

RSA No. 3183 of 2017 (O&M)

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

**RSA No. 3183 of 2017 (O&M)
Date of Decision: 26.7.2017**

Joginder Kaur

.....Appellant

Vs.

Nachhattar Singh and others

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Ms. Sarika Gupta, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Defendant No.1 is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby only alternative relief of recovery of earnest money along with interest was granted in favour of the plaintiff-respondent No.1, in a suit for possession by way of specific performance.

Brief facts of the case, as recorded by the learned first appellate court in para 1 to 3 of its impugned judgment, are that Ram Asra, predecessor-in-interest of defendants, on 9.4.2009, whereby he had agreed to sell suit property (described in detail in the head note of the plaint) to him, for a total sale consideration of ₹4.5 lakhs, and had received an earnest money of ₹3,22,500/- undertaking to execute the sale deed on or before 10.4.2010. Asserting that he had always been ready and willing to perform his part of the agreement and was still ready and willing to do so, Nachhattar

RSA No. 3183 of 2017 (O&M)

Singh averred that during his life time Ram Asra was approached by him to execute the sale deed but he did not come forward and even after his death which took place on 4.7.2009, the defendants, being his successors-in-interest, were requested by him to execute the sale deed and on their refusal to do so, he came up with the suit.

In their jointly filed written statement, defendants no.1, 2, 4 and 5 had raised preliminary objections against maintainability of the suit in the given form besides questioning locus standi of the plaintiff to file the suit. The plaintiff was sought to be estopped by his acts and conduct from filing the suit on the ground that he did not come to the Court with clean hands. The answering defendants denied that any agreement of sale was executed by Ram Asra on 9.4.2009 and the document being relied upon by the plaintiff is a result of fraud, forgery and misrepresentation. Suit property was the only residential house of Ram Asra and the answering defendants were not having any other house for their shelter and specific performance of the agreement would cause extreme hardship to them and they would be made to come on street. It was further urged that agreement of sale is highly unimaginable/unconscionable. Market price of house in suit was more than ₹15-20 lakhs and no prudent mind would agree to sell it off on such a low price. On these averments, dismissal of the suit was asked for adding that the plaintiff was a Lambardar of village Retainda and had returned from England and manipulated many other similar documents in the village. Plaintiff also set up a pronote allegedly executed by Ram Asra in his favour and suit for recovery on the basis of that pronote was also pending, when the written statement was filed.

None appeared on behalf of defendant no.3 despite due service and as such, defendant no.3 was proceeded against ex-parte. On completion

RSA No. 3183 of 2017 (O&M)

of pleadings of the parties, learned trial court framed the following issues:-

- 1 Whether the defendants entered into an agreement to sell dated 9.4.2009 with the plaintiff? OPP
- 2 If issue no.1 is proved whether the plaintiff is entitled to possession by way of specific performance of agreement to sell dated 9.4.2009 executed by Ram ? OPP
- 3 Whether in the alternative the plaintiff is entitled to recovery of Rs.4,50,000/- as prayed for? OPP
- 4 Whether the suit is not maintainable? OPD
- 5 Whether the plaintiff has no locus standi to file the present suit?OPD
- 6 Whether the plaintiff is barred by his act and conduct to file the present suit? OPD
- 7 Whether the plaintiff is not come to the Court with clean hands? OPD
- 8 Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has duly proved the agreement to sell. However, it was found that said agreement to sell between Ram Asra-predecessor-in-interest of the defendants was executed not for the purpose of selling the suit property but only as a security for the loan amount.

Accordingly, plaintiff was found entitled only for alternative relief of recovery of earnest money along with interest. Suit of the plaintiff was partly decreed by the learned trial court vide its impugned judgment and decree dated 5.5.2015. Defendants filed their first appeal which came to be dismissed by the learned first appellate court vide its impugned judgment

RSA No. 3183 of 2017 (O&M)

and decree dated 8.1.2016. Hence this regular second appeal at the hands of defendant No. and 1.

Heard learned counsel for the appellant.

A bare combined reading of both the impugned judgments and decrees would make it crystal clear that although defendants denied execution of the agreement to sell dated 9.4.2009 between their predecessor-in-interest namely Sh.Ram Asra and plaintiff, raising a plea of fraud, forgery and misrepresentation, yet they miserably failed to substantiate their plea of fraud. On the other hand, plaintiff duly proved his case to the extent that pursuant to the agreement to sell, having been executed between him and late Sh. Ram Asra, plaintiff paid the earnest money against a proper receipt. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

It is the settled proposition of law that whosoever asserts, onus would be on him to prove. As noticed hereinabove, in the present case, although defendants alleged fraud, forgery and misrepresentation against the plaintiff, yet they failed to lead any evidence, so as to prove their assertion taken in their pleadings. In the absence of any such cogent evidence, either documentary or oral, pleadings alone would not prove the stand taken by the defendants. Under these undisputed facts and circumstances of the case, it can be safely concluded that defendants-appellants miserably failed to prove their pleaded case for want of sufficient evidence. In such a situation, it is unhesitatingly held that learned courts below rightly partly decreed the suit of the plaintiff and the impugned judgments and decrees deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support

RSA No. 3183 of 2017 (O&M)

from the following judgments of the Hon'ble Supreme Court as well as this Court:-

Punjab Urban Planning and Dev. Authority Vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills, 1998 AIR (SC) 2352 (SC)

Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85 (SC)

Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others, 2015 (2) SCC (civil) 350 (SC)

Zarina Siddiqui Vs. A. Ramalingam alias R. Amarnathan, 2015 (1) SCC 705 (SC)

Swarn Singh Vs. Swarn Kaur and others, 2004 (2) RCR (Civil) 505 (P&H)

Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520 (P&H)

Devi Lal Vs. Shekaran and another, 2011 (5) RCR (Civil) 615, (P&H)

Usha and others Vs. Subhash Chander and others, 2014 (5) RCR (Civil) 813, (P&H)

M/s Machhi Ram Kishan Singh Sidana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506 (P&H)

RSA No.4070 of 2016 (Chamkur Singh and another Vs. Raghbir Singh and another) decided on 13.1.2017 (P&H)

RSA No.1239 of 2016 (Satbir Singh Vs. Mukesh Rani and others), decided on 17.1.2017) (P&H).

RSA No. 3476 of 2016 (Khan Mohammad and another Vs. Rahisan and others) decided on 3.3.2017 (P&H)

RSA No. 292 of 2015 (Amarjit Kaur and others Vs. Manjit Singh and others) decided on 17.3.2017 (P&H)

Before arriving at a judicious conclusion, the learned District

Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 12 to 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“As to whether or not the agreement of sale Ex. P-

2 was executed by Ram Asra against receipt of ₹ 3,22,500/- is the question of utmost importance to be answered in these proceedings as Nachattar Singh seems satisfied with alternative relief given to him and has not come up with any appeal or cross appeal to ask for specific performance of agreement Ex. P-2. As the agreement was purportedly executed by Ram Asra and that also not in the presence of any of the defendants, version given by Nachattar Singh and the scribe of Ex. P-2 and its attesting witness, PW-2 and 3 easily carry the day for Nachattar Singh with regard to execution of the agreement and payment of earnest money. All of the witnesses of plaintiff were duly cross examined for the defendants but without being able to shake their veracity. Nachattar Singh being a Non-resident Indian and a Lambardar of village Retainda speaks of his financial capacity to be able to pay to Ram Asra rather than any of these things being a disqualification of any kind. More than anything else, Ex. P-1 carries photograph of Ram Asra and thumb impression at no less than three places. The defendants were at liberty to go for comparison of thumb impression of Ram Asra appearing on the agreement of sale, if they were really convinced that it was not so executed by Ram Asra especially because science of comparison of finger prints is a perfect science and would have given perfect answer to question of execution of Ex. P-2 by Ram Asra or not.

In fact, the defendants have not categorically denied that Ex. P-2 did not carry thumb impressions of Ram Asra and all that they pleaded in order to wriggle out of consequences of Ex. P-2 was to raise plea of fraud, mis-representation, etc. which may have led Ram Asra to affix his thumb-impression on Ex. P-2. But for raising plea of fraud in the written statement no evidence whatsoever has been led by defendants in support of this plea. It is not just by chanting of the word fraud or

misrepresentation against a document that the chanter may walk away with nod of approval from a Court of Law. Plea of fraud has to be set up in complete details and then proved. Defendants/Appellants have not done enough on this count.

Fact of another suit filed by Nachhattar Singh against present defendants/appellants on the basis of a pronote, since decreed as well vide Ex. D-1, does not help case and cause of the defendants/appellants, rather it proves that Ram Asra had been taking money from Nachhattar Singh on one pretext or the other and on different occasions. As per Ex. D-1 an amount of RS 3,15,000/- was borrowed by Ram Asra from Nachhattar Singh on 21.6.2008, about 10 months before the execution of agreement of sale Ex. P-2.

I do not find any worthwhile merit in the argument that place of pasting photograph of Ram Asra on Ex. P-2 and spacing in the lines of Ex. P-2 suggest forgery. A look at Ex. P-2 reveals that photograph of Ram Asra was pasted first on Ex. P-2, then his thumb impressions and signatures across the photograph were obtained and thereafter main body of Ex. P-2 was scribed. Nothing illegal or suspicious can be worked out from the manner Ex. P-2 was scribed. Spacing in between the lines on Ex. P-2 is not irregular, either, to the extent to suggest anything suspicious.”

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 passed by the learned courts below. He also could not refer to 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 law

RSA No. 3183 of 2017 (O&M)

laid down by 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.

26.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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