

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 3627 of 2017 (O&M)

Date of decision : 11-08-2017

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Deen Dayal

.....Appellant

Versus

Vijay Pal

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Amandeep Rana, Advocate for the appellant.

Mr. Ashish Yadav, Advocate for the Caveator.

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RITU BAHRI, J.

The appellant-defendant has come up in regular second appeal against the judgment of the trial Court dated 25.8.2015 passed by the Additional Civil Judge (Senior Division) Pataudi decreeing the suit for specific performance of the plaintiff/respondent and the judgment dated 14.3.2017 passed by the District Judge, Gurgaon, whereby an appeal against the judgment of the trial Court has also been dismissed.

Briefly stated the facts of the case are that the plaintiff-respondent Vijay Pal filed a suit seeking decree for possession by way of specific performance of the agreement to sell dated 10.6.2010 in respect of the suit land. The plaintiff also sought decree for permanent injunction

restraining appellant-defendant from alienating the suit land to any other person except plaintiff or changing the suit land or raising construction over the same.

It was the case of the plaintiff-respondent Vijay Pal that defendant-appellant Deen Dayal agreed to sell 2K 1 M land situated within the revenue estate of Village Shekhpur Majri, Tehsil Farrukh Nagar, District Gurgaon fully described with revenue numbers in para no.1 of the plaint, herein suit land in favour of the plaintiff-respondent. Defendant-appellant executed registered agreement to sell No. 732 dated 10.6.2010 Ex. P2 in favour of plaintiff-respondent for a total sale consideration of Rs.4,98,000/- which was paid to the defendant-appellant. Agreement was scribed by Rajender Singh, Advocate and witnessed by Partap singh, Numbedar and Sanjay s/o Deen Dayal.

As per the terms and conditions of agreement Ex.P2, defendant-appellant was required to execute sale deed on 9.5.2011. Possession of suit land was agreed to be delivered at the time of execution of sale deed. Plaintiff-respondent remained present on 9.5.2011 in the office of sub-Registrar, Farrukh Nagar to perform his part of the agreement along with expenses for registration. But defendant-appellant did not turn up. As such, plaintiff-respondent to mark his presence executed an affidavit dated 9.5.2011 Ex.P-3 before Executive Magistrate, Farrukh Nagar. Thereafter, plaintiff-respondent sent a legal notice dated 24.5.2011 Ex.P-4 through Sh. N.K Rao, Advocate vide postal receipt Ex. P-5 to the defendant-appellant calling upon him to execute the sale deed within 15 days and further required the defendant-appellant to remain present on 12.6.2011 in the office of Sub-Registrar, Farrukh Nagar. But defendant did not respond.

Since 12.6.2011 was a holiday on account of Sunday, therefore plaintiff on the next day i.e 13.6.2011 again remained present in the office of Sub-Registrar along with expenses for stamp duty etc. But again defendant did not appear. Plaintiff again executed an affidavit dated 13.6.2011 Ex.P-6 before Executive Magistrate, Farrukh Nagar to mark presence. Suit for specific performance was filed on 28.2.2012.

Defendant filed written statement denying execution of agreement to sell dated 10.6.2010 (Ex.P-2). Defendant also denied having received alleged consideration of Rs.4,98,000/- from the plaintiff. Trial Court framed following issues for adjudication:

- 1. Whether the plaintiff and defendant entered into agreement to sell dated 10.6.2010? OPP.*
- 2. Whether the plaintiff is ready and willing to perform his part of the agreement? OPP.*
- 3. If issues no. 1 & 2 are proved, whether the plaintiff is entitled to decree for possession by way of specific performance of agreement dated 10.6.2010? OPP*
- 4. Whether the plaintiff is entitled to decree for permanent injunction as prayed for ? OPP.*
- 5. Whether the present suit is not maintainable in the present form? OPD.*

6. Whether the plaintiff has concealed the true and material facts from the plaintiff? OPD.

7. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD.

The trial Court decreed the suit of the plaintiff-respondent by deciding issues no. 1 to 4 in favour of plaintiff-respondent by recording the finding that agreement to sell dated 10.6.2010 Ex.P-2 was executed by defendant-appellant in favour of plaintiff-respondent for a total sale consideration of Rs.4,98,000/-. The suit was held to be maintainable. An appeal against the decree of the trial Court filed by the defendant-appellant was also dismissed by the lower appellate Court.

The agreement to sell Ex.P-2 was a registered document in the office of Sub Registrar bearing No. 732 dated 10.6.2010. As per this agreement, defendant-appellant Deen Dayal agreed to sell suit land in favour of the plaintiff-respondent. The defendant-appellant stepped into the witness box as DW-2 and filed affidavit stating therein that he had taken a loan of Rs.5,00,000/- and as a security he entered into an agreement to sell P-2. He did not take any steps for cancellation of the said agreement. However, the testimony of defendant-appellant Deen Dayal (DW-2) revealed that he in his cross-examination made clear cut admission of execution of agreement Ex.P-2 in favour of the plaintiff-respondent. He also made admission of the fact that in the said agreement Ex.P-2 there were recitals of payment of entire sale consideration of Rs.4,98,000/-. Partap Singh, Numberdar (PW-3), an attesting witness of the agreement testified

the fact that in his presence, no transaction had taken place but witness as a whole stated these facts that parties revealed to him that sale consideration had already been received by the defendant-appellant. As per Section 92 of Indian Evidence Act, 1872, when the terms of any such contract, grant or other disposition of property or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or that representatives in interest for the purpose of contradicting, varying, adding to or subtracting from its terms. In this way, defendant Deen Dayal cannot be permitted to wriggle out from his contractual obligations contained in agreement Ex.P-2. The presence of the plaintiff-respondent in the office of the Sub-Registrar on various dates proved that he was already willing and ready to perform his part of the agreement.

Counsel for the appellant-defendant has not been able to make out any substantial question of law which arises for consideration for admission of the regular second appeal. The suit has rightly been decreed by both the Courts below.

In view of all that has been discussed above, there is no infirmity or illegality in the orders passed by the Courts below. Hence, the present regular second appeal is dismissed.

11-8-2017*ritu***(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No