IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3952 of 2017 (O&M)
Date of Decision: 16.08.2017

Balbir Singh Sandhu ... Appellant

Versus

Gurpreet Singh ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Harkesh Manuja, Advocate,
for the appellant.

****

RAJIV NARAIN RAINA, J.

1. This is defendant's appeal against the judgments and decrees of the Courts below praying that they be set aside. Defendant was the proposed vendee.

2. Plaintiff brought a suit for possession by way of specific performance of a contract of sale of immovable suit property dated November 09, 2010 respecting land measuring 7 Marlas 1 ½ Sarsahi being vendor's share in 47 Kanals 16 Marlas situated in Dashmesh Nagar, Gali No.6, Moga as per Jamabandi for the year 2007-08 for the total sale consideration of ₹22.6 lakh. There was an alternative prayer in the suit for recovery of ₹18.8 lakh along with interest @12% per annum in case specific performance was refused.

3. The vendor denied the making of the agreement of sale. On evidence, the Courts below have concluded that the agreement to sell was

genuine and all the ingredients necessary to uphold the agreement were satisfied.

4. Faced with stolid denial of the document the plaintiff examined PW-9 Sanjiv Sharma, Handwriting and Finger Print Expert who compared the disputed signature of the appellant on the sale agreement with the standard signature available with the bank with Anumeet Singh, Field Officer State Bank of India testifying that they were the same.

5. The facts are that in the agreement of sale the defendant had recited that the land was free from encumbrances. It was the plaintiff's case in cross-examination that he came to know from the office of the Sub Registrar that a loan had been raised by the defendant against the suit property. However, plaintiff was unable to produce on record evidence of the amount of loan. Therefore, the Civil Judge (Senior Division), Moga denied relief of specific performance but has granted alternative relief claimed by the plaintiff for refund of earnest money of ₹9.4 lakh. The learned Civil Judge has declined relief of damages claimed in an equal amount in restricting the relief to recovery of ₹9.4 lakh with interest @9% per annum from the date of execution of agreement of sale till the filing of the present suit and further 9% per annum from the date of filing of the suit till realization of the principal amount and on the amount @6% per annum as future interest from the date of decree till its realization on the principal amount. The suit was partly decreed on April 30, 2015.

6. The present appellant Balbir Singh Sandhu appears not to have appealed against the judgment and decree and is content with paying the decreetal amount. However, the vendee Gurpreet Singh carried an appeal to

the Court of the learned Additional District Judge, Moga who by her judgment and decree dated May 17, 2017 has allowed the appeal and reversed the decree of the trial Court thereby granting relief of possession by way of specific performance of the agreement and has directed the respondent to execute the sale deed within a period of three months from the date of receipt of judgment as per the terms and conditions of agreement to sell, failing which, the plaintiff can get the sale deed executed through Court orders.

7. The learned Appellate Court has not agreed with the findings recorded on Issue No.3 and found that trial Court has committed illegality and irregularity in deciding the issue in favour of the defendant. Issue No.3 was whether the plaintiff was entitled to possession of suit property by way of specific performance or in the alternative recovery of money with interest.

8. The reasons which have appealed to the learned District Judge appear to be sound in law and fact when confronted with the stand of the defendant that the agreement to sell was forged and fabricated by the plaintiff in conclusion with marginal witnesses and scribe has not been believed on the evidence available on record. If this was true then there was no question of accepting the judgment and decree of the trial court and not calling it in question in appeal to avoid refund of considerable money to the plaintiff vendee.

9. On re-appreciating the evidence, the First Appellate Court read the evidence of PW-2 Ajit Singh Kanda and PW-3 Navin Puri who were the attesting witnesses of the agreement of sale. They have testified on oath that

the agreement was read over and explained to the defendant, who signed the same in their presence after receiving valuable consideration of ₹5.65 lakh as earnest money on November 09, 2010 on the date of execution of the agreement. The assertion was corroborated by the plaintiff in his oral testimony appearing as his own witness as PW-5 in every material particular. The plaintiff examined the scribe, the marginal witnesses and the stamp vendor who proved execution of agreement to sell dated November 09, 2010 by the defendant in favour of the plaintiff. Not only was payment made on November 09, 2010 but another advance was given in a sum of ₹3.75 lakh on April 16, 2011. The very fact that the defendant had not appealed against the judgment and decree of the trial Court conclusively shows that he accepted ₹9.4 lakh. A tacit admission is an admission and is the best evidence coming from failure to appeal. Obviously, the defendant was satisfied with refund of money.

10. The Lower Appellate Court faulted the trial Court findings that version of the plaintiff that appellant Balbir Singh Sandhu may not have raised loan against the suit property was not based on evidence. The plaintiff examined the Varinder Kumar, Assistant Manager, Moga appearing as PW-1 who proved the accounts of the defendant-appellant, his saving bank account, his house, and loan account of a business the defendant appellant runs under the name and style of Guru Nanak Feed and General Store. The official witness proved copies of voucher dated April 16, 2011 vide which the money has been deposited in the loan account and the witness deposed in cross-examination that Exs.P-4 nd P-5 are the vouchers vide which the amounts were credited in the accounts of Guru Nanak Feed and General

Store and verily Ex.P-1 is the house loan statement of the defendant appellant. These vouchers were conclusive evidence supported by bank statements Exs.P-1 to P-3 that money had been paid by plaintiff and its close proximity with the closure of the loan account. Therefore, the First Appellate Court rightly held that raising of loan was proved against the suit property and the account was cleared before the stipulated date. That money paid by the plaintiff apparently cleared the loan account with the earnest money.

11. When the agreement of sale has been duly proved in both the Courts below and the defence is one of denial is much more than a mere denial since defendant alleged the agreement to be a forged and fabricated document, and by this pleading he cannot wriggle out of the contract and is bound to perform his part of the deal.

12. On the other hand, the defendant was unable to prove his case by production of any other witness other than making his self-serving statement. The burden was on the defendant to prove the document to be forged and fabricated which he has miserably failed to discharge. There is sufficient lack of evidence that fraud was not committed by the plaintiff as alleged. The defence was false and vexatious.

13. On the aspect of readiness and willingness to perform his part of the contract, the plaintiff's evidence cannot be doubted that he pleaded the necessary ingredients in the plaint that he was ready and willing to perform his part of the contract and had partly performed it by payment of earnest money to the extent of ₹9.4 lakh. There could be no sounder evidence. It is for these reasons that the findings of the trial Court on Issue No.3 have been

reversed and the total relief granted to the plaintiff.

14. As a result of the above discussion, it is held that the learned Additional District Judge, Moga has for good reasons set aside the finding on Issue No.3 and decreed the suit in toto.

15. I entirely concur with the findings of the learned First Appellate Court and would dismiss the appeal. The time for execution of sale deed would now stand extended and would run from the date of receipt of this order with sale deed to be executed by the Executing Court within three months thereof, in case, the defendant does not come forward to execute the sale deed.

(RAJIV NARAIN RAINA)
JUDGE

16.08.2017
manju

Whether speaking/reasoned *Yes*

Whether reportable *No*