

RSA No. 326 of 2016(O&M)

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

**RSA No. 326 of 2016 (O&M)
Date of Decision: 11.7.2017**

Satpal

.....Appellant

Vs.

Mam Chand

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. S.P. Soi, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of plaintiff, is directed against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for possession by way of specific performance was dismissed.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that Mam Chand was recorded as owner in possession of land measuring 16 kanals (320/3077 share) of total land measuring 153 kanals 17 marlas comprising in khewat No. 67 khatauni No. 94 situated in village Nandi as per jamabandi of the year 2001-2002. On 31.8.2009, he entered into an agreement to sell with him for total sale consideration of ₹10 lacs per acre. The defendant-respondent received ₹7 lacs as earnest money. 31.10.2009 was fixed being the date of execution and registration of the sale deed. It was also agreed that if the defendant failed to

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perform his part of the contract, then the plaintiff would be at liberty to get the sale deed executed and registered through the process of law, or will be entitled to get double of the earnest money i.e. ₹14 lacs. Simultaneously, if plaintiff-appellant failed to perform his part of contract, then the earnest money paid by him will stand forfeited and the agreement would stand cancelled. It was asserted that the agreement was got attested from Om Parkash Notary Public-Thanesar in the presence of witnesses. 31.10.2009, 1.11.2009 and 2.11.2009 were holidays (being Sunday, Haryana Day and Gandhi Jayanti), so the sale deed could not be executed. The plaintiff-appellant contacted defendant-respondent and asked him for performing his part of contract on 3.11.2009 and also showed his readiness and willingness to perform his part of the contract. On 3.11.2009, the plaintiff-appellant reached in the office of Sub Registrar, Indri, at 9 AM with balance sale consideration money and the amount required for stamp and registration charges. He waited for defendant-respondent till 5 PM, but he did not turn up, and, as such, he got his presence marked by getting an affidavit attested from Executive Magistrate which was entered at Serial No. 263 dated 3.11.2009. Thereafter, the plaintiff again contacted defendant-respondent for performing his part of contract, but defendant-respondent started postponing the matter. It was pleaded that thereafter plaintiff-appellant sent a legal notice dated 8.3.2010 to defendant-respondent and called upon him to get the sale deed executed and registered in his favour within fifteen days, but defendant-respondent did not come forward and ultimately refused flatly to acceded to the demand of the plaintiff-appellant and also threatened that he would dispossess plaintiff-appellant from the suit property and would alienate the suit land in favour of somebody else. On these sets of facts, the

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plaintiff-appellant pleaded cause of action in his favour and filed the suit.

Having been put to notice, defendant put appearance and filed his contesting written statement, raising more than one preliminary objections. Plaintiff did not file any replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to a decree for possession by way of specific performance of contract dated 31.8.2009?OPP
2. If issue No.1 is proved, whether the plaintiff was/is ready and willing to perform his part of contract?OPP
3. Whether the plaintiff is entitled to refund of earnest money along with compensation as prayed for?OPP
4. Whether the suit is not maintainable in the present form?OPD
5. Relief

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record 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 failed to prove his case, by leading cogent and convincing evidence. Accordingly, his suit for possession by way of specific performance of agreement to sell dated 31.8.2009 was dismissed by the learned trial court, vide impugned judgment and decree dated 12.6.2012. Dissatisfied, plaintiff filed his first appeal, which also came to be dismissed by the learned Additional District Judge, vide impugned judgment and decree dated 18.9.2015. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

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A bare combined reading of both the impugned judgments and decrees passed by the learned courts below would make it crystal clear that plaintiff-appellant had no case either on facts or in law. The evidence produced by the plaintiff-appellant himself will render him totally disentitled for any kind of relief, because none of the PWs stood the acid test of cross-examination. When depositions of all the PWs are put together and read in the context of facts of the present case, it is found that statements suffered by PWs do not support the case of plaintiff-appellant. Under these circumstances, allegations levelled by the defendant about collusion of the plaintiff with his uncle Harvinder Singh, commission agent, seems to be correct.

It is so said, because it has gone undisputed even before this Court that defendant-Mam Chand used to sell his agriculture produce through commission agency of Harvinder Singh. Relationship between the plaintiff and Harvnider Singh is not disputed. Having said that, this Court feels no hesitation to conclude that plaintiff has failed to prove his case, by leading cogent and convincing evidence. In the absence of sufficient evidence, plaintiff was unable to prove his pleaded case. That is what has been held by both the learned courts below, because of which, no fault can be found with the concurrent findings recorded by both the learned courts below and the impugned judgments deserve to be upheld, for this reason also.

Appellant, being plaintiff, onus was on him to prove his case as per his pleadings. However, as noticed hereinabove, plaintiff failed to prove his case. Witnesses produced by the plaintiff also contradicted themselves to such an extent that their statements are not reliable. Pleadings alone were

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not sufficient to decree the suit. The learned courts below rightly considered and appreciated true facts of the case as well as evidence available on record in correct perspective, before recording their concurrent findings of facts and the same deserve to be upheld.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 14 to 16 of its impugned judgment, which deserve to be noticed here, read as under:-

“Rs. Seven lacs has been paid by plaintiff-appellant towards earnest money. This whopping amount which has not been shown in income tax return by Sat Pal-vendee and he has admitted this fact in his cross-examination. He also does not have any bank account in his own name as per his testimony. Vendee-Sat Pal-appellant was required to explain, from where and how, he had arranged a sum of Rs. Twenty lacs. He has testified that he went to the office of Tehsildar-Indri with balance amount of sale consideration (Rs. Thirteen lacs) and shown the amount to Tehsildar but at the same breath he has admitted that the Tehsildar had not given any certificate regarding his (PW6-Satpal's) appellant having possessed Rs. Thirteen lacs. The agreement to sell does not contain any recital about the time/occasion of delivery of possession of land which is subject matter of the agreement. The recital of this type should have

been there in the agreement and the absence thereof which remained unexplained, put doubt on the credibility of the agreement. In the plaint, there is a plea that the defendant-respondent has threatened plaintiff-appellant to dispossess him. The nature of this plea would imply that plaintiff-appellant Sat Pal has candidly admitted in his cross-examination that defendant-respondent is in possession of the suit land. Meaning thereby a false plea regarding possession has been taken which by itself is sufficient to non suit the plaintiff-appellant.

Too much of stress has been laid down on the ground that the agreement dated 31.8.2009 bears the thumb impression of Mam Chand. This factum has been denied specifically by defendant-respondent. The onus then shifts upon to plaintiff-appellant in order to establish that the thumb impressions appearing on the agreement are of none else but of Mam Chand. He should have examined some expert in order to establish this fact. No such evidence is available on record.

Mark-A/Mark-DD is the agreement to sell dated 13.11.2009. This agreement has been executed by Mam Chand with Prem Singh. It is also for sale of 16 kanals of land and the subject matter of land in this agreement is identical with the suit land of the present case. Even the phraseology of this agreement to sell (Marks-A/Mark-DD) is akin and identical with the phraseology of

agreement to sell dated 31.8.2009. On this agreement to sell Mark-A/Mark-DD (dated 13.11.2009), Sat Pal (present plaintiff-appellant) has affixed his signature as witness. Chander Singh-PW4 has admitted in his cross-examination that had a son named Rupender who has expired. PW6-Sat Pal (plaintiff-appellant) has also admitted in his cross-examination that Prem Singh's father is Pritam Singh and Rupender was son of Prem Singh. The act and conduct of Sat Pal and Prem Singh as specified here in above and fairly deciphered on glancing at agreement to sell Mark-A/Mark-DD dated 13.11.2009 and agreement to sell dated 31.8.2009 is of such nature that both Prem Singh and Sat Pal are helping to sub-serve each other's cause Significantly, both these agreements have been executed by Mam Chand. Thus, modus-operandi by the plaintiff-appellant is mischievous in nature and he is trying to usurp the property of the defendant-respondent."

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**

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**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.

11.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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