper appreciation of evidence and as such, there is no merit in the contentions raised by learned counsel for the appellants, the appeal, being devoid of any merit, is hereby dismissed.

05.04.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes