

RSA No. 1303 of 2017 (O&M)

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

RSA No. 1303 of 2017 (O&M)

Date of Decision: 7.3.2017

Bevi

.....Appellant

Vs.

Gurbachan Lal

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Gagandeep Singh, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant regular second appeal, at the hands of unsuccessful defendant, is directed against impugned judgment and decree dated 6.12.2016 passed by learned Additional District Judge, whereby first appeal of the defendant was dismissed, upholding the impugned judgment and decree dated 19.9.2014 of the learned trial court, thereby partly decreeing the suit for possession by way of specific performance of agreement to sell, granting alternative relief for recovery of earnest money alongwith interest.

Brief facts of the case, as noticed by learned first appellate court in para 4 of its impugned judgment, are that plaintiff-Gurbachan Lal filed a suit for possession by way of specific performance of agreement to

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sell dated 16.03.2012, as detailed in the head note of the plaint, or in alternative suit for recovery of ₹4.00 Lac as advance amount and for permanent injunction as prayed in the head note of the plaint on the ground that defendant was owner in possession of suit property. Defendant entered into an agreement to sell dated 16.3.2012 with the plaintiff for the sale of the suit property for consideration of ₹5,50,000/-. The agreement to sell was reduced in writing and the contents of the said agreement to sell was read over to the parties and the witnesses, after admitting the same to be correct, signed and thumb marked the same. The defendant at the time of execution of the agreement to sell received a sum of ₹2,00,000/-, out of total sale price from the plaintiff as an earnest money and it was decided that sale deed will be executed in favour of the plaintiff by her on 16.2.2013.

The plaintiff remained ready and willing to perform his part of contract, but the defendant always lingered on the matter on one pretext or other. The plaintiff requested the defendant to execute the sale deed in his favour of the property agreed to be sold and also remained present in the office of Sub Registrar, Amritsar along with balance sale price, but the defendant did not turn up to execute the sale deed and the plaintiff got his presence marked in the office of Sub Registrar, Amritsar. The plaintiff was ready and willing, is still ready and willing and will always remain ready and willing to perform his part of the agreement to sell to get the sale deed executed in his favour. Defendant threatened that she would alienate and sell the suit property in favour of some other person, for which she has got no right, title or interest to do so. A prayer was made for passing a decree for specific performance of the agreement to sell dated 16.3.2012 regarding plot or in alternative for recovery of ₹4,00,000- as advance amount and also for

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permanent injunction, as mentioned in the head note of the plaint.

Upon service, defendant put appearance and filed her contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial court framed the following issues:-

- 1) Whether the plaintiff is entitled to possession for the property in dispute by way of specific performance of the agreement to sell dated 16.03.12 as prayed for ? OPP
- 2) Whether the plaintiff is entitled to relief of permanent injunction, as prayed for ? OPP
- 3) Whether the plaintiff is entitled to alternative relief as prayed for? OPP
- 4) Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties, learned trial court came to the conclusion that although the plaintiff proved the agreement to sell, yet he was entitled only for alternative relief for recovery of earnest money and not the primary relief of possession by way of specific performance of the agreement to sell. Accordingly, suit was partly decreed, granting alternative relief to the plaintiff for recovery of earnest money, amounting to ₹2 lacs alongwith interest, vide impugned judgment and decree dated 19.9.2014. Both the parties felt aggrieved. Plaintiff filed his appeal, praying for decreeing his suit in toto, whereas defendant filed her appeal, contending that plaintiff was not entitled even for recovery of earnest money. Both these appeals came to be dismissed vide common impugned judgment and decree dated 6.12.2016 passed by the learned first appellate

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court. Hence this regular second appeal, at the hands of the defendant.

Heard learned counsel for the appellant.

Learned counsel for the appellant contended that suit of the plaintiff was liable to be dismissed in toto, because the agreement to sell dated 16.3.2012 was a forged and fabricated document. Suit of the plaintiff was based on fraud. However, when asked to point out even a semblance of evidence in this regard, except the self serving statement of defendant-appellant, learned counsel for the appellant had no answer and rightly so, it being a matter of record, thus, the impugned judgments and decrees deserve to be upheld.

In fact, defendant did not lead any evidence except her own statement, as noticed by the learned first appellate court in para 8 of its impugned judgment. Once the defendant was raising the plea of fraud, heavy onus would be on her to substantiate that assertion, but no evidence was produced by the appellant, for the reasons best known to her. Pleadings alone would not be sufficient to prove the plea of fraud. Having said that, this Court feels no hesitation to conclude that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

Before arriving at a just conclusion, learned first appellate court re-examined, re-considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Cogent findings recorded by the learned first appellate court in para 12 of its impugned judgment, which deserve to be noticed here, read as under:-

“Perusal of agreement to sell Ex.PW-1/A shows that

there is cutting on the date i.e. 16.02.2013 and on the foot note appended thereto pointing that seller name is Bevi and the last date for executing the sale deed should be read as 16.02.2013 instead of 16.03.2012. As per record, this amounts to variations in the stipulated date for executing the sale deed of the house in question belonging to defendant Bevi, thereby eroding the credibility and authenticity of the agreement to sell in question. In my view, it is unsafe to rely upon such changed agreement to sell as a person who scribed the said agreement to sell in presence of one of the attesting witnesses Amarjit Singh or Sohan Singh had not deposed in the court. The scribe of the said agreement was not examined so as to interpret said agreement to sell by construing to its purported meaning by reading agreement to sell, which has to be read as whole. So, no case is made out for transfer of possession of the property in dispute by way of specific performance of the agreement to sell dated 16.03.2012 due to unilateral alteration in the stipulated date for execution of sale deed by the plaintiff, by using undue influence and coercion upon the widowed defendant lady, having children to support and as such ld. Lower court has rightly decided the issue no.1 against the respondent/plaintiff and in favour of appellant/defendant. Further, respondent/plaintiff sought the alternative relief of refund of the earnest money of Rs.2.00 Lacs along with damages of Rs.2.00 Lacs with interest @ 12% p.a. from 16.03.2012, till date of its actual realization. Since, plaintiff himself has failed to make out a good case so as to enable the court to exercise its discretion in his favour as the relief of specific performance is discretionary relief but plaintiff could not satisfactorily prove the agreement to sell which is back bone of the contention

involved in this case. Once, there are aspersions and doubts regarding the correctness and non tampering of agreement in question, no damages can be awarded to the plaintiff by relying upon such agreement to sell. So, this court is of the considered view that plaintiff is entitled only to the alternative relief of recovery of earnest money amounting to Rs.2.00 Lacs along with interest at the prevailing bank rate from the date of filing this suit, till realization of the decretal amount. Therefore, ld. Lower court has rightly partly decreed the suit of the plaintiff in alternative for recovery of earnest money, amounting to Rs.2.00 Lacs with interest at the prevailing bank rate from the appellant/defendant, from the date of institution of suit till realization of decretal amount.

Further, concurrent findings of facts recorded by both the learned courts below have been found based on sound reasons. Suit of the plaintiff was partly decreed and rightly so, because he was not entitled for primary relief for a decree of specific performance. On the other hand, defendant-appellant did not lead any evidence to prove the plea of fraud. Under these circumstances, it can be safely concluded that learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by learned courts below. He also could not point out any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the

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judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

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 appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

7.3.2017
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No