IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4745 of 2016 (O&M)
Date of decision: 02.12.2017

Surjit Kaur .... Appellant

Versus

Chamkaur Singh and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Raj Kumar Kakkar, Advocate
for the appellant.

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Avneesh Jhingan, J.

The present regular second appeal is at the behest of defendant No.7 being aggrieved of the suit of recovery being decreed by the Courts below.

For the sake of convenience, the parties are being referred to as per their original position in the plaint.

The plaintiff filed a suit for recovery of Rs.7 lakhs i.e. Rs.5 lakhs paid as earnest money on the basis of agreement to sell dated 02.02.2005 plus Rs.2 lakhs as interest @ 1% per month along with pendente lite interest and future interest.

The facts averred by the plaintiff are that defendants No.1 to 3 along with defendants No.4 and 5 entered into an agreement for sale of land measuring 191 Kanals, 10 Marlas as detailed in para 1 of the plaint, the land was situated at village Hamad Wala Uttar. The agreement of sale was executed through general power of attorneys of defendants No.1 to 5. The general power of attorney are defendants No.6 and 7. The rate of land was fixed at Rs.1,80,000/- per acre. The agreement to sell was scribed at Ferozepur and attested by two marginal witnesses. In pursuance of agreement to sell, out of the total sum of Rs.43,08,750/-, a sum of Rs.5 lakhs was paid as earnest money by the plaintiff to defendants No.1 to 5 through attorneys defendants No.6 and 7. It was further mentioned in the agreement to sell that the registered sale deed would be executed within three months from the date when the pending litigation would be decided in favour of defendants No.1 to 5. It was further averred that just before filing of the suit, plaintiff came to know that defendants No.1 to 5 have lost the case regarding the land in question and will not be able to perform their part of the agreement. The plaintiff approached the defendants for return of the earnest money but defendants in last week of November 2007 refused to admit the claim of the plaintiff. Thereafter, serving the legal notice which was received back and issuing a reminder, the suit was filed.

On notice, defendants No.1 to 5 and 7 filed written statement and contested the suit whereas respondent No.6 was proceeded against exparte. In the written statement, the preliminary objections were raised. It was alleged that agreement to sell was result of fraud and no payment has been received by answering defendants from plaintiff. The issue of limitation was also raised. The replication to the written statement was filed.

Learned trial Court framed the following issues:-

1. Whether the plaintiff is entitled to recover Rs.7,00,000/-as

earnest money from the defendants on the basis of agreement to sell dated 02.02.2008? OPP

2. Whether the plaintiff is entitled for interest on the aforesaid amount, if so, at what rate? OPP
3. Whether the suit of the plaintiff is within limitation? OPP
4. Whether the plaintiff has suppressed material facts from the Court, if so, its effect? OPD
5. Relief.

The plaintiff, in order to support his suit, examined Pala Singh, marginal witness to agreement to sell as PW1, the plaintiff himself appeared as PW2 and Miss. Arvinder Kaur, Advocate who attested the agreement to sell deposed as PW3.

In order to rebut the claim of the plaintiff, defendant No.7-Surjit Kaur stepped into the witness box as DW1. Ashiq-defendant No.5 deposed as DW2, Rinku @ Jaswinder Singh, Dr. Karnail Singh and Prem Kumar appeared as DW3 to DW5 respectively. The jamabandis and agreement to sell were exhibited before the trial court.

Learned trial Court after appreciating the facts and considering the evidence produced, decided issues No.1 and 2 in favour of the plaintiff and against the defendants. Issue No.3 was not pressed and decided against the plaintiff and in favour of the defendants. Issue No.4 was not pressed and was decided against the defendants. The net result was that vide judgment and decree dated 08.08.2014, the suit for recovery was decreed for recovery of Rs.7 lakhs alongwith future interest @ 1% per mensum.

Aggrieved of the said judgment and decree, defendant No.7 filed the appeal. Learned Additional District Judge, Ferozepur vide judgment and decree dated 18.03.2016 dismissed the appeal, however, the issue of limitation was decided in favour of the plaintiff.

Hence this regular second appeal.

In the present appeal, though four substantial questions of law have been framed but at the time of arguing the appeal, learned counsel fairly and candidly stated that he is not pressing the issue that the agreement to sell was the result of fraud. He contented that the amount of Rs.5 lakhs paid as earnest money was never received by the defendants and the suit was barred by limitation as there was no litigation pending regarding the suit property and it was not proved by the plaintiff that some litigation was pending.

At this stage, it would be important to note that the defence was taken by the defendants before the courts below that the agreement to sell was result of fraud. It would be appropriate to deal with this issue from two angles. Firstly, the agreement to sell was executed between the plaintiff and defendants No.6 and 7, who were general power of attorneys of defendants No.1 to 5. This aspect has been duly proved that the general power of attorney was executed by defendants No.1 to 5 in favour of defendants No.6 and 7. Defendant No.7 Surjit Kaur herself admitted that she was power of attorney of defendants No.1 to 5. Defendants No.1 to 5 never raised an issue that defendants No.6 and 7 were not appointed as their general power of attorney. Ashiq-defendant No.5 admitted that defendants

No.1 to 5 had appointed defendants No.6 and 7 as their power of attorney holders. Even in the present proceedings, it is not being disputed that defendants No.6 and 7 were general power of attorneys.

The second aspect is regarding execution of agreement to sell. The agreement to sell has been proved as Pala Singh-PW1, the marginal witness, deposed proving execution of the agreement to sell. The defence taken by defendants No.1 to 5 that the agreement to sell, was a result of fraud, has not been pressed now. The counsel did not press the said issue as the legal position is settled in this regard that the person who alleges fraud, forgery etc. has to prove the same. No such proof was brought on record by the defendants. Moreover, Surjit Kaur-DW1 admitted that she executed the agreement to sell about six years back regarding 24 acres of land. She admitted her thumb impression on agreement to sell was put in Tehsil Complex, Ferozepur. The said agreement to sell was also duly proved by the deposition of PW3 Arvinder Kaur, Advocate, who attested the agreement. Hence, it is proved that agreement to sell was executed.

After the above two aspects being decided the issue raised by learned counsel for defendant No.7 that the earnest money of Rs.5 lakhs was not received has no legs to stand and is liable to be rejected. The marginal witness Pala Singh-PW1 not only deposed to prove the execution of agreement to sell but he further stated that Surjit Kaur had received a sum of Rs.5 lakhs as earnest money. Even the reading of agreement to sell clearly shows that the amount of Rs.5 lakhs was received as earnest money.

The contention raised by learned counsel that the suit was barred by limitation as there was no litigation pending regarding the suit property cannot be accepted. A perusal of agreement to sell shows that it has been specifically stated that sale deed of the suit land would be executed within three months from the date when the matter regarding land would be decided in favour of the defendants. DW1-Surjit Kaur (defendant No.7) during her deposition stated that the case was pending at the time of execution of the agreement. It is important to note that the agreement to sell was executed on 02.02.2005 and the suit was instituted on 02.04.2008. From the reading of the plaint, it is clear that when the defendants finally refused to return payment in last week of November 2007, then the cause of action accrued to the plaintiff.

Even otherwise, once the execution of the agreement to sell has been duly proved, its contents will have to be relied upon. The agreement was entered on 02.02.2005, there was some litigation pending. On the favourable decision of the litigation, the defendants had to execute and register sale deed within three months from the said date. Assuming on 02.02.2005 itself, the favourable decision had come still within three months from that date, the sale deed was to be executed and registered. The cause of action would have arisen after three months that is in May 2005. From that angle also, the suit was within limitation.

During the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgments passed by the Courts below. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

The cogent findings recorded by the learned trial court as well as the first appellate court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgments and decrees passed by the courts below and the same deserve to be upheld.

No other argument was raised.

Considering the 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 bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

(AVNEESH JHINGAN)
JUDGE

02.12.2017
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Note:

1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes