IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1257 of 2012
Date of Decision.13.03.2018

Sukhdev Singh ......Appellant

Vs

Baldev Singh and another .....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Punchhi, Advocate
for the appellant.

Mr. S.K. Jain, Advocate
for respondent No.1.

Mr. Vikrant Attri, Advocate for
Mr. C.S. Pasricha, Advocate
for respondent No.2.

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AMIT RAWAL J.(ORAL)

The appellant-defendant is aggrieved against the judgment and decree rendered by the lower Appellate Court dated 16.01.2012 whereby the judgment and decree dated 19.01.2011 dismissing the suit for possession by way of specific performance has been modified while granting alternative relief of refund of earnest money of Rs.4,60,000/- along with interest @18% per annum.

The respondent-plaintiff instituted the suit claiming specific performance of agreement to sell dated 8.6.2004 in respect of land measuring 65 kanals agreed to be sold @Rs.80,000/- per acre against the earnest money of Rs.4,60,000/-. The stipulated date for execution and registration of the sale deed was 7.6.2005 which was extended to 6.6.2006. It was stated that the plaintiff had been ready and willing to perform his part of the contract and even marked his presence before the Registrar but the appellant-defendant did not come forward. The suit was filed on 8.8.2006 preceded by legal notice which was refused by the appellant-defendant.

The defendants contested the suit on merits by taking the pleas of non-maintainability, concealment of material facts and limitation etc. and denied that it was not agreement to sell but money transaction as the respondent-plaintiff had been extending loan by getting the agreement to sell executed, which was in fact for a security. The details of various agreements i.e. 11.05.1994, 21.06.1996, 17.06.1998 and 16.6.1999 had been given in the written statement whereby in respect of the some amount, the appellant-defendant had obtained loan on various dates and stated to have repaid the same.

The trial Court on the basis of pleadings framed the following issues:-

"*1. Whether defendant No.1 entered into a valid agreement to sell dated 8.6.2004 regarding 65 kanals of land situated in village Mallekan, Tehsil and Distt. Sirsa and the plaintiff is entitled to the relief of specific performance of agreement in question and consequential relief of permanent injunction, as prayed for? OPP*

2. Whether the crop loan raised by defendant No.1 on 48 kanals from defendant No.2 is result of fraud and defendant No.2 is liable to set from enforcing this mortgage? OPD

3. Whether the plaintiff has concealed the true and material facts from this Court? OPD

4. Whether the suit is not maintainable in the present form? OPD

5. Whether the suit is liable to be dismissed as plaintiff has *been doing the money lending business? OPD*

6. Whether the plaintiff has no cause of action to file the present suit? OPD

7. Whether the suit is within limitation? OPP

8. Whether the plaintiff has got no locus standi to file the present suit? OPD

9. Whether the plaint is liable to be rejected under Order 7 Rule 11 CPC? OPD

10. Whether the Civil Court has no jurisdiction to try and entertain the present suit? OPD

11. Whether the suit has been instituted by plaintiff and defendant No.1, if so to what effect? OPD

12. Relief.

In support of his case, the plaintiff examined as many as six witnesses including the attesting witness of the agreement to sell and brought on record documents to prove the presence marked before the Sub Registrar. On the other hand, defendants examined three witnesses and brought on record documents Ex.D1 to Ex.D16 i.e. entries in the register of deed writer regarding the agreement, Ex.DW3/B mortgage deed No.121 and Ex.DW3/C, statement of accounts.

The trial Court noticing the aforementioned facts dismissed the suit but the lower Appellate Court as indicated above partly allowed the appeal.

Mr. Sandeep Punchhi, learned counsel for the appellant-defendant No.1 submitted that specific averments qua obtaining the loan by executing the agreement to sell, which was executed for the purpose of security and its repayment, was specifically pleaded in the written statement but there was no replication and therefore, the same shall be deemed to be admitted as per the provisions of Order 8 Rule 5 CPC. Though the aforementioned agreement to sell had not been proved on record but Ex.D2 to Ex.D13 i.e. entries in the register of the deed writer, who was stated to have written agreements as detailed in the written statement, were itself a clincher for the trial Court to form an opinion against the respondent-plaintiff by denying the discretionary relief, much less, the alternative relief as all other transactions of alleged amount obtained from respondent-plaintiff were repaid along with interest. Even plaintiff's witness, PW-4 Mangat Singh stated that Baldev Singh had been engaged in the business of advancing loans. Ex.D13 is the agreement to sell dated 21.06.1996 in respect of some other person executed by the respondent-plaintiff, which never culminated into registration of the sale deed, thus, the respondent-plaintiff was in habit of extending loans and in lieu thereof, obtaining agreement to sell as securities. All these facts weighed in the mind of the trial Court while dismissing the suit but the lower Appellate Court has committed illegality and perversity in ordering refund of earnest money of ₹4,60,000/- to the respondent-plaintiff along with interest @18% per annum. No evidence with regard to interest has been led. It was not even a commercial transaction as the appellant-defendant No.1 was an agriculturist and loan was being taken for carrying out the agricultural activities, thus, urges this Court for setting aside the judgment and decree rendered by the lower Appellate Court by formulating the substantial questions of law as carved out in the memorandum of appeal.

Per contra, Mr. S.K. Jain, learned counsel appearing on behalf of the respondent No.1-plaintiff submitted that the appellant-defendant admitted the signatures on the agreement to sell but coined a different version/story that it was obtained on blank paper. No explanation or direct and cogent evidence has been placed on record to establish that under what circumstances, he had appended signatures on blank paper, particularly, when there was a categoric admission that in all previous transaction, he had been entering into agreement to sell with open eyes for purpose of obtaining loan. It cannot be believed that a person, who had always been in need of money, did not actually enter into agreement to sell for discharging his liabilities. Readiness and willingness had also been proved but the trial Court erroneously refused the discretionary relief. The defendant No.1 failed to prove repayment of earnest money of ₹4,60,000/-, therefore, rightly so, the lower Appellate Court granted the alternative relief, thus, urges this Court for upholding the finding under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Punchhi vis-à-vis the decree granted for refund of earnest money of ₹4,60,000/-, for, no doubt, the appellant-defendant had been able to prove on record entries Ex.D2 to D13 from the register of the deed writer, who is stated to have written the agreement to sell for the purpose of advancing the loan from respondent-plaintiff to the appellant-defendant No.1 but the fact of the matter is that no documentary and oral evidence has been placed on record to show that in respect of transaction with regard to agreement to sell dated 08.06.2004, which according to him, was also a security had repaid the sum of ₹4,60,000/-. Non filing of the appeal by the respondent-plaintiff itself shows that he was satisfied with the decree or return of the earnest money of ₹4,60,000/-. Though execution of the document has been proved but the view expressed by the lower Appellate Court granting alternative relief is perfectly legal and justified, therefore, the said finding is upheld.

As regards granting of interest @18% per annum, I am of the view that the respondent-plaintiff has not been able to prove that it was a commercial transaction, particularly, the fact of the matter is that the appellant-defendant is an agriculturist. Even the interest on the loan granted to the agriculturist is lesser than the commercial transaction. In my view, grant of interest @18% per annum is on higher side, therefore, the same is reduced to 12% per annum.

In view of the aforementioned peculiar facts and circumstances, the judgment and decree passed by the lower Appellate Court is modified and the regular second appeal is disposed of in the above terms. However, this observation of mine shall not be used as a precedent.

(AMIT RAWAL)
JUDGE

March 13, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No