

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

**RSA No.5536 of 2016 (O&M)
Date of decision: 30.01.2017**

Sumer Singh
Harmesh & another

Versus

....Appellant
...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Arun Jain, Sr.Advocate
with Mr.Varun Parkash, Advocate, for the appellant.

Mr.Deepender Singh, Advocate, for caveator/respondent No.1.

G.S. SANDHAWALIA, J. (Oral)

Notice of motion.

Mr.Deepender Singh, Advocate accepts notice on behalf of
respondent No.1-plaintiff/caveator.

Appellant-defendant No.1, is aggrieved against the judgment and
decree dated 04.08.2016, passed by the Addl.District Judge, Faridabad, whereby
the appeal of the respondent-plaintiff was accepted and the judgment and decree
dated 23.03.2012, passed by the Civil Judge (Jr.Divn.), Faridabad, was set
aside, with the direction to execute the sale deed within a period of 2 months. It
was further held that the agreement dated 09.08.2005, executed by the present
appellant, in favour of respondent No.2-Sukhbir was ante-dated.

The suit for specific performance of the agreement dated
06.03.2006 was filed on 15.02.2007, for 4 kanals 8 marlas of land out of 39
kanals 17 marlas, situated within the revenue estate of Village Narahwali,
Tehsil Ballabgarh District Faridabad. The pleadings of the respondent-plaintiff
was that the agreement was for a sum of Rs.1,87,000/-, out of which, he had
paid Rs.1,55,000/- in cash and the balance amount was to be paid at the time of

registration of the sale deed, on or before 05.02.2007. On account of the appellant-defendant not appearing before the office of the Sub-Registrar on the said date, a legal notice dated 07.02.2007 was served upon the appellant.

The defence of the appellant-defendant was that he had taken a loan of Rs.1,00,000/- in August, 2005 and he had also executed the loan in favour of one Sukhbir Singh. In order to return the said loan amount, the respondent-plaintiff had approached him along with his nephew, Neeraj and assured him to get the loan sanctioned from the bank. Accordingly, Rajender Kumar and Neeraj had played a fraud upon him and got the signatures of the appellant-defendant on some blank papers and converted them for their own use. An application was filed with the SP, Faridabad but the police did not take any action. A criminal complaint had also been filed against Neeraj and Rajender. The plea taken, on merits, was that he was residing in the suit land and had constructed a house over it and other averments of the application were denied. Sukhbir-defendant No.2 had also filed an application under Order 1 Rule 10 CPC and had been impleaded and filed his written statement also. He had set up an agreement to sell dated 09.08.2005 in his favour and he had alleged that out of Rs.2,25,000/-, he had paid Rs.1,00,000/- as cash and the sale deed had to be executed by 19.01.2007 in his favour for which, he had filed a separate suit for specific performance.

It is a matter of record that the suit filed by Sukhbir Singh has been dismissed and the appeal filed also met the same fate and it is stated that a Regular Second Appeal has been filed against the said judgment and decree by Sukhbir.

The following issues were framed by the Trial Court:

1. Whether the plaintiff is entitled to a decree of specific performance of the agreement to sell dated 6.3.2006 as prayed for? OPP
2. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP
3. Whether the suit of the specific performance is not maintainable in the present form?OPD
4. Whether the suit is barred under Order 2 Rule 2 read with Section 10 C.P.C.? OPD
5. Whether the plaintiff has no locus standi to file the present suit?OPD
6. Whether the plaintiff has no cause of action to file the present suit?OPD
7. Whether the plaintiff has not come to the court with clean hands and has concealed the material facts?OPD
8. Whether the suit of the plaintiff is barred by limitation?OPD
9. Whether the plaintiff is estopped from filing the present suit by his own acts and conduct?OPD
- 10.Relief.”

The Trial Court, accordingly, came to the conclusion that the agreement in question, as such, was not a validly executed document and there was a doubt, as such, regarding its authenticity and keeping in view the earlier agreement dated 09.08.2005, it directed refund of Rs.1,55,000/- along with interest @ 10% per annum from the date it was borrowed. Accordingly, it was held that in the suit for specific performance, there was a discretion with the Court that the bargaining power was to be kept into consideration between the parties.

Appellant-defendant did not file any first appeal against the

order of refund, as such, against the said judgment and decree dated 23.03.2012.

The Lower Appellate Court, as noticed, has allowed the appeal for specific performance of the agreement dated 06.03.2006. However, a perusal of the judgment would go on to show that the Court below has only taken into consideration the agreement dated 09.08.2005 and come to the conclusion that the same was ante-dated. It took into consideration Ex.P3, the report of the Deputy Works Manager, whereby the age of the stamps affixed on the agreement were taken into consideration. It was noticed that the stamps were of the year 1978 in one case and in the other case, the stamp was of the year 2006, whereas the agreement was of the year 2005. Resultantly, it was declared that the said agreement was ante-dated and it was held that it was prepared by respondents No.1 & 2 in collusion, just to discard the claim of the present appellant. Therefore, the appeal was allowed, as noticed above.

Unfortunately, the Lower Appellate Court failed to take into consideration that it was also to record a finding on the correctness of the issues framed *inter se* the parties and whether the plaintiff's suit was liable to be decreed on the ground that a valid agreement had been entered into between the parties. As noticed, the plea taken is of fraud, as such, on account of a loan having been taken and the judgment under appeal, as such, does not show that there was any discussion on the agreement to sell dated 06.03.2006, regarding the witnesses who had, as such, attested the same along with the scribe. The readiness and willingness, as such, of the plaintiff

and whether the plaintiff was estopped from filing the suit and whether the issues had been rightly decided by the Trial Court. The Lower Appellate Court, being the last Court of facts, had to necessarily give a finding on all the said aspects which has not been done.

Learned Senior Counsel for the appellant is well justified in submitting that the Court had expended its energy more towards the agreement dated 09.08.2005, which was subject matter of another civil suit and has not given due attention to the agreement dated 06.03.2006.

Counsel for the respondent is in no position, as such, to defend this aspect of the impugned judgment.

In such circumstances, this Court is of the opinion that the issue deserves a fresh re-look by the Lower Appellate Court. Accordingly, the present appeal is accepted, the judgment and decree dated 04.08.2016, passed by the Addl.District Judge, Faridabad is set aside and the matter is remanded for fresh decision. Keeping in view the fact that the suit is of the year 2007, the assigned Court shall decide the appeal by 31.05.2017.

January 30th, 2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*