

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

RSA No.3930 of 2012

Pritam Singh

....Appellant

Versus

Chanan Singh

....Respondent

Date of Order: 12.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.K. Manchanda, Advocate for the petitioner.

Mr. Vikasdeep Singh, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

Defendant-Pritam Singh has challenged the concurrent findings of both the learned courts below vide which the suit of the plaintiff-respondent claiming possession by way of specific performance has been decreed vide judgment and decree dated 28.2.2011 passed by Civil Judge (Sr. Division), Moga and the appeal filed against the same by the defendant has been dismissed by the lower Appellate Court vide judgment and decree dated 09.5.2012.

Respondent-plaintiff instituted the suit for possession by way of specific performance of agreement to sell dated 14.12.2000 in respect of land measuring 18 kanals 16 marlas as described in the head note of the plaint for a total sale consideration of Rs.3,17,254/- i.e at the rate of Rs.1,35,000/- per acre out of which a sum of Rs.1,92,000/- was paid by plaintiff to the defendant as earnest money; with alternative prayer for recovery of a sum of Rs.3,17,254/-. It was stated that the defendant being co-owner to the extent of 376/502 share out of land measuring 175 kanals 17 marlas entered into agreement of sale dated 14.12.2000 in favour of

plaintiff in the presence of marginal witnesses. He agreed to execute the sale deed on or before 26.5.2001 in his favour. On 20.5.2001, plaintiff had gone to the house of defendant and requested his wife to get general power of attorney from the defendant, who was in the Central Jail, Ferozepur owing to pendency of trial in case under the NDPS Act, for execution of sale deed but she persuaded the plaintiff to visit on the next day. Again on 21.5.2001 when the plaintiff visited the house of the defendant Pritam Singh along with Hardial Singh and Nirmal Singh, wife of the defendant demanded original agreement in order to corroborate the version of the plaintiff in order to ascertain as to whether actually the agreement to sell was executed or not but when same was handed over, she ran away from the spot along with original agreement. Then the plaintiff moved applications to the SHO and DSP, P.S Fatehgarh Sahib but no action was taken. Plaintiff had always been willing and ready to perform his part of contract. On the stipulated date, he along with balance sale consideration was present before the Sub Registrar, Dharamkot but no one on behalf of the defendant came forward to execute the sale deed resulted into filing of suit.

Upon notice, defendant filed written statement and came out with the stand that on 13.6.2000 a sum of Rs.1,65,000/- from the plaintiff was borrowed and in lieu of same as a security of loan, he executed an agreement of sale on the same day, which was scribed by Nagin Chand document writer and witnessed by Charanjit Singh Lambardar and Kapoor Singh son of Kartar Singh. The loan was to be returned on 15.12.2000. The defendant arranged the amount and paid the loan amount on 30.3.2001 in the presence of Jit Singh and Bhagwant Singh but in the meantime, agreement to sell dated 14.12.2000 was cancelled and the same was not

traceable. On merits, it was denied that there was any agreement to sell.

On the basis of pleadings of the parties, the trial Court framed the following issues:

- “1. Whether on 14.12.2000 defendant executed an agreement to sell the suit land as alleged in favour of the plaintiff?OPP*
- 2. Whether defendant received Rs.1,92,000/- as earnest money, as per agreement, as alleged?OPP*
- 3. Whether the plaintiff has always been and is still ready and willing to perform his part of the agreement to sell?OPP*
- 4. Whether the plaintiff is entitled to specific performance of agreement to sell dated 14.12.2000?OPP*
- 5. Whether in the alternative, plaintiff is entitled to Rs.3,17,254/- along with pendente lite and future interest @ 2% per month from the date of agreement till realization as claimed?OPD*
- 6. Whether the plaintiff has not come to the court with clean hands as alleged in preliminary objection No.1?OPD*
- 7. Relief.”*

In order to prove case, plaintiff examined PW1 Vikas Sachdeva, PW3 Roor Singh, PW4 Hardial Singh besides stepping himself into witness box as PW2 and closed evidence after tendering certain documents.

On the other hand, defendant himself appeared as DW1 and closed the evidence.

The trial Court on the basis of preponderance of evidence on record decreed the suit of the plaintiff and the appeal filed by the defendant has been dismissed by the lower Appellate Court, hence the present appeal.

Learned counsel for the appellant submitted that the original agreement to sell has not seen the light of the day nor any application for secondary evidence was ever filed. The Courts below could not have decreed the suit as it was only a loan agreement, which was executed on 13.6.2000 as a security and for there was an entry, in this regard, in the register of document writer. He submitted that the loan amount was returned by the defendant on 30.3.2001 to the plaintiff-respondent and a fresh agreement to sell was entered into on 14.12.2000, which was only for the purpose of security. There was no occasion for the respondent to mark his presence before the Sub Registrar on the stipulated date i.e 26.5.2001, when the appellant-defendant was behind the bars in some false case registered under the provisions of NDPS Act. All the aforesaid facts have not been looked into cumulatively by both the courts below, therefore the impugned judgments and decrees suffer from perversity and irregularity.

Per contra, learned counsel for the respondent-plaintiff submitted that the factum of the agreement being signed by the appellant-defendant, has been proved on record, therefore non-production of the original agreement to sell was not vital. Once the defendant himself admitted the execution of the agreement to sell, there was no occasion to prove the original of the same in this respect. Plaintiff had been diligent and ready to perform his part of contract, thus, prayed that both the courts below have rightly exercised the jurisdiction while decreeing the suit of the plaintiff.

I have heard learned counsel for the parties and perused the paper book with their able assistance.

Although the agreement of sale has not been denied by the

defendant-appellant yet it was stated to be the one being executed qua security of the loan amount. No direct and cogent evidence or any other relevant material has been placed on record to prove that the defendant had re-paid the loan amount alleged to have been taken in pursuance of agreement to sell dated 13.6.2000. If at all, the appellant-defendant had actually paid the amount, he would have got any witness examined to prove his case. After execution of the agreement to sell, vendors often backs out of their words and do not honor their commitments qua performance of their part of contract, owing to the increase of the prices or any other reason. It is such kind of case where the defendant after admission of his signatures on the agreement of sale though alleged to have been executed in lieu of security but failed to substantiate his claim. Even the attesting witness was subjected to a detailed cross examination but nothing contrary was found. Moreover, the defendant failed to prove his pleaded case in written statement qua taking of loan amount and discharged the liability. On the other hand, it has been proved on record that the respondent-plaintiff had always been willing and ready to perform his part of contract, in the light of Section 16(c) of the Specific Relief Act. On the basis of aforesaid facts, both the courts below, in my considered view, have rightly appreciated the evidence while decreeing the suit.

I do not find any merit in the present appeal to differ with the well reasoned judgments and decrees of both the courts below and no substantial question of law arises for determination.

Dismissed.

March 12, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No