IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.523 of 2017 (O&M)
Date of Decision: 13.07.2017

Smt. Savitri and another ... Appellants

Versus

Raj Kumar ... Respondent

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

Present: Mr. Mukul Goyal, Advocate,
for the appellants.

RAJIV NARAIN RAINA, J.

1. Plaintiff's suit for possession by way of specific performance of agreement to sell dated January 16, 2009 has been decreed by the Court of the learned Civil Judge (Junior Division), Sonepat vide judgment and decree dated November 29, 2013. The learned Additional District Judge, Sonepat has affirmed the judgment on September 27, 2016 and dismissed the appeal.

2. The case of the plaintiff is that defendants agreed to sell him 4 Kanals of suit land for a total consideration of ₹8,80,000/-. The total sale consideration was paid on the date the agreement was signed and a receipt of the full amount has been signed by the defendants acknowledging money paid to them. They had agreed to execute sale deed in favour of the plaintiff. When he asked the defendants to come forward for execution of sale deed defendants avoided him on one pretext or the other. A legal notice was served upon the defendants on February 08, 2010 wherein they were asked to execute the sale deed within 15 days of the receipt of the notice, but the

defendants did not turn up in Tehsil office to execute their part of the contract. On obtaining a copy of the Jamabandi of the suit land the plaintiff says he came to know that the defendants had obtained a loan from a bank by mortgaging the suit property as collateral for the loan. This loan transaction was entered into and suit land mortgaged to the bank after executing the agreement to sell in his favour. In these circumstances, it was urged the mortgage would not be legally binding on the rights of the plaintiff to seek possession by way of specific performance. Hence the suit was filed in the Court at Sonepat to enforce the contract.

3. On notice, the defendants entered appearance. In their written statement they denied receiving the sale consideration. They denied the money receipt. They were always at liberty to obtain loans from bank by way of mortgage of collateral property, the suit land. An additional plea was taken by the defendants that they had infact entered into agreement to sell of the corpus with one Bijender on January 15, 2008 for a sale consideration of ₹17,60,000/- per acre and had received an amount of ₹2 lakh from him in advance as earnest money. Agreement to this effect was scribed in Tehsil compound of Sonepat in the presence of one Krishan s/o Chandgi. Bijender was the brother of the plaintiff. He was dead by the time the present sale agreement was drawn which became the cause of the suit. Defendants and Bijender had fixed a target date for execution of sale deed on March 10, 2008 which was extended up to April 14, 2008 on Bijender's request as he was not in a position then to arrange the balance price. He had, however, parted with ₹2.36 lakh in favour of the defendants by March 10, 2008 in the presence of one Karan Singh @ Kartar Singh. They alleged that late

Bijender had obtained their signatures/thumb impressions on blank papers holding out to them that he would apply for partition of land so that there would be no difficulty in future execution of the sale deed. Defendants alleged that they received another ₹4.36 lakh from Bijender on April 15, 2008 the date of alleged extension of time for execution of sale deed and on April 15, 2008 they had asked Bijender to pay the balance amount and get the sale deed executed but Bijender prevaricated and put off the matter. They needed the money to expedite payment of money for purchase of a Tractor but Bijender did not relent and the plaintiff himself while sitting with his brother Bijender told them that Bijender did not have spare money at the time to conclude the deal. Bijender was unmarried and used to live with the plaintiff in the same house. Bijender and plaintiff were present when the agreement was executed in 2008. A Panchayat was convened where it was agreed that the agreement should be cancelled on return of earnest money of ₹4.36 lakh. The agreement was cancelled and then the loan of ₹3 lakh was obtained for purchase of a Tractor against mortgage of the suit land. Bijender died in the month of September 2008. The earnest money was returned to the plaintiff.

4. Be that as it may, the version of propounded by the defendants has not been substantiated by legal evidence. As far as plaintiff is concerned he produced in evidence both the attesting witnesses to the agreement who deposed in his favour that they had indeed signed the agreement in each other's presence and in the presence of the parties while appending their signatures on the contract agreement. The plaintiff had stepped into the witness box as his own witness to depose to pleaded facts and the

defendants could not shake his testimony in cross-examination. They also proved the receipt Ex.P-2 deposing on oath that the receipt was duly executed by the defendants in the presence of PW-3 Rameshwar.

5. In order to prove her case defendant Savitri appeared as her own witness DW-1 and tendered her affidavit deposing to the facts pleaded in the written statement. She tendered the postal receipts Exbs.D-1 to D-3 of the previous transaction with late Bijender and photocopies of the agreement and receipts as Mark D-1 to D-3 to prove execution of agreement with late Bijender, brother of the plaintiff. Defendant No.2 also stepped into the witness box to support the facts pleaded in the written statement. The mother and son, the defendants, examined DW-3, Shri V.B. Kashyap a Handwriting & Finger-print Expert who stated that he had compared the signatures of PW-2 Krishan Kumar on the agreement to sell Ex.P-1 who was one of the attesting witnesses and the receipt Ex.P-2 with the admitted signatures of Krishan Kumar and tendered opinion that the questioned signatures of Krishan Kumar on the agreement and receipt had not been written by the writer of the admitted signatures.

6. It was argued by the defendants in First Appeal that the agreement Ex.P-1 was not admissible in evidence because the agreement itself recited that possession of the suit property was handed over to the plaintiff and, therefore, it required to be stamped to be admissible as a conveyance deed. They placed reliance on the judgments noticed in the judgment of the First Appellate Court to contend the precedents were distinguishable on facts. The first case relied upon was O<u>m Parkash v. Lakshmi Narayan</u>, 2014 (2) LJR 724 (SC) and the second; <u>Avinash Kumar</u>

Chauhan v. Vijay Krishan Mishra, 2009 (3) LJR 404 (SC). In *Om Parkash* stamp duty was required to be affixed on the agreement as per substituted Act of Madhya Pardesh which is not the position in the present jurisdiction. There was no law in the State of Haryana which required stamp duty to be affixed on an agreement to sell immovable property. In Haryana stamp duty is to be paid at the time of execution of sale deed and not at the time of execution of the agreement to sell. The argument did not impress the Lower Appellate Court and neither does the contention appeal to this Court and, therefore, the argument has to be rejected.

7. It was next argued and answered as to what is the position where both the attesting witnesses of the agreement are close relatives of the plaintiff and whether their testimony would be treated as unreliable. There is no such law where merely because the attesting witnesses of an agreement to sell are close relatives of the plaintiff their testimony would be liable to be discarded as unreliable. This is for the Court of first and second instance to examine and express their opinion and if they have relied on the testimony then interference is not warranted on this account merely to substitute view upon the same evidence when it has not been misread or misappreciated.

8. The plea that plaintiff obtained signatures of the defendants by committing fraud upon them at the time when Panchayat was convened to resolve the dispute regarding the agreement to sell executed by the defendants in favour of the brother of the plaintiff, was a plea which had to be supported by legal evidence because the allegation levelled was of fraud which plea has to be proved like a criminal charge and the self-serving

statement of the defendants do not carry any weight. The argument is of no substance and is noticed and rejected.

9. The opinion of the Handwriting & Finger-Print Expert that the signature of PW-2 Krishan Kumar did not tally with his admitted signature was an argument of the defendants rightly rejected by the Lower Appellate Court as the opinion was irrelevant in the presence of the deposition of PW-2 Krishan Kumar admitting his signature on the agreement and receipt Ex.P-1 and Ex.P-2.

10. The postal receipts Ex.D-1 to D-3 produced by the defendants only show that some letters were posted to the police authorities by registered post. These receipts or letters sent to the police cannot prove alleged fraud of obtaining signatures on blank papers and using them to disturb the title of the defendants.

11. When the defendants denied the execution of agreement itself then it would not lie in their mouth to plead and prove after backing out of the deal to be permitted to raise plea of readiness and willingness on the part of the plaintiff to execute his part of the contract. For this proposition which bars raising the plea, the Lower Appellate Court relied on the decision of this Court in Sant Singh v. Amarjit Singh, 2015 (9) RCR (Civil) 185 and quite appropriately.

12. It matters little that the agreement Ex.P-1 is not registered as a suit for specific performance cannot be dismissed on the ground on non-registration of agreement. Unregistered agreements to sell are enforceable in law under the Specific Relief Act. Even in a case where a clause is contained in the agreement to sell of delivery of possession by way of part

performance, suit would not be dismissed for want of registration of the agreement. For this proposition, the learned Addl. District Judge relied on the ruling in Harum v. Kale Khan, 2016 (2) RCR (Civil) 626. In the case of an unregistered agreement to sell the prospective vendee cannot avail of the protection of Section 53-A of the Transfer of Property Act, but it cannot be said that such unregistered agreement is not enforceable in law as correctly observed by the Court *a quo* while relying on judgment in Paramjit Kaur v. Har Dayal, 2013 (1) RCR (Civil) 220.

13. For these reasons, the appeal was dismissed and I have no reason to alter that decision as there is no scope for interference left in the well reasoned judgment in appeal when execution of the agreement was duly proved and the passing of the sale consideration vide the receipts were clear evidence in support. The version of the defendants appears to be a concocted story woven to save the defendants from the performance in execution of sale deed and parting with the property to the plaintiff.

14. I find no substance in this appeal or any question of law arising therein for consideration in appeal against an appellate decree and would dismiss the same by upholding the concurrent findings of fact recorded by the Courts below.

(RAJIV NARAIN RAINA)
JUDGE

13.07.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*