

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.323 of 2017 (O&M)

Date of decision: 23.01.2017

Atma Singh @ Atama Singh

... Appellant

Vs.

Ajit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

RAMESHWAR SINGH MALIK, J. (ORAL)

Defendant is in second appeal. Feeling aggrieved against the impugned judgment and decree dated 17.11.2016 passed by learned Additional District Judge, Gurdaspur, whereby the impugned judgment and decree dated 22.09.2015 of the learned trial Court, decreeing the suit of the plaintiff-respondent for possession by way of specific performance, defendant-appellant has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by learned First Appellate Court in paras 2, 3 and 4 of its impugned judgment, are that the plaintiff contended that the defendant was owner in possession of the suit land measuring 17 kanals 6 marlas. On negotiation with the plaintiff of the defendant, the defendant agreed to alienate the suit land to the plaintiff in lump sum of Rs. 15 lac as entire sale consideration thereof. In consequent to that, the defendant on receiving a sum of Rs. 11,70,000/- as earnest money on 10.01.2011 executed an

agreement to sell in favour of the plaintiff with the stipulation that the sale deed will be executed on or before 30.06.2011 on receiving the balance sale consideration thereof.

On 30.06.2011, the plaintiff along with balance sale consideration and ancillary expenses thereto, remained very much present before the office of Joint Sub Registrar Qadian along with Swaran Singh Ex M.C. Qadian and Baldev Singh Numberdar of village Kiri Afghana till 5.00 P.M. None turned up on behalf of the defendant for that purpose. In the end at about 5.00 P.M., the plaintiff got marked his presence before the Joint Sub Registrar Qadian by way of an affidavit qua his presence for that purpose.

The plaintiff had always been and was still ready and willing to perform his that part of contract. The defendant delayed the matter on one pretext or the other and finally his refusal had compelled the plaintiff to seek the civil remedy against him. The defendant had also threatened the plaintiff that he would mortgage or alienate of the suit land in some other ways for some more consideration in some one else which had also been resulted the plaintiff to sought the relief of permanent injunction against the defendant that he be restrained from further alienation of the suit land to any one else.

Having been served in the suit filed by the plaintiff, defendant put appearance and filed the 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 for specific performance with possession of contract dated 10.01.2011?OPP.
2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for?OPP.

3. Whether the suit of the plaintiff is not maintainable in the present form?OPD.
4. Whether the plaintiff has no locus standi to file the present suit?OPD.
5. Whether the plaintiff has concealed the material facts from the Court?OPD.
6. Whether the suit of the plaintiff is properly valued for the purpose of court fee and jurisdiction?OPD.
7. Relief

With a view to prove their respective pleaded case, both the parties led their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has duly proved his case by leading cogent evidence. Accordingly, suit of the plaintiff for possession by way of specific performance of the agreement to sell dated 10.01.2011 was decreed, vide impugned judgment and decree dated 22.09.2015. Dissatisfied, defendant filed his first appeal, which also came to be dismissed by learned First Appellate Court, vide impugned judgment and decree dated 17.11.2016. Hence this Regular Second Appeal at the hands of the defendant.

Heard learned counsel for the appellant.

A combined reading of both the impugned judgments and decrees would make it crystal clear that the plaintiff brought on record cogent and convincing evidence, which was rightly found sufficient by the learned trial Court to decree the suit. Agreement to sell was duly proved as Ex.P2. Plaintiff also proved his presence before the Registrar along with witness, on the target date. He has also proved payment of earnest money as well as his readiness and

willingness to perform his part of the contract at every relevant point of time.

In such a situation, a heavy onus was on the defendant-appellant to prove his plea of fraud by leading sufficient evidence. However, defendant failed to do so, as there was no sufficient and cogent evidence available on record on behalf of the defendant-appellant, which might prove his plea of fraud. It goes without saying that wherever the allegation of fraud is alleged by any party, a heavier onus would be on such party to prove his plea of fraud, by leading cogent evidence.

As rightly held by learned Courts below, defendant has failed to bring on record sufficient evidence to prove his plea of fraud. Having said that, this Court feels no hesitation to conclude that learned trial Court was well within its jurisdiction to decree the suit of the plaintiff and the same was rightly upheld by learned First Appellate Court, while dismissing the first appeal of the defendant-appellant, thus, the impugned judgments and decrees passed by the learned Courts below, deserve to be upheld.

The facts as well as evidence brought on record were duly reconsidered and re-appreciated by the learned First Appellate Court before arriving at a just conclusion on the basis of its own findings, which have been found supported by sound reasons. Learned First Appellate Court, in paras 19 to 25 of its impugned judgment dealt with each and every relevant aspect of the matter, referring to the evidence available on record. These findings recorded by learned First Appellate Court deserve to be noticed here and the same read as under: -

“Having heard to their rival contentions under the guidance of aforesaid citations and having gone through the file, firstly regarding the uncontroversial facts on record, that it remained not

in dispute that the suit land is owned by the defendant as is evident from the revenue record of the suit land as referred above i.e. copy of jamabandi for the year 2003- 2004 Ex. P-1; copy of khasra girdawari for the crops of Sauni 2011 and Haari 2012 Ex. P-6 and that of copy of jamabandi for the years 2013-2014 Ex. D-2.

Now the question is regarding the negotiation between the parties in lis concerning the agreement to sell in question Ex. P-2. Before proceedings qua agreement to sell Ex. P-2, it is pertinent to mention here that the defendant apart from his own evidence rather has also been got proved through the cross examination of plaintiff Ajit Singh as PW-1 and it is attesting witness Kashmir Singh PW-2 that previous to the agreement to sell in question Ex. P-1 there was an agreement to sell Ex. D-1 of the suit land in favour of Dalbir Kaur wife of the present plaintiff. However, the regarding the same i.e. Ex.D-1, it is plea of the defendant that he had returned the so called earnest sum as detailed in Ex. D-1 as in fact that agreement to sell Ex. D-1 was to secure the sum of Rs. 5,00,000/- as got advanced by the defendant from said Dalbir Kaur wife of the plaintiff. Therefore, in that manner the agreement to sell Ex. D-1 has become redundant.

Now, so far the agreement to sell Ex. P-2 in question, concerning which the plaintiff has sought the specific performance of that. Obviously the initial onus is upon the plaintiff to prove that agreement to sell Ex P-2. The plaintiff through his own evidence as PW-1 and through its attesting witness Kashmir Singh as PW-2 and through PW-5 Manoj Kumar son of Ramesh Chander that the

said Ex. P-2 was got scribed from that Ramesh Chander who has since expired has got duly proved the agreement to sell in question as Ex. P-2. In that way, the plaintiff has got duly proved that agreement to sell Ex. P-2 as per the provisions of Indian Evidence Act being that got executed by the defendant in favour of the plaintiff.

As against that, there is sole evidence of the defendant as DW-1 with the plea that the said agreement to sell Ex. P-1 is the result of fraud with him in consequence to previous agreement to sell Ex. D-1. In view of that plea of the defendant the heavy onus shifts upon the defendant that how the agreement to sell in question Ex. P-2 is the result of fraud with the defendant. It is settled principle of law that when the fraud is pleaded in a civil suit, then that is required to be proved beyond the reasonable doubt just like a criminal charge. Instead, the defendant has failed to lead an iota of evidence on record to that extent except from his own oral evidence to that extent which has not been found sufficient that the agreement to sell Ex. P-2 as has been proved by the plaintiff is result of fraud. Rather, it is pertinent to mention here that the second attesting witness of the agreement to sell Ex. P-2 is Lakhwinder Singh son of Diwan Singh. It is admission of the defendant that the said Lakhwinder Singh son of Diwan Singh is his brother in law (Gainer) (Jeeja). So far the attesting witness Kashmir Singh, it is also admission of the defendant that the said Kashmir Singh had got arranged that sum to him. The defendant has shown his proper acquittance with Ajit Singh also. So far

Lakhwinder Singh he has also admitted that the said Lakhwinder Singh being his relative used to turn up to him. Had the said agreement to sell Ex. P-2 be a question of fraud then the defendant must be prepared to examine that Lakhwinder Singh second attesting witness of agreement to sell Ex. P-2 and relative of defendant. So the plaintiff by its facts and circumstances on record qua Ex. P-2 agreement to sell in question has duly proved the fact that the same was got executed by the defendant in favour of the plaintiff after receipt of due earnest money thereunder.

Now the question is its legality and validity as pointed out by the learned counsel for the defendant that there is some cutting at point Mark-C qua Rectangle Number of the suit land in Ex. P-2. The said cutting/ over writing has been found properly explained in the writing of that agreement to sell Ex. P-2 in its last line by giving proper note thereto. Further, regarding the plea of the defendant that the same has not been found on properly stamped paper, but on perusal of that the same has been found scribed on a stamp paper of Rs. 500/-. So that objection of the defendant has been found not sustainable. Moreover, at the time of exhibition of that agreement to sell Ex. P-2 nothing has been found to raise the question qua insufficient stamp paper concerning that agreement to sell Ex. P-2.

Now the question is readiness and willingness on the part of the plaintiff concerning that agreement to sell in question. Once the defendant/ proposed vendor of that agreement to sell has denied the execution of agreement to sell in question, then he

cannot take plea of any readiness and willingness on the part of plaintiff/proposed vendee of that agreement to sell in question. Even then the plaintiff by his own evidence as PW-1 and through the evidence of PW-3 and PW-4 as referred above, by proving an application Ex. P-3 and an affidavit Ex. P-4 that he remained very much present on the stipulated date i.e. 30.06.2011 alongwith ancillary expenses thereto and balance sale consideration before the office of Executive Magistrate Qadian i.e. Registration Authority for that sale deed. As against that not an iota of evidence has come on record on the part of defendant qua his presence before the office of that registration authority on that stipulated date, rather the defendant under the stress of his cross examination has admitted that he had not turned up before the said registration authority on 30.6.2011.

Further question has arisen for the act and conduct of the plaintiff. In that way, the cause of action had arisen to the plaintiff to file this suit on 30.6.2011. The plaintiff preferred the present suit on 30.01.2012. Therefore, the plaintiff has availed that opportunity without any unreasonable delay qua specific performance of agreement to sell in question. Rather the act and conduct of the defendant has not been found above board as an entry in the revenue record of the suit land Ex. D-2 is reflecting that he has mortgaged that suit land for a sum of Rs. 4,00,000/- in favour of Gurdaspur Cooperative Bank Harchowal. Meaning thereby the defendant has left no stone unturned to frustrate the agreement to sell in question. Instead, the plaintiff duly proved the execution of

agreement to sell in question as executed by the defendant in favour of the plaintiff and further his readiness and willingness on his part for specific performance thereof.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the findings recorded by both the learned Courts below. Further, no question of law, much less substantial question of law arises for consideration of this Court, which is sine qua non for entertaining the regular second appeal, while exercising the appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground 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

23.01.2017
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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No