

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.4190 of 2015
Date of decision:10.1.2017**

Krishan Chand

...Appellant

Versus

Ramesh Chand and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Suman Jain, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J.

Defendant is in second appeal against the judgment and decree passed by the learned first appellate court, whereby the judgment and decree, passed by the learned trial Court, granting alternative relief of refund of earnest money to the plaintiff, was modified in the appeal, filed by the plaintiff-respondent, and his suit for specific performance was decreed.

Facts necessary for disposal of the present appeal, as noticed by the learned first appellate court in para 3 of the impugned judgment, are that the plaintiff filed a suit for possession by way of specific performance of the agreement with a consequential relief of permanent injunction, alleging therein that defendant No.1 is owner in possession of the land as detailed and described in para no.1 of the plaint to the extent of 240/1300 share which comes to 12 kanals, (hereinafter referred to as the suit land) situated within the revenue estate of village Mandkol, District Faridabad, now Palwal. Defendant No.1 agreed to sell the suit land to the plaintiff at the rate of Rs.7,00,000/- per acre vide agreement to sell dated 6.1.2006 for a total

sale consideration of Rs.10,50,000/-. The plaintiff also paid a sum of Rs.4,23,000/- to the defendant as part payment vide a receipt executed separately. The sale deed was agreed to be executed on or before 6.1.2007 on receipt of balance sale consideration of Rs.6,27,000/-. The plaintiff has always been ready and willing to perform his part of the contract, whereas the defendant is avoiding the execution of the sale deed and threatening to alienate the suit land to some other persons. Despite notice and knowledge of the present suit defendant No.1 during the pendency of the suit, to defeat the rights of the plaintiff and to frustrate the contract dated 6.1.2006, executed a sale deed dated 13.6.2006 in respect of the land measuring 8 kanals in favour of defendant No.2, who is his son-in-law. The plaintiff requested the defendants to admit his claim, but they refused to accede his request. Thus, finding no other option plaintiff filed the suit.

On the notice having been issued, defendant-appellant put in appearance before the learned trial Court and filed his written statement, contesting the suit of the plaintiff. After 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 on the basis of agreement dated 6.1.2006?OPP.
2. Whether the sale deed dated 13.6.06 can be ignored being executed during the pendency of the suit?OPP
3. Whether the plaintiff has no cause of action or locus-standi to file the present suit?OPD
4. Whether the suit of the plaintiff is not maintainable?OPD
5. Relief.

In order to substantiate their respective stands taken, both the parties led their documentary as well as oral evidence. The plaintiff duly

proved his case, qua each and every relevant aspect of the matter. Agreement to sell Ex.P1 was duly proved on record. However, the learned trial Court exercised its discretion under Section 20 of the Specific Relief Act, 1963, in favour of the defendant and partly decreed the suit, granting only alternative relief to the plaintiff, directing refund of earnest money along with interest vide judgment and decree dated 16.2.2013.

Feeling aggrieved against the judgment and decree passed by the learned trial Court, both the parties filed their respective first appeals. Appeal of the plaintiff-respondent was allowed, whereas appeal filed by the defendant (appellant herein) was dismissed by the learned first appellate court, vide impugned judgment and decree dated 9.4.2015. Hence this second appeal, at the hands of the defendant.

Heard learned counsel for the appellant.

Learned counsel for the appellant submits that the appellant had been defrauded by misusing the signature of the appellant, which has been obtained on blank papers at the time of cancellation of earlier agreement to sell, executed between the appellant and brother of respondent-plaintiff. However, when confronted during the course of hearing and asked to refer to any complaint made by the appellant against the respondent to the authorities concerned at the appropriate time and taking specific averments in this regard, plea of fraud being a serious allegation, learned counsel for the appellant had no answer and rightly so, it being a matter of record.

In case, the stand of the defendant-appellant was based on the plea of fraud, a heavy onus would be on him to plead and prove his case, in accordance with law. However, he miserably failed to discharge his onus in this regard. Having said that, this Court feels no hesitation to conclude that

the learned first appellate court committed no error of law, while passing the impugned judgment and decree and same deserve to be upheld.

Once the plaintiff-respondent has duly proved the agreement to sell by leading cogent evidence, defendant-appellant miserably failed to take appropriate averments and also did not lead any relevant documentary as well as oral evidence, the learned first appellate court was well justified to decree the suit. Plaintiff was rightly held entitled by the learned first appellate court, for a decree of specific performance and the impugned judgment and decree deserve to be upheld, for this reason also.

Learned first appellate court, before arriving at a just conclusion, recorded its cogent findings in paras 13 to 15 of the impugned judgment and the same deserve to be noticed here, which read as under:-

“After having heard both the sides, I find no merit in any of the contentions of counsel for the respondent no.1. To prove the agreement to sell dated 6.1.2006 Ex.P1 appellant Ramesh himself stepped into the witness box as PW1 and reiterated the facts already set up in the plaint. He also examined Kishan Chand, Deed-writer as PW3. But admittedly he was not produced for cross-examination. However, respondent no.1 summoned Kishan Chand, Deed-writer in his evidence and he appeared in the witness box as DW3. He admitted in his cross-examination that Ex.P1 and Ex.P2 agreement to sell and the receipt respectively were prepared by him on the instructions of the parties thereto. The same were read over and both the parties after admitting the same to be correct put their thumb impressions and signatures. The said agreement to sell was entered in his register at Sr.No.12 dated 6.1.2006. Beside this appellant/plaintiff examined Dr.Satdev Aggarwal, Fingerprint and Handwriting Expert as PW4. He has mentioned in his report Ex.PW4/B that the questioned thumb impressions marked as Q1 to Q5 on the agreement Ex.P1 and receipt Ex.P2

tally with the admitted left thumb impressions mark S1 to S3 of Kishan. Moreover, respondent no.1 has admitted to the extent that his thumb impressions and signatures were taken by the appellant and his brother Naresh when the agreement dated 7.1.2005 in favour of Naresh Kumar (Ex.D1) was got cancelled and thereafter agreement to sell Ex.P1 was manipulated. Mere allegations are not sufficient to prove the fraud unless substantial evidence is led. Thus, in view of the above, the appellant successfully proved the due execution of agreement Ex.P1 and receipt Ex.P2 by respondent no.1. The Hon'ble High Court of Punjab and Haryana in case titled as Harjinder Singh alias Rajinder Singh Versus Karam Chand and another, 2013 (2) Latest Judicial Reports 361 has held that -

“When the defendant, in a suit for specific performance takes up the plea of denial of their signatures on the agreement to sell then in the eventuality of their failing to prove the same, no equity accrues to them.”

So far as the specific performance of the contract is concerned; respondent no.1 has denied the execution of the agreement to sell Ex.P1 and receipt Ex.P2 and he has nowhere pleaded that the specific performance of the agreement to sell shall cause hardship to him as there is steep hike in the prices of the land. Moreover, hike in the prices is no ground to deny the specific performance of the agreement to sell.

Admittedly there was no pleading of the respondent no.1 that the specific performance of the agreement will cause hardship to him nor any issue was framed by the learned Trial Court on this controversy. Thus, the learned Trial Court should have refrained itself from giving findings on the issue which has not been pleaded. Otherwise, also the Hon'ble Supreme Court of India in case titled as Laxman Tatyaba Kamkate and another Versus Smt.Taramati Harshchandra Dhattrak, 2010 (3) Civil Court Cases 828 (SC) has observed that -

“It may be true that there has been considerable increase in the prices of the land in question but it

cannot be a ground for denying the relief of specific performance to the respondent.”

As noticed in the foregoing paragraphs, once the plaintiff has duly proved his case, he was rightly held entitled for a decree of specific performance. So far as the plea of fraud raised by the learned counsel for the appellant is concerned, the same has been found wholly misplaced. Plaintiff duly proved the thumb impressions of the appellant on the agreement to sell Ex.P1, on receipt Ex.P2, by producing the Handwriting Expert Dr. Satya Dev Aggarwal as PW4. If the appellant was intending to raise the plea of fraud, it was least expected from him to substantiate that serious allegation by leading cogent evidence. However, he failed to do so.

In such a situation, it can be safely concluded that the learned trial court was not justified to exercise its discretion under Section 20 of the Specific Relief Act in favour of the defendant-appellant. It is so said, because under the peculiar facts and circumstances of the case noticed hereinabove, appellant has not been found to be a bonafide litigant. He was trying to play smart to defeat the genuine claim of the plaintiff-respondent. The learned trial Court ought to have decreed the suit of the plaintiff in toto, instead of granting alternative relief. In this regard, plaintiff was rightly feeling aggrieved and the learned first appellate court was well within its jurisdiction, to allow the appeal of the plaintiff-respondent, decreeing the suit.

The view that has been taken by this Court also finds support from a judgment of the Hon'ble Supreme Court in **Banarsi Vs. Kamphal**, AIR 2003 SC 1989 and also a judgment of this Court rendered in **RSA No.1365 of 1996 (Nirmal Singh Vs. Darshan Kumar @ Sudershan**

Kumar through his LRs and others), decided on 13.1.2014 as well as the later judgment of the Hon'ble Supreme Court in **K.Prakesh Vs. B.R.Sampath Kumar, 2015 (1) SCC 597.**

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 regular second appeal is bereft of merit and without any substance, thus, it must fail. No question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal under Section 100 of the Code of Civil Procedure, has been found involved in the present case. Reference can be made to the judgment of the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286.*** No case for interference has been made out. Consequently, the impugned judgment and decree passed by the learned first appellate court below are upheld.

Resultantly, the instant appeal stands dismissed, however, with no order as to costs.

10.1.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No