

RSA No. 6198 of 2015 (O&M)

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 6198 of 2015 (O&M)

DATE OF DECISION:19.01.2017

Jagjit Singh

.....Appellant

Versus

Paramjit Kaur

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Gautam Diwan, Advocate
for the appellant.

DAYA CHAUDHARY, J.

C.M. No. 15576-C of 2015

There is a delay of 8 days in filing the accompanying appeal.

For the reasons mentioned in the application, the same is allowed and delay of 8 days in filing the accompanying appeal is hereby condoned.

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The present regular second appeal has been filed by appellant-plaintiff-Jagjit Singh to challenge judgment and decree dated 17.10.2013 passed by Additional Civil Judge (Senior Division), Ludhiana, whereby, the suit filed by him was dismissed as well as judgment and decree dated 21.7.2015 passed by Additional District Judge, Ludhiana, vide which, the appeal filed against the aforesaid judgment and decree of the trial Court has

also been dismissed.

Briefly, the facts of the case are that the appellant-plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 19.6.2006 executed by the respondent-defendant in favour of the appellant-plaintiff, directing the respondent-defendant to execute and get the sale deed registered in the name of the appellant-plaintiff qua the sale of house measuring 75 square yards comprising khasra no. 1041, khata no. 265/302 as entered in the jamabandi of the year 1985-1986 situated at village Dugri Tehsil and District Ludhiana. A further prayer was also made for permanent injunction restraining the respondent-defendant not to alienate the property in dispute during pendency of the suit. The suit of the appellant-plaintiff was dismissed vide judgment and decree dated 17.10.2013 passed by Additional Civil Judge (Senior Division), Ludhiana.

Aggrieved by the said judgment and decree, the appellant-plaintiff filed an appeal before the Additional District Judge, Ludhiana, which was also dismissed on 21.7.2015.

After loosing before both the Courts below, the present appeal has been filed before this Court to challenge the judgments and decree passed by both the Courts below.

Learned counsel for the appellant contends that both the Courts below have not properly appreciated the evidence available on record. The authenticity, execution of the agreement to sell dated 19.6.2016, handing over the earnest money of ₹ 50,000/- at the time of the execution of the agreement and again handing over an amount of ₹ 1,50,000/- to the respondent-defendant was proved by the appellant-plaintiff. Learned counsel further contends that both the Courts below have also not

appreciated that the appellant-plaintiff appeared before the office of Sub Registrar 20.9.2006 along with balance sale consideration and other charges but the respondent-defendant failed to turn up to perform her part of agreement. Learned counsel also contends that respondent did not produce any evidence to prove her version, whereas, the sale consideration was paid by the appellant and it was proved on record. Respondent-defendant has not only admitted her signatures on the agreement to sell but failed to prove the forgery committed by the appellant. At the end, learned counsel for the appellant submits that the judgments and decrees passed by both the Courts below are liable to be set aside.

Heard the argument advanced by learned counsel for the appellant and have also perused the judgments and decrees passed by both the Courts below.

The facts relating to filing of suit, written statement and the judgments passed by both the Courts below against the appellant-plaitiff are not disputed. The following issues were framed by the civil Court:-

1. Whether the plaintiff is entitled for specific performance of the agreement to sell with regard to property in dispute? OPP
2. Whether the plaintiff has remained ready and willing and is still ready and willing to perform his part of contract? OPP
3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
4. Whether suit of the plaintiff is not maintainable in the present form? OPD
5. Relief.

The husband of the respondent-defendant was not traceable for the last many years. The case of the appellant-plaintiff is based on agreement to sell dated 19.6.2006, which was stated to be witnessed by Resham Singh and Rajni. PW-3 Resham Singh tendered his duly sworn affidavit and supported the case of the appellant-plaintiff in his examination in chief but in cross-examination, he had stated that he is an Advocate by profession and did not know that Jagjit Singh-appellant-plaintiff was also an Advocate or not. He has also stated that his affidavit was already typed by Jagjit Singh and without going through the same, he had signed the same in good faith. Even he had stated that he did not know respondent-defendant-Paramjit Kaur personally. He also denied that Paramjit Kaur-respondent had signed in his presence and any consideration with regard to agreement to sell was given in his presence. From the statement of PW-3 Resham Singh, it is clear that he did not know the plaintiff-appellant as well as respondent-defendant.

The appellant-plaintiff also examined Rajni as PW-5 one of the marginal witness of the agreement to sell. In cross-examination, she has stated that she had seen the house in dispute but she could not tell the length and breadth of the house and also did not know the owners of the house in the surrounding areas and the work/business being done by appellant-plaintiff. She also stated that agreement to sell was scribed in the house of respondent-Paramjit Kaur. Resham Singh and Balwinder Singh were known to her from the date of agreement as both were working in the Court. She denied that agreement was typed in her presence. She was even not aware whether she signed on one place or two places. Even she did not know whether appellant-Jagjit Singh signed with black pen or blue pen.

Similarly, PW-4 Balwinder Singh in his cross-examination has stated that he was Clerk with Sh. Surinderpal Arora, Advocate. He stated that he did not know as to what was written in Ex. PW2/A and his signatures were obtained only by telling that the document was to be tendered in the Court and he signed the affidavit Ex. PW4/A at the instance of appellant-Jagjit Singh. He further stated that he had never seen Paramjit Kaur. He even denied having made any payment in his presence.

Appellant-plaintiff-Jagjit Singh has also stated in his cross-examination that he had seen the original sale deed in the name of Hind Raj, husband of the respondent-defendant and brother of Hind Raj and the same was not in his possession. He admitted that till the date of agreement, Hind Raj was recorded as owner of the property in the revenue record and he was not aware whether any mutation was sanctioned in favour of respondent-Paramjit Kaur or not. He also admitted in cross-examination that he did not see any decree passed by the Court, which proved that only Paramjit Kaur was the legal heir of property in dispute. He also stated that he had not brought any proof to show as to from where payment of ₹ 50,000/- and ₹ 1,50,000 was made. Appellant-plaintiff could not prove the source of payment of earnest money and the amount paid later.

Both the marginal witnesses, namely, Resham Singh and Rajni have not supported the case of the appellant-plaintiff in cross-examination. Respondent-defendant has also placed on record notice dated 27.9.2013 signed by President, District Bar Association against appellant-plaintiff-Jagjit Singh, who was impersonating himself as lawyer. In the present case also, he appeared in the Court and posed himself as an Advocate, whereas, he was not possessing any degree or qualification to appear as an Advocate.

Accordingly, appellant-plaintiff could not prove the agreement to sell, ownership and mutation of the property in dispute in the name of the respondent.

Similarly, the lower appellate Court upheld the judgment and decree passed by the trial Court with the following findings:-

“Though, it is not pertinent for the decision of the matter in dispute, but it will not be out of place to mention here that the plaintiff Jagjit Singh impersonated himself as an Advocate before the Ld. Predecessor. However, he was apprehended impersonating as an advocate by the Ld. Predecessor and he mentioned the said factum in the zimni order. Thereafter, President, District Bar Association affixed notice in this regard on the notice board and sent copy of the same to the Ld. Predecessor also, wherein, it was mentioned that the plaintiff Jagjit Singh has been practising as an Advocate from Chamber on 8th Floor in LCC-II. Relief of specific performance is a discretionary relief. When a person goes to the extent of impersonating himself as an advocate without having any requisite qualification, it goes to prove his demeanour only, which speaks volume about his act and conduct.

Before parting with my discussion above, it is also pointed out that the defendant was proceeded against ex parte on 30.11.2016. The plaintiff furnished affidavit of PW-1 Nargis. Thereafter, the defendant moved the application to set aside the ex parte proceedings against him on 7.11.2007 and the said application was allowed on 18.12.2007. Then the defendant

filed the written statement. Issues were framed on 14.2.2008 afresh. However, the plaintiff failed to furnish fresh affidavits of witnesses and himself. Rather he produced the witnesses for the purpose of cross-examination. However, no statement of defendant was recorded that he was having no objection if the affidavits tendered by the plaintiff and his witnesses be read in support of their case. But no adverse inference is drawn against the plaintiff on the said ground as it was incumbent on the Court to direct the plaintiff to furnish the fresh affidavits of his witnesses.

Having regards to my discussion above, it is held that plaintiff not only failed to prove the execution of the agreement to sell by adducing the cogent and convincing evidence but he also failed to prove that he has been ready and willing to perform his part of the agreement. Moreover, possession of the disputed property was not delivered to the plaintiff despite the fact that he allegedly paid ₹ 2 lacs out of the total sale consideration of ₹ 2,50,000/- which also goes to raise doubt about the veracity of the version of the plaintiff. Accordingly, it is held that the plaintiff is not entitled to the equitable relief of specific performance of the agreement, when he failed to prove the execution of the same. Hence, the findings of learned lower Court on issues No.1 to 5 are affirmed against the plaintiff and in favour of defendant. No arguments was advanced on issues No. 6 to 9. Accordingly, the findings of lower lower Court on these issues are also affirmed against the plaintiff and in favour

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of defendant.”

By considering the judgments of both the Courts below, I am of the view that the appellant has failed to prove his case and there is no reason to interfere with the concurrent findings recorded by both the Courts below and the appeal being devoid of any merit is hereby dismissed.

January 19, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes