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

RSA No.2791 of 2016 (O&M)
Date of decision : 10.10.2017

Shyam Lal

...Appellant

Versus

Ashok Kumar and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.**

Present: Mr. Vikas Behl, Sr. Advocate with
Mr. Gurmohan Singh Bedi, Advocate for the appellant.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Govind Chauhan, Advocate for the respondents.

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**ANIL KSHETARPAL, J.**

The defendant is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiffs had filed a suit for possession by way of specific performance of the agreement to sell dated 30.12.2005. It was pleaded that the land measuring 21 kanals 19 marlas was agreed to be sold for a total sale consideration of ₹48,00,000/-, Out of which, ₹10,00,000/- was paid as earnest money. The target date for execution and registration of the sale deed on payment of the balance sale consideration was fixed as 29.05.2006.

In the written statement, defendant denied that he entered into any agreement to sell with the plaintiff. He also denied the receipt of the earnest money. He further denied that he had ever signed the said agreement to sell. It was claimed that the agreement to sell is a result of fraud played by the plaintiffs.

The Courts below after appreciating the evidence available on the file have recorded a concurrent finding of fact that the defendant has failed to prove the plea of fraud. The Courts below have decreed the specific performance of the agreement to sell on payment of the balance sale consideration.

I have heard the learned counsel for the parties at length and with their able assistance gone through the record of the case.

Learned counsel for the appellant has submitted as under:-

1. The agreement to sell and sale deed in favour of the defendant were executed on the same day i.e. on 30.12.2005 and, therefore, the papers of the agreement to sell were placed in between the sale deed executed in favour of defendant-appellant and he signed it without looking into the documents.
2. One of the marginal witness of the agreement to sell had given an affidavit Ex.D12 admitting that the agreement to sell was result of fraud.
3. It is wholly unnatural that out of the total earnest money of ₹10,00,000/-, ₹9,75,000/- paid in cash, whereas remaining amount of ₹25,000/- paid through Post Dated Cheque.
4. Stamp Vendor has not been examined by the plaintiff.
5. Once there is a suspicion, then the specific performance of the agreement to sell cannot be ordered.

On the other hand, learned counsel for the respondents has submitted that the agreement to sell is proved on the file. He has further submitted that DW6, the Typist who was examined by the defendant has admitted that the earnest money including cheque was paid to the defendant in his presence. He has further submitted that the defendant-appellant has been changing his stand in as much as while replying to the notice dated 15.11.2006, the defendant had put forth a story of loan, whereas in the written statement, stand was changed and it was pleaded that ₹25,000/- was on account of refund of excess payment of commission to the Property Dealer. He has further brought to my notice that DW3, the nephew of the defendant, has given another story that the defendant was served with some intoxicant drink and under that influence, the signatures were obtained.

It is well settled that the plea of fraud is to be proved beyond any doubt. In the present case, the defendant-appellant is a Chartered Accountant. The defendant-appellant belongs to the same village from where the plaintiffs belong. The parties are known to each other. The agreement to sell runs into two pages and both the pages have been signed by the defendant-appellant. A reading of the agreement to sell would show that the details of the land have been given. Even the mutation number and date of sanctioning of the mutation has been written therein. The agreement to sell is witnessed by the two marginal witnesses. Part of the earnest money was paid through a post dated cheque which has been admittedly encashed by the defendant.

First argument of the learned counsel is that on 30.12.2005, defendant had executed two documents. One sale deed Ex.D10, whereby the defendant had purchased 11 square yard plot from Manohar and second agreement to sell agreeing to sell the land in question. Counsel has tried to assert that in fact Manohar had executed the agreement to sell in favour of Hem Lata wife of plaintiff No.1 with respect to the land measuring 92 square yards and appellant had agreed to purchased 11 square yards plot out of the same. He has submitted that while signing the aforesaid sale deed fraudulently, the plaintiffs have got signed the agreement to sell.

As noticed earlier, the defendant-appellant is a Chartered Accountant. He has been changing his stand repeatedly. Second argument of learned counsel is that one of the attesting witness had admitted the fraud in the affidavit Ex.D12. This witness namely Numberdar has come into the witness-box as PW2. Sohan Singh-Numberdar has explained that brother of the defendant alongwith him who belongs to the same village had come to him on the pretext that defendant wants to get a ration card and identity card prepared. His signatures were obtained under that pretext. The Numberdar specifically stated that he does not know English and Ex.D12 is in English.

Still further, the affidavit is attested by Rohtash Singh, Numberdar, however he has not been examined by the defendant.

Next argument of the learned counsel is that the payment of the earnest money is unbelievable because out of ₹10,00,000/-, ₹9,75,000/- was paid in cash and ₹25,000/- was paid through a Post Dated Cheque. One has to test this argument in the facts of the case. Here is a case where plaintiffs and defendant are known to each other. They belong to the same village. The family of the defendant is still living in the same village. In these circumstances, if some part of the payment is paid through Post Dated

Cheque which is a small fraction, there is nothing unnatural about it.

Next argument of learned counsel is that the Stamp Vendor has not been examined. Defendant could have examined the Stamp Vendor. There is an agreement to sell executed between the parties which is in writing, executed on a stamp paper purchased for the purpose of executing the agreement, the evidence of the Stamp Vendor would not be relevant.

Last argument of the learned counsel is that once there is suspicion, then specific performance of the agreement to sell should not be ordered.

I have considered the submission. However, I do not find any force in the same. In my considered opinion, there is no suspicion. The agreement to sell is proved on the file. The payment of the earnest money is also proved. It is further established from the documents available on the file that the plaintiffs were always ready and willing to perform their part of the contract. In fact plaintiffs had got prepared the Demand Drafts Ex.P16 and Ex.P17 and Pay Order Ex.P18 in favour of the defendant for payment.

In these circumstances, I do not find that the agreement is surrounded by suspicious circumstances.

For the reasons mentioned above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

However, since, the balance amount of ₹38,00,000/- has remained with the plaintiffs, therefore, the judgments and decrees passed by the Courts below are modified and the plaintiffs-respondents shall be entitled to a decree for specific performance of the agreement to sell dated

30.12.2005 on payment of the balance sale consideration along with interest at the rate of 9% p.a.

In view of the above, the present Regular Second Appeal is dismissed with small modification noticed above.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

**10.10.2017** **(ANIL KSHETARPAL)**
*Pawan* **JUDGE**

**Whether speaking/reasoned:-** **Yes/No**

**Whether reportable:-** **Yes/No**