

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 652 of 2011 (O&M)

Date of Decision : 30.01.2018

Lachhman

....Appellant

Versus

Sombir and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. V.B. Aggarwal, Advocate
for the appellant.

None for respondent no.1.

Surinder Gupta, J.

This is Regular Second Appeal against concurrent judgments of Courts below decreeing the suit of plaintiff-respondent no. 1-Sombir, for specific performance of agreement to sell dated 21.11.2000 and directing legal heirs of defendant no. 1-Rakesh (since deceased) to execute the sale deed of the disputed plot measuring 424 sq. yards situated in revenue estate of village Dulhera, Tehsil Bahadurgarh, District Jhajjar, on receipt of balance sale consideration of ₹1,25,000/-. Sale deed no. 4521 dated 29.12.2000 executed by defendant no. 1-Rakesh in favour of defendant no. 2-Lachhman (appellant in this appeal) was held as illegal, null and void.

2. Case of plaintiff, in brief, is that defendant no. 1-Rakesh purchased 5/18th share out of land measuring 4 *kanals* 18 *marlas* bearing *khewat* no. 384, *khatauni* no. 452 Min., *khasra* no. 69/1/1/2 (4-5)20/3(0-3) from defendants no. 3 and 5 vide sale deed dated 19.08.1998 and got mutation no. 4951 dated 19.12.1998 sanctioned in his favour. Out of the total land, purchased by him, he sold 302½ sq. yards to mother of plaintiff,

Smt. Sarjo, vide registered sale deed dated 25.02.1999 and handed over

possession of above land to her, over which she has already constructed a house. For the remaining land measuring 423½ sq. yards, defendant no. 1- Rakesh vide agreement dated 21.11.2000 agreed to sell the same to plaintiff for a sale consideration of ₹1,60,000/- and received earnest money of ₹35,000/-. The date for execution of sale deed was fixed as 08.01.2001. Defendant no. 1 was asked several times to execute the sale deed but he avoided on one pretext or the other. In first week of January, 2001 a *panchayat* was called where also he was asked to execute the sale deed and defendant no. 1 agreed to execute the same on 08.01.2001. Plaintiff remained present in the office of Sub-Registrar alongwith balance sale consideration on 08.01.2001 but defendant no. 1 did not appear. Plaintiff got attested an affidavit to this effect. Out of greed and in order to defeat claim of plaintiff, defendant no. 1 sold the said property to defendant no. 2 vide sale deed dated 29.12.2000. Defendant no. 2 got the sale deed executed in his favour despite having knowledge that defendant no. 1 has already executed an agreement to sell the plot in question in favour of plaintiff. Plaintiff has always been ready and willing to perform his part of the contract and requested defendant no.1 to execute the sale deed but in vain, hence this suit.

3. Defendant no. 1 admitted execution of the agreement executed by him in favour of plaintiff and stated that he had always been ready and willing to execute the sale deed of the suit property in favour of plaintiff or his nominee after receiving the balance sale consideration. He denied execution of sale deed dated 29.12.2000 in favour of defendant no. 2 and dubbed the same as bogus and without consideration.

4. Defendant no. 2-appellant contested claim of plaintiff, denied

the agreement propounded by plaintiff and alleged that the same is ante-dated. He alleged that defendant no. 1 executed the sale deed of the suit land in his favour and handed over possession of the same to him. This plot was purchased for ₹1,44,000/- but inadvertently amount of ₹44,000/- only was written in the sale deed, which was paid to him before the Sub-Registrar. Defendant no. 1 had been paid amount of ₹44,000/- before the Sub-Registrar and ₹1 lac at home. Both the Courts below upheld execution of agreement dated 21.11.2000 in favour of plaintiff and held sale deed dated 29.12.2000 executed by defendant no. 1 in favour of defendant no. 2 as illegal. Regarding possession of the suit land, reference was made to written statement filed by defendant no. 2 wherein he has stated that possession of the plot sold to him was delivered to him but after filing of this suit he has taken possession of suit property illegally.

5. Learned counsel for the appellant has argued that defendant no.2-appellant has raised the plea that the agreement was fabricated and ante-dated. The agreement to sell does not create any title in favour of plaintiff while defendant no. 2 has purchased the suit property vide sale deed dated 29.12.2000. This is a document of title and Courts below have wrongly decreed the suit of plaintiff. He has placed reliance on observations of Hon'ble Apex Court in case of **Prem Singh and others vs. Birbal and others, 2006 (3) RCR (Civil) 381**, wherein it has been observed that there is presumption that registered document is validly executed and observations of this Court in case of **Raj Kumar and others vs. Hardwari and others, 2007 (2) RCR (Civil) 123**, wherein also similar observation has been made. He has further argued that defendant no. 1 has though admitted the agreement but he has not appeared in witness-box, as such, plea taken by

him in written statement could not be given any weight and on this score, an adverse inference is to be drawn against defendant no. 1. In support of his case he has relied on observations of Single Bench of this Court in case of **Smt. Jangir Kaur and others vs. Mohinder Singh and others, (2007) 4 PLR 268**, wherein it has been observed that where a party does not appear in witness-box to state his case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct and on similar observations in case of **Iswar Bhai C. Patel & Bachu Bhai Patel vs. Harihar Behera and another, AIR 1999 SC 134**.

6. Appellant has filed this appeal against findings of Courts below that execution of agreement to sell dated 21.11.2000 by defendant no. 1 (since deceased) in favour of plaintiff is duly proved and plaintiff is entitled to specific performance of the same. Learned counsel for the appellant has not pointed out any flaw in the judgment of learned Civil Judge (Jr. Division), Bahadurgarh or learned Additional District Judge, Jhajjar while recording this finding. So far as law referred by learned counsel for the appellant is concerned, the same cannot be disputed. Registered sale deed would be a proof of payment of receipt of consideration paid before the Sub-Registrar if vendor is denying the receipt of consideration. It is not a case where presumption attached to a registered document is being contested. The Courts below have allowed the plea of plaintiff that sale deed in favour of defendant no. 2 (appellant) was wrongly executed by defendant no. 1. This sale deed was executed after execution of agreement dated 21.11.2000 by defendant no. 1 in favour of plaintiff. Defendant no. 1 has though not appeared to support the contention raised by him in his written

statement but he has admitted execution of the agreement in favour of plaintiff. Even if the plea raised by defendant no. 1 be not noticed, plaintiff by examining the witnesses has been able to prove execution of the agreement by defendant no. 1 in his favour and the appellant has utterly failed to rebut the evidence produced by plaintiff.

7. Keeping in view above facts and on perusal of judgments of Courts below, I find no legal or factual infirmity therein calling for any interference in this appeal.

8. Here learned counsel for the appellant has argued that vendor i.e. defendant no. 1 had agreed to sell his plot to plaintiff and then sold the same to defendant no.2-appellant and this amounts to unjust enrichment by vendor. He has requested that in the event of his appeal being dismissed, the sale consideration paid by him vide sale deed dated 29.12.2000 may be ordered to be returned to appellant with costs, future interest and penalties. In support of his contention he has relied on observations of Andhra Pradesh High Court in case of **Ravada Krishna Rao vs. Pasupureddy Ananda Rao and others, 1993 Civil Court Cases 447 (AP)**. In that case, Hon'ble Single Bench of Andhra Pradesh High Court has observed that it is always open to subsequent purchaser to proceed against vendor in case of breach of warranty or other covenants by way of separate suit. This remedy is always available to appellant as per law. In that case, plaintiff under a compromise with subsequent transferee, who had given up his claim and possession of property in favour of plaintiff, had deposited balance sale consideration in Court. Vendor and subsequent vendee both filed application claiming that amount. Keeping in view above fact, an issue was framed "whether the subsequent purchaser is entitle to any equities in this

case?” Facts of that case are different and distinguishable with facts of this case and in the absence of any pleading to this effect, I find no reason to frame any such issue and the above citation referred by learned counsel for the appellant does not advance the plea of learned counsel for the appellant in any manner.

9. As a sequel of my above discussion, this appeal has no merit and the same is dismissed.

January 30, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No