

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

RSA-4413 of 2017 (O&M)
Date of decision: 29.09.2017

Rohtash (since deceased) through his LRs Appellants

Versus

Ghisa Ram Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Lokesh Vohra, Advocate for
Mr.Sandeep Sharma, Advocate
for the appellants.

Avneesh Jhingan, J

Appellants/defendants are in regular second appeal against the judgment and decree dated 19.05.2017, whereby the First Appellate Court dismissed the appeal of the plaintiff/respondent upholding the impugned judgment and decree dated 27.11.2014 decreeing the suit of specific performance.

The facts necessary for the disposal of the present appeal, as noticed by learned First Appellate Court in para 2 of its impugned judgment, are that the case of the plaintiff/respondent (hereinafter to be referred as the plaintiff for short) are that the defendant-Rohtash (predecessor of the appellants) being owner in possession of the land measuring 8 Kanal (hereinafter to be referred as the suit land for brevity) i.e. 364/2229 share out of the land comprised in Khewat no.52, Khatoni no.62, Kita 27 total area measuring 107 Kanal 17 Marla vide Jamabandi for the year 2003-04 situated

within the revenue estate of village Balaha Kalan, District Mohindergarh had agreed to sell the same to the plaintiff/respondent for a sale consideration of Rs.4,00,000/-vide agreement dated 27.07.2010 and received a sum of Rs.2,16,000/- as earnest money. The remaining sale consideration was agreed to be paid at the time of execution and registration of the sale deed. The sale deed was agreed to be executed on 30.05.2011. Thereafter on demand of the defendant, a sum of Rs.1,00,000/- was paid to him on 28.10.2010 and a receipt in this regard was executed. The plaintiff/respondent always remained ready and willing for getting the sale deed executed but the defendant started doing negotiations with someone else for selling the suit land, pursuant to which, the plaintiff had to file a civil suit no.20 of 2011 titled as Ghisa Ram Versus Rohtash against the defendant. Thereafter as per the conditions of the agreement dated 27.07.2010, the plaintiff/respondent alongwith remaining sale consideration, stamps, tahrir etc. remained present before the office of Sub Registrar, Narnaul on 30.05.2011 for execution of the sale deed but the defendant did not come and ultimately the plaintiff/respondent got his presence marked before Sub Registrar, Narnaul by attestation of an affidavit from there. Thereafter the defendant delayed the matter on one pretext or the other. Thereafter a legal notice was sent to the defendant through Shri Ramautar Yadav Advocate for getting the sale deed executed on 20.06.2011. On 20.06.2011 also the plaintiff/respondent alongwith remaining sale consideration, stamps, tahrir etc. again remained present before the office of Sub Registrar, Narnaul for execution of the sale deed but the defendant did not come and ultimately the plaintiff got his presence marked before Sub Registrar, Narnaul through an attested affidavit. Thus the plaintiff/respondent always

remained ready and willing to perform his part of agreement but it was the defendant who did not get the sale deed executed. Hence the plaintiff filed the present suit.

In his written statement, the defendant while taking preliminary objections with regard to locus standi etc. submitted that neither he entered into an agreement with the plaintiff/respondent nor he received the earnest money from the plaintiff/respondent as alleged. The defendant also admitted the institution of civil suit no.20 of 2011 titled as Ghisa Ram Vs. Rohtash by the plaintiff/respondent against the defendant but it was submitted that on knowing the facts of the case, a notice dated 25.05.2011 was sent to the plaintiff/respondent through Shri Mahabir Prasad Sharma Advocate on 25.05.2011 and thereafter the said suit was withdrawn by the plaintiff on 31.10.2011. The plaintiff/respondent has concocted a false story. Rest pleadings in the plaint were denied. It was prayed that the suit was liable to be dismissed with costs.

From the pleadings of the parties, following issues were framed vide order dated 19.01.2012:-

1. Whether the plaintiff is entitled for decree of specific performance of the contract on the basis of agreement to sell dated 27.07.2010 against the defendant? OPP
2. Whether plaintiff has paid Rs.3,16,000/- out of the total sale consideration of Rs.4,00,000/-? OPP
3. Whether plaintiff is/was ready and willing to perform the part of contract? OPP
4. Whether agreement to sell dated 27.07.2010 is the result of

fraud and misrepresentation? OPD.

5. Whether suit of plaintiff is not maintainable? OPD

6. Whether plaintiff has no locus standi to file the suit? OPD

7. Whether plaintiff has filed false and frivolous suit? OPD

8. Relief.

In support of their cases parties led their respective evidence. It is pertinent to mention here that when the case was fixed for rebuttal evidence, defendant Rohtash died and his legal representatives (appellants) were impleaded as party vide order dated 30.09.2014. After hearing learned counsel for both the parties and going through the case file, the learned lower Court decreed the suit of the plaintiff/respondent with costs.

The appellants/defendants felt aggrieved and filed the first appeal which was dismissed by the learned Additional District Judge, Narnaul vide impugned judgment and decree dated 19.05.2017. The First Appellate Authority upheld the decree of specific performance passed in favour of the respondent/plaintiff and the appellants/defendants were directed to execute the sale deed of the suit property in favour of the plaintiff. Hence this regular second appeal at the hands of the appellants/defendants.

Heard learned counsel for the appellants.

It is not disputed before this Court that an agreement dated 27.07.2010 was entered between the parties. It is also not disputed that the amount of Rs.2,16,000/- was received by the appellant on same day. The appellant raised the issue that the agreement dated 27.07.2010 (Ex.PW1/A) was not an agreement to sell but was a loan agreement. The said plea raised has no legs to stand. This plea was not raised in the written statement. The

plea was raised only at the stage of the evidence. Even if this aspect is ignored, no evidence or witness was produced in support of the fact that it was a loan agreement. On the other hand, the respondent/plaintiff was able to establish the case. The statement of PW1 Singh Ram Yadav, Deed Writer, that on instructions of the parties, the agreement was drafted, the same was read over to the parties, who accepted them to be correct and thereafter thumb marked/signed the same in his presence of the attesting witnesses. Statement of PW3 Om Parkash, Lambardar who was attesting witness to the agreement to sell dated 27.10.2010 and receipt dated 28.10.2010 also supported the case of the plaintiff. The affidavit Ex.PW4/A was also supported by PW5.

On the other hand, the appellants/defendants have neither denied their thumb impressions on the agreement nor the fact that they received a sum of Rs.2,16,000/- on the said date. They have also not denied the receipt dated 28.10.2010 ExPW1/B. Further, there is no denial that the amount of Rs.1 lakh was received by them on 28.10.2010.

The sequence narrated in the above para clearly shows only a bare claim regarding loan agreement was raised which was not substantiated. Even the conduct of the appellants/defendants shows that it was not a loan agreement. Had it been a loan agreement, there was no occasion for the appellants/defendants to receive another amount of Rs.1 lakh on 28.10.2010.

Keeping in view the totality of facts and circumstances of the case, the learned Courts below did not allow the appellants/defendants to back out from the agreement to sell and to enrich himself at the cost of the respondent/plaintiff by keeping his money and thereafter backing out from the

agreement.

Before arriving at a judicious conclusion, learned Ist Appellate Court re-considered and re-appreciated the facts of the case as well as evidence available on record. The reasoning recorded by the Ist Appellate Authority is cogent and convincing. The finding recorded by learned first appellate Authority deserves to be noticed and reproduced hereunder :-

“The defendant has not disputed his thumb impressions on the agreement to sell Ex.PW1/A. His case is that the said agreement to sell was basically a loan agreement. However, the defendant did not even take the said plea in his written statement. The said plea was taken only during the course of evidence. Moreover, merely by the bald averments of the defendant it cannot be held that the said agreement to sell was actually a loan document. Plaintiff/respondent led overwhelming evidence to prove the said agreement to sell. Besides, examining himself, he also examined PW 3 Om Parkash Nambardar who was an attesting witness on the said agreement. The said witness fully supported the case of the plaintiff. The plaintiff also examined Raj Kumar who identified the signatures of his father Ramswarup who was also an attesting witness on the agreement. Deed writer Singhraj Yadav also appeared as witness for

*the plaintiff/respondent and he also supported the plaintiff's case. The argument of the learned counsel for the appellants that receipt of Rs.1 lakh Ex.PW1/B is in the continuation of the said agreement to sell and as the said receipt does not bear the signatures of the plaintiff the agreement is to be discarded does not have substance. Ex.PW 1/B is merely a receipt (although in continuation of the agreement) whereby the defendant received Rs.1 lakh from the plaintiff and it did not require the signatures of the plaintiff/respondent. Moreover in view of the **Aloka Bose Vs. Parmatma Devi AIR 2009 SC 1527** even an agreement to sell need not be signed by the vendee and an agreement to sell can be oral as well. In *Harender Singh vs. Mahavir Supra* our Hon'ble High Court held that a purchaser need not sign an agreement to sell and it is only the vendor who shall sign the agreement. The plea of the defendant that possession is with the defendant is hardly of any consequence. Only because it was wrongly recorded in the agreement that possession was delivered to the plaintiff, the agreement doesn't become doubtful. So far as readiness and willingness of the plaintiff is concerned, the plaintiff had duly gone to office of*

the Sub Registrar on the date fixed i.e. 30.05.2011 and marked his presence by way of affidavit Ex.PW4/A. Within no time thereafter, the plaintiff instituted the present suit on 16.07.2011. Moreover the plaintiff had already paid the major part of the sale consideration to the defendant. (Rs.3,16,000/- was paid out of total sale consideration of Rs.4 lakhs). The learned trial Court has rightly held that the plaintiff was ready and willing to perform his part of the contract.”

In the case of specific performance each contract has to be decided on its own facts. It is not always necessary that order with regard to refund of money has to be passed, but jurisdiction to grant decree of the specific performance is discretionary one. In the present case, the facts of the case are such that the Courts below have rightly exercised their discretion after discussing the same on sound reasoning created by judicial principle. The orders are based as per the mandate of law contained in Section 20 of Specific Reliefs Act, 1963.

Learned counsel for the appellants/defendants had framed three questions of law in the regular second appeal at the time of arguments. He was specifically asked that which substantial question of law he is pressing. Counsel stated that he is not pressing questions No.1 and 2 and is only arguing question No.3 i.e whether the lower Courts can ignore the evidence led by the appellants/defendants. The reading of the said question itself shows that it is a general question yet the arguments raised in support of the question are being

dealt.

Learned counsel further argued that the receipt dated 28.10.2010 (PW1/B) should be ignored as it does not bear the signatures of the respondent/plaintiff. He argued that this receipt is in continuation of the agreement to sell and therefore, it must bear the signatures of the respondent/plaintiff also. The argument has no merit. The receiving of the amount of Rs.1 lakh is not disputed, further receipt bears signatures of the appellant is also not disputed. There is no legal requirement that on the receipt of money paid in pursuance to the agreement, the plaintiff should have affixed his signatures.

Learned counsel further argued that the plaintiff had taken different stands, in the agreement to sell it was stated that possession has been handed over to the respondent/plaintiff whereas the possession is with the appellants/defendants. Even this argument cracks no ice. The proposition cannot be extended to enunciate that in case of agreement to sell if the possession is not handed over, then the agreement to sell cannot be enforced. Apart from this, the appellant had received the major amount of Rs.3,16,000/- out of total sale consideration of Rs.4 lakhs and readiness and willingness to perform the contract on part of the plaintiff is duly established. In such circumstances, no fault can be found with the orders passed by the learned Courts below.

During the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgment passed by the learned First Appellate Court. He could not refer any question of law, much less substantial question of law, which is sine qua non for this

Court to exercise its appellate jurisdiction under Section 100 of the Code of Civil Procedure.

Thus, no fault can be found with the impugned judgment and decree passed by the First Appellate Court and same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons mentioned, this Court is of the considered view that the present appeal is bereft of merit and thus must fail. No cause 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.

(AVNEESH JHINGAN)
JUDGE

29.09.2017

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Note:

1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes