

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

RSA No. 2809 of 2012 (O&M)

Date of decision : September 10, 2018

Ashwani Kumar

.....Appellant

Versus

Sadhu Singh and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajinder Singla, Advocate
for the appellant.

LISA GILL, J.

CM-7534-C-2012

Prayer in the application is for permission to make good deficiency in court fee. Deficient court fee stands deposited though after the stipulated time.

In view of the facts and circumstances of the case time to affix the same is extended till then.

Application is disposed of.

RSA No. 2809 of 2012 (O&M)

Appellant - defendant is aggrieved of concurrent findings rendered against him by the learned Civil Judge (Junior Division), Sunam vide judgment and decree dated 04.12.2007 and learned Additional District Judge, Sangrur vide judgment and decree dated 09.09.2011. Suit filed by the plaintiff – respondent No. 1 was partly decreed to the extent of recovery of ₹4 lakhs alongwith interest.

Brief facts necessary for adjudication of the case are that respondent No. 1 – Sadhu Singh (plaintiff before the learned trial Court) filed a suit for specific performance of agreement dated 18.05.2000 stated to

have been executed between the appellant and respondent – defendant No. 2 Sham Lal. It was pleaded that the appellant and respondent No. 2 were the owners of the plot in dispute. Appellant – defendant No. 1 for himself and on behalf of the respondent – Sham Lal agreed to sell the plot in question. Agreement dated 18.05.2000 was executed for a consideration of ₹4,50,000/-. It was further stated that the appellant – defendant received a sum of ₹4,00,000/- on 18.05.2000 from the plaintiff - respondent as part payment. The payment was received on behalf of respondent No. 2 as well. Possession of the plot was handed over to the plaintiff – respondent, who alleged to be in possession of the said plot. Sale deed was agreed to be executed on or before 30.06.2000 with further stipulation that in case the defendants failed to execute the sale deed, the plaintiff – respondent would be entitled to get the sale deed through Court and defendants would be liable to pay double the amount of the earnest money. Readiness and willingness on the part of the plaintiff - respondent was pleaded while submitting that the defendants were not ready and willing to perform their part of the contract. Plaintiff remained present before the office of Sub Registrar, Sunam on 30.06.2000 with the balance sale price of ₹50,000/- but the defendants did not turn up. Registered notice was issued by the plaintiff on 12.04.2002. The same was received by the appellant – defendant No. 1. However, notice issued to the respondent – defendant No. 2 was received back with the report that the addressee was out of his senses. When the defendants failed to execute the sale deed, the suit for specific performance and in the alternate, relief of recovery of ₹8 lakhs was filed.

Defendants resisted the suit while taking various preliminary objections. Averments in the plaint were controverted. It was stated that the

appellant – defendant No. 1 had no right to execute the alleged agreement to sell on behalf of the defendant – Sham Lal as he had never authorised the appellant to execute the said instrument. It was further pleaded that agreement to sell dated 18.05.2000 is a forged and fabricated document. The plaintiff in fact had some dealings with the father of defendant No. 1 and he used to obtain signatures of father of defendant No. 1 on blank papers. In the absence of his father, defendant No. 1 used to append his signatures on blank stamp papers. It was further pleaded that Parkash Chand father of appellant- defendant No. 1 passed away. The plaintiff taking advantage of signatures over the blank papers, prepared forged and fabricated agreement to sell. Dismissal of the suit was prayed for.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the defendant no. 1 executed an agreement for sale of plot in dispute in favour of plaintiff on 10.05.2000 after receiving a sum of ₹4,00,000/- as an earnest money on his own behalf and on behalf of defendant no.2?OPP.
- ii) Whether plaintiff was and is still ready to perform his part of contract?OPP
- iii) Whether plaintiff is entitled to specific performance of contract dated 18.05.2000 or in the alternative relief for recovery of ₹4,50,000/- (₹4,00,000/- being principal amount and ₹50,000/-, being damages) alongwith future interest at the rate of 18% per annum from the date of filing the suit till its realisation? OPP.
- iv) Whether plaintiff is entitled to permanent injunction as prayed for? OPP.
- v) Whether suit of plaintiff is not maintainable in the present form?OPD

vi) Whether alleged agreement to sell is forged and fabricated document? OPD

vii) Whether plaintiff has no locus standi and cause of action to file the present suit? OPD

viii) Relief.

Evidence was led by both the parties.

Learned trial Court on considering the facts and circumstances of the case concluded that identity of the property in question could not be established. Moreover, there was nothing on record to indicate that appellant – defendant No. 1 had any authority to enter into an agreement to sell on behalf of the defendant – respondent Sham Lal. Relief of specific performance of agreement dated 18.05.2000 was denied, however, alternate relief of recovery of ₹4 lakhs alongwith interest at the rate of 12% per annum since 18.05.2000 till the date of institution of the suit alongwith future interest at the rate of 6% per annum was decreed. Aggrieved therefrom, appeal was preferred by present appellant – defendant. Cross objections were filed by the plaintiff – respondents. Learned Additional District Judge, Sangrur vide judgment and decree dated 09.09.2011 dismissed the appeal as well as the cross objections filed by the appellant – defendant and plaintiff respectively. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have erred in directing recovery of ₹4 lakhs from the appellant – defendant. Plaintiff – respondent No. 1 failed to prove the identity of the property in question. Factum of ownership of the appellant and respondent No. 2 was also not proved. Therefore, alternate relief has been wrongly afforded to the plaintiff. It is further contended that there is no

evidence on record to show that the amount of ₹4 lakhs was ever handed over to the appellant – defendant by the plaintiff. Learned courts below have wrongly ignored the fact that there were business dealings between the plaintiff and appellant's father. It is in the course of said dealings that signatures of the appellant's father used to be taken in routine. In the absence of his father, the appellant would append signatures on blank stamp papers. It is the said papers, which were misused to create the document in question. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 04.12.2007 passed by the learned Civil Judge (Junior Division), Sunam and judgment and decree dated 09.09.2011 passed by the learned Additional District Judge, Sangrur be set aside and suit filed by the plaintiff – respondent No. 1 be decreed throughout.

I have heard learned counsel for the appellant and have perused the file with his assistance.

As per the case of the plaintiff, agreement to sell dated 18.05.2000 was executed by the appellant in respect to the plot, which was in the joint ownership of the appellant and respondent – defendant Sham Lal. As per the jamabandies, both the appellant and defendant – Sham Lal are reflected to be the owners of the property in question. In view of the stand taken by the appellant in his written statement, it is not open to the appellant to contend at this stage that ownership of the property in question has not been proved and, therefore, there is no question of agreement to sell dated 18.05.2000 being executed by the appellant. It has been rightly held by both the learned courts below that the appellant had no authority whatsoever to enter in an agreement to sell the share of defendant – Sham Lal. Moreover, the plea that the plaintiff used to obtain signatures of the

appellant and his father on blank stamp papers in the course of business dealings, is unsubstantiated by any evidence on record. Even during the course of hearing before this Court, learned counsel for the appellant could not point out the nature or manner of business dealings, if any, between the appellant/appellant's father and the plaintiff. Therefore, the said argument is rejected being clearly fallacious and untenable. It is rightly observed by the learned Additional District Judge, Sangrur that the appellant is a shop keeper and admittedly an educated person, therefore, it is highly improbable that blank papers would have been got signed in the manner portrayed.

At this juncture, it is relevant to note that signatures of the appellant on agreement to sell dated 18.05.2000 are not denied. The plea taken is that his signatures were obtained on blank stamp papers. Plaintiff – Sadhu Singh appeared as PW1 and reiterated the contents of the plaint. He proved agreement dated 18.05.2000 as well as handing over of ₹4 lakhs to the appellant, in his presence before the Sub Registrar, Sunam on the stipulated date besides the legal notice issued to the vendors. PW2 Ved Parkash the attesting witness has testified before the learned trial Court. He deposed about the receipt of ₹4 lakhs by the appellant from the plaintiff as earnest money and on behalf of Sham Lal as well. PW2 specifically deposed that the appellant appended his signatures on the agreement in his presence after admitting the contents thereof, which were read over to him, to be correct. Signatures of the appellant were got compared by PW3 R.P. Vashisht, Hand writing and finger print expert.

Argument raised by learned counsel for the appellant is that the source of amount of ₹4 lakhs has not been proved. The same by itself cannot per se prove that the said amount was not handed over to the present

appellant. In the factual matrix of the case, both the learned courts below rightly held that document dated 18.05.2000 was in fact executed as a security of the amount in question. In this situation, the suit filed by the plaintiff – respondent No. 1 has been rightly decreed to the extent of recovery of said ₹4 lakhs.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 04.12.2007 passed by the learned Civil Judge (Junior Division), Sunam and judgment and decree dated 09.09.2011 passed by the learned Additional District Judge, Sangrur which calls for interference by this Court.

There is a delay of 49 days in re-filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

Accordingly, this appeal is dismissed with no order as to costs.

September 10, 2018
rts

(Lisa Gill)
Judge

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