

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2089 of 2016 (O&M)
Date of decision: 02.05.2017

Subhash Chand (deceased) through LRs

... Appellant

Vs.

Surjit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Dr. Ravi P.S. Girwar, Advocate and
Mr. Rajesh Tushar, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby the learned trial Court decreed the suit of the plaintiff for possession by way of specific performance of agreement to sell dated 09.12.2008, vide its impugned judgment and decree dated 18.04.2012 and the first appeal of the defendant was dismissed by the learned first appellate Court, vide impugned judgment and decree dated 21.12.2015.

Brief facts of the case, as noticed by learned Additional District Judge in para 2 of his impugned judgment, are that the appellant-defendant being owner of land measuring 6 kanals situated within the revenue estate of village Takoran, Tehsil Pehowa, District Kurukshetra as fully detailed and described in para No.1 of the plaint (hereinafter referred to as 'the disputed land')

for short) entered into an agreement of sale of the same along with all rights appurtenant thereto with the respondent-plaintiff vide an agreement dated 09.12.2008, so executed by the appellant-defendant in favour of the respondent-plaintiff @ ₹8 lakhs per acre and on that day the appellant-defendant received a sum of ₹2 lakhs as of earnest money from the respondent-plaintiff and the remaining sale consideration was to be paid at the time of execution and registration of the sale deed of the disputed land, which was agreed to be executed on or before 20.11.2009 and it was also agreed between the parties that in case the appellant-defendant would fail to execute the sale deed of the disputed land in favour of the respondent-plaintiff, in that eventuality, the appellant-defendant would pay double of the amount of the earnest money to the respondent-plaintiff and the respondent-plaintiff would also be entitled to get the sale deed of the disputed land executed and registered through the process of the Court and in case the respondent-plaintiff would fail to perform his part of contract then the earnest money so paid by him to the appellant-defendant would stand forfeited. It was further asserted that thereafter the respondent-plaintiff approached the appellant-defendant along with the balance sale consideration several times for the purposes of execution and registration of the sale deed of the disputed land as per terms of the agreement dated 09.12.2008, but the appellant-defendant prolonged the matter on one pretext or the other and on 20.11.2009 i.e. the target date, the respondent-plaintiff along with balance sale consideration and other requisite expenses came to the office of Sub Registrar, Pehowa for the purposes of execution and registration of the sale deed of the disputed land and waited for the appellant-defendant but he did not turn up. It was further asserted that thereafter the respondent-plaintiff met the appellant-defendant and requested him for execution of the sale deed of the

disputed land as per terms of the agreement of sale dated 9.12.2008 but the appellant-defendant again prolonged the matter on one pretext or the other. It was further asserted that the respondent-plaintiff had always been ready and willing to perform his part of contract but it was the appellant-defendant, who prolonged the matter without any reasonable excuse. It was further asserted that the respondent-plaintiff also got served upon the appellant-defendant a legal notice through his counsel on 27.11.2009 with a request to perform his part of contract as per the terms of agreement dated 09.12.2008 and which notice was duly received by the appellant-defendant, but despite the same, the appellant-defendant failed to perform his part of contract.

Having been served in the suit, defendant put appearance and filed his contesting written statement, taking more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the defendant entered into an agreement to sell dated 9.12.2008 with the plaintiff? OPP
2. Whether the plaintiff was and is still ready and willing to perform his part of contract? OPP
3. If issues No.1 and 2 are proved, whether the plaintiff is entitled for relief of possession by way of specific performance of agreement in question? OPP
4. Whether in alternative, plaintiff is entitled for a recovery of Rs.6,00,000/- as damages with interest @ 18% per annum? OPP
5. Whether the suit of the plaintiff is not maintainable in the present form? OPD

6. Whether the plaintiff has no locus standi to file the present suit? OPD

7. Relief.

With a view to prove their respective stands taken in their pleadings, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has duly proved his case, by leading cogent evidence. Execution of the agreement to sell was duly proved. Plaintiff also proved his readiness and willingness at very relevant point of time. Accordingly, suit of the plaintiff for possession by way of specific performance of the agreement to sell dated 09.12.2008 was decreed by the learned trial Court, vide its impugned judgment and decree dated 18.04.2012. Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by learned Additional District Judge, vide impugned judgment and decree dated 21.12.2015. Hence this regular second appeal at the hands of the defendant.

Heard learned counsel for the appellant.

A combined reading of both the impugned judgments and decrees will make it crystal clear that although the defendant-appellant specifically pleaded and raised the plea of fraud against the plaintiff, yet he miserably failed to prove it, by leading cogent and convincing evidence. In fact, the entire case of the defendant-appellant was based on the plea of fraud against the plaintiff. It is the settled proposition of law that onus would be on the party who asserts.

In the present case, it was the defendant-appellant who asserted that he was defrauded by the plaintiff. He denied the execution of agreement to sell, contending that the plaintiff took his signatures on blank papers. However,

when the appellant-defendant was leading his evidence, DW2 Raj Kumar completely demolished the case of the defendant-appellant, deposing before the Court in his cross-examination that thumb impression of the defendant was taken by the deed writer on two written papers. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

It goes without saying that it is very easy to allege the fraud but it is very difficult to prove the same. That is what has happened in the present case. DW2 Raj Kumar, despite being an interested witness, as he was close relative of defendant, could not help the defendant to prove the plea of fraud. It is so said because this material witness admitted in his cross-examination that defendant has purchased the stamp papers and the deed writer took the thumb impression of defendant on two written papers. In this view of the matter, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Gautam Sarup Vs. Leeta Jetly and others, 2008 (7) SCC 85 (SC).***
2. ***Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520 (P&H).***
3. ***Devi Lal Vs. Shekaran and another, 2011 (5) RCR (Civil) 615 (P&H).***
4. ***Usha and others Vs. Subhash Chander and others, 2014 (5) RCR (Civil) 813 (P&H).***
5. ***M/s Machhi Ram Kishan Singh Sidana, Rice Mills Vs. Sham***

Singh and others, 2015 (9) RCR (Civil) 506 (P&H).

6. *RSA No.4070 of 2016 (Chamkur Singh and another Vs. Raghbir Singh and another) decided on 13.1.2017 (P&H).*
7. *RSA No.1239 of 2016 (Satbir Singh Vs. Mukesh Rani and others), decided on 17.1.2017 (P&H).*

Before arriving at his judicious conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in later part of para 11 of his impugned judgment, which deserve to be noticed here, read as under: -

“.....So, in the absence of necessary particulars of fraud and the proof thereof the said plea is not available to the appellant-defendant. Furthermore, perusal of the agreement of sale Ex.P1 reveals that on the back of first page of the said agreement there is an endorsement made by the concerned stamp vendor that the said stamp paper worth ₹100/- only has been sold in favour of the appellant-defendant on dated 09.12.2008 i.e. on the same day when the appellant-defendant entered into an agreement of sale of the disputed land with the respondent-plaintiff. Again an affidavit Ex.P4, so proved on the file by the respondent-plaintiff further supported the fact of his readiness and willingness to perform his part of contract. Fact of non-replying the legal notice Ex.P2 so got issued by the respondent-plaintiff through his counsel upon the appellantdefendant further goes against the interest of the appellant-defendant. So from the entirety of the evidence so

adduced on the file it stands proved that the appellant-defendant in fact, on dated 9.12.2008, entered into an agreement of sale of the disputed land with the respondent-plaintiff and received a sum of ₹2 lakhs as of earnest money. The said facts find corroboration from the deposition of various witnesses so examined by the respondent-plaintiff in his favour and the appellant-defendant now by taking irrelevant pleas wants to delay the due execution of the impugned agreement of sale Ex.P1. The appellant-defendant has though alleged that regarding the alleged fraudulent act of the respondent-plaintiff, he had filed a criminal complaint against him yet at the same time neither any copy of such complaint nor as to what remained the fate of said complaint has been brought on the file.

*In case titled as **Jeet Singh vs Bahadur Singh, 2009 (4) RCR (Civil) 196**, it has again been observed by the Hon'ble Punjab & Haryana High Court that:-*

“The case of the defendant, on the other hand, was that has thumb impression had been obtained on blank paper and the agreement to sell in question was forged and fabricated document. Learned Additional District Judge in its judgment has observed that after perusal of the agreement to sell, in question, it was found that it had been executed on a stamp paper worth Rs.300/-, purchased by the defendant from Shiv Kumar Bansal for execution of agreement to sell in favour of the plaintiff. In these circumstances, learned Additional District Judge, has rightly observed that agreement to sell

could not be said to be a forged and fabricated document as the stamp paper had been purchased by the defendant himself for execution of agreement to sell in favour of the plaintiff.....”

It is also pertinent to note here that first opportunity for the defendant to deny the execution of agreement to sell was at the time of issuance of legal notice Ex.P2 by the plaintiff. However, defendant-appellant did not reply this legal notice at all, for the reasons best known to him. So far as the readiness and willingness on the part of the plaintiff-respondent to perform his part of the contract is concerned, he has duly proved the same. Affidavit Ex.P4 was proved by the plaintiff to establish that he was ready and willing to perform his part of the contract, but it was only the defendant-appellant who did not come forward to execute the sale deed, in compliance of the agreement to sell dated 09.12.2008. Under these undisputed facts and circumstances of the case noticed hereinabove, it is unhesitatingly held that the learned Courts below were well justified in recording their concurrent findings of fact and the same deserves to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the concurrent findings recorded by both the learned Courts below. Further, no question of law, much less substantial question of law arises for consideration of this Court, which is sine qua non for entertaining the regular second appeal, 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

02.05.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No