IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4396 of 2016 (O & M)
Date of Decision:-22.03.2017

Surinder Singh and others

...Appellants

Versus

Bhajan Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Mohd. Salim, Advocate
for the appellants.

HARI PAL VERMA J.

C.M. No.11488-C of 2016

This is an application seeking condonation of delay of 445 days in re-filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 445 days in re-filing the appeal is condoned.

C.M. No.11489-C of 2016

Allowed as prayed for.

RSA No.4396 of 2016

The appellants/defendants (hereinafter called 'the defendants') have filed the present appeal against the judgment and decree dated 28.1.2015 passed by learned District Judge, Sangrur, whereby their appeal against the judgment and decree dated 23.3.2011 passed by the Additional Civil Judge (Sr. Division), Malerkotla was dismissed.

Briefly stated, respondent/plaintiff (hereinafter called 'the plaintiff') has filed the suit for possession by way of specific performance of agreement to sell dated 3.8.2004 along with prayer for permanent injunction.

As averred in the suit, defendants Surinder Singh, Manjit Singh, Harpreet Singh @ Harjit Singh and Jarnail Singh have agreed to sell the suit property as described in the head-note of the plaint, in favour of plaintiff for a sale consideration of Rs.5,31,000/-. The defendants received a sum of Rs.2,51,000/- from the plaintiff as earnest money on 03.8.2004 itself and the sale deed was required to be executed on or before 3.11.2004. Though the plaintiff remained ready and willing to perform his part of contract, but the defendants have not come forward to execute the sale deed, rather, threatened the plaintiff to alienate the suit property to some other person.

The defendants have filed written statement denying the very execution of the sale agreement dated 03.8.2004 regarding the suit property, with the plaintiff. They denied that if they ever received any earnest money from plaintiff. Rather, the defendants have pleaded that the plaintiff is a money-lender and on 3.8.2004 the defendants were in need of Rs.1,25,500/- and, therefore, they approached the plaintiff for a loan of Rs.1,25,500/- on interest basis. The plaintiff has agreed to give loan with the stipulation of execution of an agreement regarding the property owned by the defendants. It is in these compelling circumstances, the agreement was executed as a colleteral security only and was never intended to be acted upon. The defendants have rather returned the amount of Rs.1,00,000/- to the plaintiff on 17.12.2004 in the presence of Gurdeep Singh son of Mohinder Singh and Prem Kumar son of Dev Raj, residents of Ahmedgarh, whereas, remaining amount of Rs.25,500/- along with interest was agreed to be paid shortly. It is due to greed, the plaintiff has filed the suit.

From the pleadings of the parties, the learned trial Court formulated the following issues :-

> "1. Whether the plaintiff is entitled to possession by way of specific performance ? OPP
> 2. Whether the plaintiff is entitled to permanent injunction, as prayed for ? OPP
> 3. Whether the suit is not maintainable in the present form ? OPD
> 4. Relief."

The trial Court had decreed the suit of the plaintiff vide judgment and decree dated 23.3.2011 as the plaintiff has proved the very execution of the sale agreement dated 3.8.2004, which was based on the testimonies of PW1 attesting witness and PW4 scribe of the agreement to sell in question, that against the agreed amount of Rs.5,31,000/-, the defendants have received Rs.2,51,000/- as earnest money from the plaintiff.

The plea of the defendants is that as against the availed loan of Rs.1,25,500/- from the plaintiff, an amount of Rs.1,00,000/- has already been paid by them to the plaintiff on 17.11.2004 in the presence of Gurdeep Singh and Prem Kumar, but the defendants have not examined these persons as witnesses. Since the defendants have failed to prove that the agreement to sell (Ex.P1) was executed as a collateral security to repay the loan of Rs.1,25,500/-, the suit was decreed.

Against the aforesaid judgment and decree dated 23.3.2011 passed by the trial Court, the present appellants/defendants had filed the appeal before the learned lower Appellate Court, however, the said appeal was also dismissed vide judgment and decree dated 28.1.2015.

It is in the aforesaid circumstances, the appellants/defendants have preferred the present appeal.

The appellants have formulated the following substantial questions of law in the present appeal :-

> "(i). Whether the judgments and decrees passed by both the Courts below are illegal and gross misreading of evidence hence cause miscarriage of justice?
>
> (ii) Whether there is no requirement to register the agreement to sell ?
>
> (iii) Whether the respondent can omit more than claim out of same cause of action ?"

Learned counsel for the appellants-defendants has argued that the suit filed by the respondent/plaintiff is based upon false statement. The defendant is an agriculturist and he has sold the crops in the shop of Krishan Lal. The commission agents usually takes the signatures of the agriculturists on blank papers. In this manner, the commission agent Krishan Lal also took the signature of the defendant on a blank paper in the connivance of respondent/plaintiff. The agreement was not registered/attested before any Gazetted Officer or Notary. The suit filed by the respondent/plaintiff for possession by way of specific performance of agreement to sell dated 3.8.2004 (Ex.P1) was barred under the provision of Order 2 Rule 2 CPC as the plaintiff has withdrawn the previous suit for permanent injunction against the defendant prior to filing of the present suit. The defendants were in need of money of Rs.1,25,500/- but the plaintiff while taking advantage of his dominant position, as a financer, got the alleged agreement to sell executed as colleteral security by menioning double of the amount of loan advanced by him in the shape of earnest money. The defendants have already returned Rs.1,00,000/- to the plaintiff on 17.12.2004 in the presence of Gurdeep Singh and Prem Kumar and rather ready to return the remaining amount along with interest. In fact the plaintiff is a money-lender and there was no record to show that plaintiff was having capacity to pay Rs.2,51,000/- at the time of execution of the agreement to sell to the defendants and in the absence of any evidence qua source of money, it could not be said that such a huge amount of Rs.2,51,000/- was paid to the defendants by the plaintiff. The plaintiff has failed to prove the valid execution of the agreement to sell as well as his readiness and willingness to perform his part of contract.

I have heard learned counsel for the appellants.

There is no dispute that the present appellants i.e. defendants have admitted the very execution of agreement to sell (Ex.P1), however, their only defence is that it was intended to be an agreement to sell for colleteral security purposes so that the defendants can secure the loan amount of Rs.1,25,500/-. The defendants have gone to the extent that on 17.12.2004 they have rather returned Rs.1,00,000/- in the presence of witnesses Gurdeep Singh and Prem Kumar. But interestingly those witnesses have not been examined by the defendants in support of their contention. Therefore, it cannot be said that the defendants have repaid Rs.1,00,000/- and only a small amount i.e. Rs.25,500/- is outstanding against them. The plea of the defendants that agreement to sell in question was executed for colleteral security purpose also cannot be accepted for the reason that the agreement to sell in question reveals that it was signed by the parents of the defendants so as to seek no objection to the proposed share of the suit property by the present defendants in favour of the plaintiff. The defendants got this property from their parents by way of a decree but even the parents, who have signed the agreement to sell, have not been examined. Thus, the very plea that the agreement to sell in question was executed for the colleteral security purpose and was not executed for sale of the suit property has rightly been disbelieved by the Courts below. Similarly, the plea that the plaintiff was a money-lender and was not having sufficient source to pay an amount of Rs.2,51,000/- in the shape of earnest money also cannot be accepted. No such material has been brought on record to substantiate this argument that the plaintiff was working as money-lender. Rather, the respondent/plaintiff, while appearing as PW5 has stated that an amount of Rs.1,00,000/- was given to him by his father, whereas Rs.80,000/- were obtained by him from his financer and remaining amount was arranged by him. But defendants have not confronted this witness that he was not having sufficient funds to pay the earnest money. Once the respondents have disputed the very agreement to sell and failed to prove that the money was for colleteral security purpose, this Court does not find any illegality in the judgments and decrees passed by the Courts below. It being a case of concurrent finding of facts recorded by the Courts below, no interference is warranted.

No other point has been argued.

No substantial question of law is involved in the present regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

March 22, 2017 **(HARI PAL VERMA)**
Vijay Asija **JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No