

RSA No. 1786 of 2015 (O&M)

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

**RSA No. 1786 of 2015 (O&M)
Date of Decision: 28.8.2017**

Ajit Singh

.....Appellant

Vs.

Chhinder Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. V.K. Gupta, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Plaintiff is in regular second appeal against the concurrent findings of facts, recorded by both the learned courts below, whereby his suit for possession by way of specific performance of the agreement to sell dated 29.11.2000 was dismissed by the learned trial court vide its impugned judgment and decree dated 25.8.2009 and his first appeal was also dismissed by the learned District Judge, vide impugned judgment and decree dated 27.2.2012, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that the plaintiff-appellant filed a suit for specific performance of the agreement to sell dated 29.11.2000, inter alia, on the allegations that the disputed property, as detailed and described in para No.1 of the plaint, was agreed to be sold by the defendant to the plaintiff

vide agreement to sell dated 29.11.2000 for a consideration of ₹75,000/- and ₹70,000/- was received as earnest money and balance price was to be paid at the time of execution and registration of the sale deed which was to be executed and registered on 30.5.2001. The possession of the suit land was to be delivered at the time of execution of the sale deed. The plaintiff was always ready and willing to perform his part of contract. On 30.5.2001, the parties mutually agreed to extend the date of execution and registration of the sale deed up to 4.12.2001 and a writing in this behalf was executed on the back of agreement itself. On 3.12.2001, the plaintiff offered the balance sale price to the defendant and requested him to get the sale deed executed and registered on which the defendant stated that he would come present before the Sub-Registrar, Siwan, on 4.12.2001 and would execute the sale deed in his favour but on that day, the defendant did not turn up and the plaintiff waited for him in the office of Sub-Registrar and moved an application for marking his presence. A legal notice was also served upon the defendant on 11.1.2002 but to not effect.

Having been put to notice, defendant appeared and filed his contesting written statement, raising 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 plaintiff is entitled to the specific performance of the agreement to sell dated 29.11.2000?OPP
- 2) Whether the plaintiff is entitled to the possession of the suit property?OPP
- 3) Whether the suit of the plaintiff is not maintainable?OPD
- 4) Whether the plaintiff has suppressed the true and material facts from the court and its effect?OPD
5. Whether this court has no jurisdiction to try this suit?OPD

6. Relief

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has miserably failed to prove his case for want of cogent and sufficient evidence. Accordingly, his suit for possession by way of specific performance of the agreement to sell dated 29.11.2011 was dismissed by the learned trial court, vide its impugned judgment and decree dated 25.8.2009. Feeling aggrieved, plaintiff filed his first appeal, which was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 27.2.2012. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

Admittedly, suit property was the only residential house of the defendant. He specifically denied in his written statement that he ever entered into an agreement to sell qua his only residential house with the plaintiff. It was also pleaded that since the appellant was doing the business of money lending, he was in the habit of forging agreements to sell, which he did on 29.11.2000, 12.8.1999, 31.12.1998, 29.5.1997, 8.2.1999, 8.3.1999, 28.2.2000, 26.2.1999, 20.10.1996 and 1.5.2001.

Interestingly, plaintiff-appellant kept conveniently silent in this regard, for the reasons best known to him. Further, total amount of sale consideration in the present case was ₹75,000/- out of which plaintiff-appellant claimed to have paid an amount of ₹70,000/- to the defendant-respondent as earnest money. However, plaintiff-appellant never insisted either for taking

possession of the suit property or for registration of the sale deed on the date of alleged payment of earnest money and that too, for no good reasons.

It is also a matter of record that plaintiff pleaded that target date was extended with alleged mutual consent of the parties. However, it does not appeal to reason at all as to why in spite of payment of ₹70,000/- out of total sale consideration of ₹75,000/-, plaintiff would not insist for taking the possession and also for registration of the sale deed. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction in passing their respective impugned judgments and decrees and the same deserve to be upheld.

A bare combined reading of both the impugned judgments and decrees will make it crystal clear that the agreement to sell dated 29.11.2000 was the result of forgery committed by the plaintiff-appellant. It is so said because he was in the habit of preparing and forging these types of agreements to sell, as numerous such kind of instances have been referred hereinabove and said fact remained uncontroverted. It has also come on record that plaintiff-appellant was a dishonest litigant.

He not only miserably failed to prove his pleaded case for want of cogent and sufficient evidence but he also exposed himself to such an extent that he was rightly non-suited by both the learned courts below. Under these undisputed facts and circumstances of the case, it can be safely concluded that 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.

In fact, conduct of the parties to the litigation is also one of the relevant considerations for any court of competent jurisdiction to arrive at a

judicious conclusion. Since our justice delivery system is based on the golden rule of truthfulness, dishonest litigants, like the appellant in the case in hand, has no place to stand in a court of law. Such a litigant, who has no respect for the law of the land and the justice delivery system, can be and must be thrown out of court at any stage of litigation and the sooner is better. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned courts below and the same deserve to be upheld, for this reason also.

Further, even if for the sake of argument, agreement to sell (Ex.P2) is treated to be duly proved, followed by readiness and willingness of the plaintiff, still present one was a clear cut of undue hardship on the defendant. It is so said, because it also does not appeal to reason as to why defendant would enter into an agreement to sell with the plaintiff qua his only residential house. In fact, appellant as well as learned counsel for the appellant have been found obsessed with the other agreement to sell executed between the plaintiff and father of the defendant.

While considering the peculiar fact situation of the case in hand, it has been established on record that the plaintiff was unable to prove his pleaded case by bringing on record any reliable evidence. On the other hand, defendant completely disproved the case of the plaintiff by placing on record voluminous documentary as well as oral evidence, which was rightly considered and appreciated by both the learned courts below, before passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned District Judge rightly examined, considered and appreciated true facts of the case as well as

the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 15 to 19 of its impugned judgment, which deserve to be noticed here, read as under:-

“As per admitted case of the parties a similar agreement on the same day was claimed to have been executed between the plaintiff and Harbans Singh, father of present defendant and the suit filed for specific performance of that agreement against Harbans Singh was dismissed vide judgment (Ex.D28). However, appeal filed against the judgment (EX.D28) was also dismissed vide judgment (Ex.D31). Judgments (Ex.D28 and Ex.D31) reflect that two agreements were allegedly executed on 29.11.2000 an one agreement allegedly executed in between the plaintiff Ajit Singh and father of the defendant was not believed to be genuine vide judgments EX.D28 an Ex.D31 and that agreement was again for the sale of the residential property for a consideration of Rs. 1,55,000/- and Rs. `1,47,000/- were shown to have been paid as earnest money and in the present agreement (Ex.P2) the sale consideration was shown to be Rs. 75,000/- an Rs. 70,000/- were paid as cash as mentioned in (Ex.P2) and as such, it is established on record that a total sum of Rs. 2,17,000/- was allegedly paid by the plaintiff to defendant Chhinder Singh and his father Harbans Singh whereas as per admitted case of the plaintiff the possession of none of the property in part performance of the agreement was taken by the plaintiff either from the defendant or his father Harbans Singh. There is no denial of the fact that when major part of the sale consideration is paid the possession is usually obtained in part performance of the agreement and when counsel for the appellant was asked as to why the possession was not taken from Harbans Singh or the present defendant, it was contended that defendant and his father had decided to dispose of all the properties for shifting to Uttar Pradesh and on that account the possession was retained by the defendant till all the properties are sold but this contention is beyond pleadings as neither in the agreement (EX.P2) nor in the evidence it is explained that the

possession could not be taken because of the fact that residential houses were to be vacated by the defendant after selling all the properties in the village.

The suit filed by the plaintiff against the father of the defendant for specific performance stands dismissed up to the appellate court and when Harbans Singh and Chhinder are father and son certainly if the amount of Rs. 2,17,000/- was with the appellant-plaintiff on 29.11.2000, then the sale deed of at least one of the houses could be executed and there could be another agreement for sale of other property and as such absence of the part performance and not getting the sale deed executed either from Harbans Singh or from the present defendant Chhinder leads to any irresistible conclusion that the present transaction is a sham and fictitious one. There is no bar for getting that agreements executed from father and son but at the same time when the plaintiff was having Rs. 2,17,000/- on 29.11.2000 when two agreements came into existence in between the plaintiff and father of the defendant either the possession was to be taken in part performance of the agreements or at least one of the transactions either with the present defendant or with his father could be finalized on that very day by getting at least one of the sale deeds executed. If actually the property mentioned in agreement (Ex.P2) was agreed to be sold for Rs. 75,000/- and only Rs. 5,000/- was left to be paid certainly on that very day by making the remaining payment of RS. 5,000/- the sale deed could be got executed or in the alternative by making remaining payment of Rs. 8,000/- to Harbans Singh the sale deed could be got executed from Harbans Singh as according to judgment (Ex.D28) the agreement to sell between the plaintiff and Harbans Singh was for a total consideration of Rs. 1,55,000/- and Rs. 1,47,000/- were shown to have been paid as earnest money and this fact itself is sufficient to conclude that no transaction took place between the parties to the present litigation and the agreement (Ex.P2) appears to have been procured under highly suspicious circumstances.

There is no explanation on record as to why either of the

transaction with the defendant or his father was not finalized and when the petty amount remained to be paid again the plaintiff was supposed to have obtained possession of the suit land but again there is no proper explanation as to why the possession of the disputed property was not taken and as such it is to be concluded that the agreement (Ex.P2) came into existence without any natural flow of successive events and something is being kept concealed by the plaintiff. The time for execution of the sale deed was also extended vide endorsement (Ex.P4) made on the back of agreement (Ex.P2) but no specific reason is there that for what purposes the time had to be extended especially when only paltry amount of Rs. 5,000/- was to be paid on 30.5.2001 and as such instead of getting the time extended the sale deed could be executed but again there is no explanation in this behalf and according to endorsement (Ex.P4) the time was extended up to 4.12.2001 and again there was no sense for extension of seven months time if the amount of Rs. 70,000/- against the total consideration of Rs. 75,000/- had already been paid vide receipt (Ex.P3).

The plaintiff as PW6 claimed that he procured that amount of Rs. 2,50,000/- from the commission agent but neither the said commission agent has been examined as witness nor his account books have been placed on record and when the deed writer PW4 is claiming that no payment was made in his presence the agreement (Ex.P2) is surrounded by highly suspicious circumstances.

In view of my foregoing discussion and even on re-appraisal of the entire evidence on record the due execution of the agreement (Ex.P2) could not be established on record rather, agreement (EX.P2) is proved to have been procured in highly suspicious circumstances and even the alleged earnest money shown to have been paid to the defendant could not be proved paid before the deed writer.”

During the course of hearing, learned counsel for the appellant

failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its 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 **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179**.

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 appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

28.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No