

RSA No. 2633 of 2015 (O&M)

Amit Kumar
2017.09.05 10:29
I attest to the accuracy and
integrity of this document

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

**RSA No. 2633 of 2015 (O&M)
Date of Decision: 29.8.2017**

Jit Singh and others

.....Appellants

Vs.

Avtar Singh (deceased) through LRs and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. S.S. Rang, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment and decree dated 3.1.2015 passed by the learned Additional District Judge, whereby first appeal of the defendants was allowed, setting aside the judgment and decree dated 10.5.2013 of the learned trial court, in a suit for possession by way of specific performance of the agreement to sell, plaintiffs have approached this Court by way of present regular second appeal.

Brief facts of the case, as recorded by the learned first appellate court in para No.3 of its impugned judgment, are that plaintiffs alleged that the defendant agreed to sell the suit land to them for total sale consideration of ₹30 lacs on 15.7.2005. He had received ₹7 lacs as earnest money from them on 15.7.2005 and had agreed that ₹8 lacs towards the remaining earnest money

shall be paid to him on 20.3.2006. The date for execution and registration of sale deed was fixed to be 5.5.2006. The terms of the agreement were reduced into writing in the presence of witnesses. On 20.3.2006, they made the payment of ₹8 lacs to the plaintiffs who delivered the possession of the suit land to them and executed a receipt on the back side of the original agreement. The plaintiffs had always been ready and willing to perform their part of the agreement and they were still ready and willing to perform the same. On 5.5.2006, plaintiffs went to the office of Sub Registrar, Rajpura, to get the sale deed executed in terms of the agreement dated 15.7.2005 and they were having adequate amount for making the payment of balance sale consideration and to incur the expenses on the execution and registration of the sale deed. They waited for the defendant up to 5 pm but the defendant did not turn up. Ultimately, the plaintiffs got their presence marked from Sub Registrar, Rajpura, by getting an affidavit attested from him. The defendant failed to perform his part of the agreement. Due to appreciation of the price of the land, defendant had been negotiating with other parties for sale of land to them at higher rate. Repeated requests were made by them to the defendant to execute the sale deed in favour of the plaintiffs in terms of the agreement dated 15.7.2005 but to no effect.

Having been put to notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. He specifically pleaded that agreement to sell dated 15.7.2005 was a forged and fabricated document. He never intended to sell the suit land. It was further alleged that plaintiff No.1 remained in possession over the suit land as tenant under him since June 2002 to June 2006 and after the month of June 2006, possession of the plaintiff over the suit land became illegal.

It was also pleaded by the defendant that plaintiff No.1 had taken

the suit land on lease from him at rent of ₹70,000/- per annum in the year 2003. Defendant specifically denied the agreement to sell and also receipt of any earnest money. Defendant also filed his counter-claim to the effect that he was entitled to get ₹70,000/- as arrears of rent from plaintiff No.1 and also for damages for use and occupation of the suit land. Plaintiffs filed their replication to the written statement filed by the defendant and also filed their reply to the counter-claim.

On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled for possession by way of specific performance of agreement to sell dated 15.7.2005?
OPP
2. Whether plaintiff always remained ready and willing and is still ready and willing to perform his part of agreement to sell? OPP
3. Whether plaintiff is entitled for permanent injunction as prayed for? OPD
4. Whether plaintiff has not come to court with clean hands?
OPD
5. Whether defendant is entitled to special compensatory costs? OPD
6. Relief.

Following additional issues were also framed by the learned trial court on 21.1.2013:-

- 6-A Whether the defendant is entitled for the decree of counter claim of damages of Rs. 1 lac per annum alongwith interest w.e.f. June 2006 till vocation for use and occupation of suit property by the defendant?OPD
- 6-B Whether the court claim is in accordance with law?
OPP
- 6-C Whether the counter claim is not legally maintainable?
OPP.

With a view 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 plaintiffs have proved their case whereas defendant could not prove his case set up in his counter-claim.

Accordingly, suit for possession by way of specific performance of the agreement to sell dated 15.7.2005 was decreed by the learned trial court and counter-claim of the defendant was dismissed vide common judgment and decree dated 10.5.2013. Feeling aggrieved, defendant filed his first appeal which came to be allowed by the learned first appellate court, vide its impugned judgment and decree dated 3.1.2015. Hence this regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

It has come on record that plaintiff No.1 was in possession over the suit land as lessee since 2003. With a view to prove the agreement to sell (Ex.P1) and receipt qua payment of earnest money as Ex.P2, plaintiffs produced two attesting witnesses namely; PW1-Mahal Singh and PW2-Mohinder Singh. However, in their cross-examination, both these material witnesses completely smashed the case of the plaintiffs. A combined reading of the statements of these two witnesses PW1 and PW2 would make it crystal clear that the agreement to sell in question was not a genuine document.

Plaintiffs-appellants also miserably failed to prove the payment of earnest money to the defendant. It was also admitted by PW3-plaintiff (Jit Singh), that agreement to sell and receipt of earnest money were got prepared

on 15.7.2005 and signatures on both the documents were put on the same day. However, in his cross-examination, he had to admit and changed his version, while stating that signatures on receipt were appended on payment of ₹8 lacs to the defendant on subsequent day.

Thus, pleadings and witnesses of the plaintiffs were contradicting each other. In fact, plaintiffs were trying to take undue advantage of their dominating position being lessee on the suit land. Since the abovesaid evidence and true facts of the case were not properly appreciated by the learned trial court, learned Additional District Judge was well within his jurisdiction to pass the impugned judgment and decree 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. Relevant and cogent findings recorded by the learned first appellate court in later part of para 24 of its impugned judgment, which deserve to be noticed here, read as under:-

“.....The evidence produced by the plaintiffs is incapable for proving the execution of the agreement and receipt by the defendant. Further there is no other evidence to prove that any earnest money was paid to the defendant. Agreement Ex.P.1 and receipt Ex.P.2 were not got scribed from any regular document writer. It is an admitted fact that P.W.2 Mahal Singh is cousin of the plaintiff. P.W.2 Mohinder Singh is also close friend of the plaintiff. No doubt mere proximity of the plaintiff with the witnesses can not be a sole ground for discarding their testimony but the admission made by the said witnesses clearly prove that the agreement in question is not a genuine document, rather the version given by the defendant in the written statement is correct. The defendant specifically raised a plea in the written statement

that plaintiff No1 had taken the land in question on lease in the year 2003 and he had not paid the lease money for the year 2005-06 to him. When he approached the police in this connection, the plaintiff were called by the police and at that time they relied upon the agreement in question. The plaintiffs specifically controverted the said plea in the replication and has alleged that the possession of the land was delivered to them by the defendant only on 20.3.2006 when additional earnest money of Rs. 8 lac was paid to him. P.W.2 Mahal Singh admitted that the plaintiff had been cultivating the land in question for about 6/7 yeas and defendant had moved an application against them to the police regarding non payment of the lease money. He submitted that the agreement and receipt had been written on 15.7.2005. All of them had appended their signatures on the agreement and receipt at the same time, though he initially stated that the amount of Rs. 7 lac was paid to the defendant in his presence but in his cross examination he stated that he did not see any money on that day. Thereafter, he even stated that the agreement and receipt had been got typed prior to his reaching the spot. Even the parties had appended their signatures prior to his reaching there. Therefore as per his statement, the agreement and receipt had been prepared at one and the same time. Neither the defendant had appended his signatures on the agreement in his presence nor any money had been paid to him in his presence. PW2 Mohinder Singh marginal witness of the agreement and receipt also stated that his signatures on the agreement and receipt had been obtained on the same day. He stated that the agreement and receipt had been prepared prior to his reaching the Tehsil complex. He had not seen Col. Avtar Singh(defendant) on that day. No exchange of money took place in his presence. He put his signatures on the agreement and receipt merely on the asking of the plaintiffs. In the opinion of this court, on the basis of such like statements made by the witnesses, it can not be said that the execution of the agreement and receipt has been duly proved by the plaintiffs. Further, even the testimony of plaintiff Jit Singh indicates that the version of the plaintiffs is

incorrect and the agreement and receipt are forged documents. Initially he stated that they started cultivating the land in question only after having entered into agreement in question but he had to concede that they had moved an application before Tehsildar for correction of khasra Girdawari entries pertaining to the suit land for the year 2002 onwards on the ground that they have been cultivating the land since 2002. Therefore, he had to concede that they had been cultivating the suit land since long. This admission of the plaintiff shows that their version that the possession of the suit land was delivered to them under the agreement of sale is not correct. On the other hand, the version of the defendant is that plaintiff No1 had taken the land in question on lease from him in the year 2003 is correct. PW3 plaintiff Jit Singh also stated that the agreement and receipt were got prepared on 15.7.2005 and signatures on both the documents were put on the same day but lateron he changes his version and states that the signatures and receipt were appended on payment of Rs 8 lac to the defendant on a subsequent day. Therefore, even according to his version both the documents had been got prepared on the same day. As already mentioned above PW Mohinder Singh has stated that his signatures on both the documents had been obtained on the same day. Therefore, it is made out that the agreement and receipt had been fabricated on the same day. The plaintiff stated that he had paid the earnest money of Rs. 8 lac by withdrawing from his bank account. The plaintiff could not produce any evidence regarding withdrawal of any money from the bank account. So far as the report of Document Expert of the plaintiffs is concerned, the photographic enlargements of the questioned and admitted/standard signatures prepared by him clearly reflect that the disputed signatures Q1 to Q4 are not tally with the signatures of Avtar Singh. The disputed signatures seem to have been written at a very slow speed with hesitation and retracing. Therefore, the report of PW5 Mani Jain regarding genuineness of the signatures has got no value. It is a common tendency that the Document Experts give the report in favour of the party who examines them.

In case the Document expert does not agree to the toe line of his party, the said party does not examine the Document Expert. On the other hand, the disputed signatures on the agreement with the standard signatures of the defendant were got compared by the police during the investigation of criminal case from Balwinder Singh Bhandal, who was Deputy Director of FSL, Punjab, Chandigarh at the relevant time and he gave the report that the disputed signatures do not tally with the standard signatures of Avtar Singh. No doubt, his report does not contain the reasoning. Even if the said report is ignored still it is made out that the plaintiff could not prove the agreement in question for the reasons mentioned above. So far as the admissions allegedly made by the defendant are concerned, a reading of the cross examination of the defendant shows that the defendant denied his signatures on the agreement and receipt as well as the receipt of earnest money of Rs. 7 lac on 15.7.2005 and Rs. 8 lac on 20.3.2006. But at one stage, he stated that there are his signatures on Ex.P.1 and Ex.P.2. It seems that some mistake has been committed at the time of recording his statement. But otherwise the said witness has specifically denied his signatures on the agreement and receipt. He specifically stated that the plaintiffs were occupying the land in question as lessees under him and he denied the suggestion that the plaintiffs were not his lessees but in the last portion of his statement he stated that he had not given his land to the plaintiffs on lease. Therefore, it is made out that at the time of writing some suggestions, which were denied by the defendant, the denial of the defendant was not incorporated in his statement on account of some inadvertent mistake. Merely on the basis of said isolated sentences in the statement of the defendant, the entire version of the plaintiff could not have been accepted particularly when same stood belied from all other evidence and the documents on record. It would be pertinent to mention here that the copy of application filed by the plaintiffs for correction of khasra Girdawari entris Ex.D.1 shows that they claimed that they have been cultivating the land in question since 2002-2003. In these circumstances, the trial

court could not turn the entire case in favour of the plaintiff merely because the defendant could not produce any document regarding giving of land in question on lease to the plaintiff or that there is isolated sentence in his statement that he did not give the land in question on lease to the plaintiff.”

A bare combined reading of both the judgments and decrees passed by the learned courts below would make it crystal clear that the learned trial court misdirected itself, while completely over-looking cogent and convincing evidence available on record against the plaintiffs. In such a situation, learned first appellate court rightly set aside the judgment and decree of the learned trial court, while passing the impugned judgment, which has been found based on sound reasons. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate court committed no error of law, while passing its impugned judgment of reversal and the same deserves to be upheld.

It is the settled proposition of law that relief of specific performance is a discretionary relief. The legislature, in its wisdom, has provided more than one exceptions under Section 20 of the Specific Relief Act ('the Act' for short). However, in the case in hand, defendant-respondent was not required to seek any help of Section 20 of the Act for the reason that the agreement to sell itself was found to be an invalid document. Further, as noticed hereinabove, plaintiffs also failed to prove any payment of earnest money. Evidence led by the plaintiffs was not found worth reliable. In this view of the matter, no fault can be found with the impugned judgment and decree passed by the learned first appellate court and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellants

RSA No. 2633 of 2015 (O&M)

failed to point out any patent illegality or perversity in abovesaid findings recorded by the learned first appellate court. 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.

29.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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