

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

RSA No. 3765 of 2017 (O&M)

DATE OF DECISION : 11.12.2017

Goma Devi

.... APPELLANT

Versus

Mahipal

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. J.P. Sharma, Advocate,
for the appellant.

* * *

AVNEESH JHINGAN, J.

The present regular second appeal has been filed at the behest of the defendant being aggrieved of decreeing the suit of the plaintiff for specific performance vide the concurrent judgments and decrees passed by the learned courts below.

For the sake of convenience, the parties are being referred to as per their original position in the civil suit.

The plaintiff filed a suit for specific performance of an agreement to sell dated 19.11.2011 regarding the land measuring 17 kanals 4 marlas comprising in khewat No. 404, khatoni No. 492, situated within the revenue estate of village Patikara, Tehsil Narnaul.

The facts, as averred in the plaint, are that the defendant agreed to sell the suit property to the plaintiff for consideration of ₹ 4,50,000/-. It

was stated that the amount of ₹ 1,00,000/- was received on the day, when the agreement of sale was executed and another sum of ₹ 1,00,000/- was received by the defendant through her son on 21.01.2012. The sale deed was to be executed upto 19.11.2012. It was averred that the plaintiff was always ready and willing to perform his part of the contract but the defendant never appeared in the office of Registrar for executing the sale deed. The plaintiff even served a legal notice upon the defendant but she did not appear to get the sale deed executed and registered. Thereafter, the suit was filed.

On notice, the defendant filed written statement raising various preliminary objections. On merits, she denied the agreement to sell and further denied that any amount was ever received by her. It was alleged that the agreement to sell was forged and fabricated.

The learned trial court framed the following issues :-

1. Whether defendant executed an agreement to sell dated 19.11.2011 qua the suit property for total consideration of Rs. 4,50,000/- in favour of the plaintiff? OPP
2. Whether plaintiff has paid Rs. 2,00,000/- out of total sale consideration of Rs. 4,50,000/-? OPP
3. Whether plaintiff is/was ready and willing to perform the part of the contract? OPP
4. If the above said issues are to be proved, whether plaintiff is entitled for decree of possession by way of specific performance of the contract on the basis of agreement to sell dated 19.11.2011 against the defendant? OPP
5. Whether agreement to sell is result of fraud and misrepresentation? OPD
6. Whether plaintiff has no locus-standi and cause of action to file the suit? OPD
7. Whether plaintiff is estopped by his own act and conduct from filing the present suit.

8. Whether plaintiff has not come to the Court with clean hands and concealed true and material facts from the Court? OPD
9. Whether plaintiff has filed false and frivolous suit? OPD
10. Relief.

The plaintiff, in order to support his suit, examined PW.1 Pyare Lal and PW.4 Dharamvir, who were attesting witnesses to the agreement. Notary Public, namely Shri Ved Prakash Yadav, Advocate, was examined as PW.2 and the Typist Ranjeet Singh was examined as PW.3. The plaintiff himself deposed as PW.7. The documents, like agreement of sale; legal notice, postal receipts, affidavit duly attested by the Notary Public were exhibited as Ex.PW1/B; Ex.PW5/A; Ex.PW5/B and Ex.PW5/C; and Ex.PW6/A.

The defendant, in order to rebut the claim of the plaintiff herself appeared as DW.1 and tendered her affidavit Ex.DW1/A.

The learned trial court, after appreciating the facts and considering the evidence produced, decided issues No.1 to 5 in favour of the plaintiff and against the defendant. Issues No.6 to 9 were also decided in favour of the plaintiff and against the defendant. The net result was that vide judgment and decree dated 11.12.2015, the suit was decreed. The defendant was directed to get the sale deed executed and registered in view of the terms and conditions of the agreement to sell Ex.PW1/B.

Aggrieved of the aforesaid judgment and decree, appeal was filed by the defendant. The learned Additional District Judge, Narnaul, dismissed the appeal vide judgment and decree dated 05.04.2017.

Hence, the present Regular Second Appeal.

Learned counsel contended that the defendant had not entered into any agreement of sale in favour of the plaintiff. Rather, the alleged agreement is a forged and fabricated document. He further contended that no amount was ever received either by the defendant or by her son. No other issue was raised.

The legal aspect with regard to the first contention raised by learned counsel for the defendant is well settled. The person who alleges fraud, forgery or fabrication has to prove fraud or forgery. Reliance in this regard is placed upon a decision of the Full Bench of this Court in **Smt. Niranjana Kaur and others Versus The Financial Commissioner, Revenue & Secretary to Government, Punjab and others**, 2010 (4) RCR (Civil) 610.

In the said decision, it was held as under :-

“47. However, the fraud and mis-representation is to be on the part of the vendee, or with his consent, by his vendor. In absence thereof, it would be unfair to deny the right to contest to the subsequent vendee. It will be for the party alleging fraud to prove the fraud and misrepresentation, as no presumption can be drawn.”

In the above decision, the law has been enunciated that one who alleges fraud has to prove it.

In the present case, apart from the bald statement made by the defendant, not even an iota of evidence was produced to substantiate that

the agreement to sell was forged or fabricated. On the other hand, the plaintiff had proved that the agreement to sell was duly executed by the defendant. The attesting witnesses to the agreement deposed before the court supporting the claim of the plaintiff. The Typist, who had typed the agreement to sell, also appeared before the court. The Notary Public, who had attested the agreement to sell, deposed in the court and supported the claim of the plaintiff. The said witnesses were duly cross-examined. Their deposition was not doubted. No adverse material had come during their cross-examination.

In view of the above discussion, it is evident that the execution of the agreement to sell has been duly proved.

The second contention raised by learned counsel is that the defendant had not received any amount in pursuance of the agreement to sell. It was further contended that even her son had not received the alleged amount. The plaintiff had examined the attesting witnesses to the agreement, who had deposed not only regarding the execution of the agreement, but also to the effect that the earnest money of ₹ 1,00,000/- was received by the defendant. The acknowledgment of the receipt of further amount of ₹ 1,00,000/- paid to the son of the defendant was exhibited as Ex.PW1/C. The said receipt was also endorsed by the witnesses that the amount of ₹ 1,00,000/- was received by son of the defendant on 21.01.2012. The son of the defendant never appeared before the court to deny the receipt with regard to second instalment of the earnest money. It appears that the defendant went into a total denial mode, while defending the suit, but the

said denials were not substantiated. Rather in her cross-examination, defendant stated that the amount of ₹ 50,000/- was taken by her from the plaintiff for the marriage of her son and some document was prepared at the Tehsil Complex.

In the present appeal, the readiness and willingness of the plaintiff has not been challenged. Even otherwise, the same has been duly proved by the legal notice Ex.PW5/A and affidavits Ex.PW5/C and Ex.PW6/A. The presence of the plaintiff was marked before the Sub Registrar on 19.11.2012 and 24.12.2012, which duly proves his willingness.

At this stage, it may be mentioned that in the appeal filed though five questions of law have been framed but at the time of arguments, learned counsel only made the above said submissions and no other issue was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant second appeal is dismissed, however, with no order as to costs.

December 11, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes