

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

RSA No.4925 of 2013 (O&M)
Decided on:-March 23, 2018.

Gaurav Kumar and others

.....Appellants.

Versus

Manoj Kumar and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Anil Kumar Garg, Advocate
for the appellants.

Mr. Ishan Gupta, Advocate
for respondent No.1.

HARI PAL VERMA, J.

The appellant-plaintiffs have filed the present regular second appeal against the judgment and decree dated 16.07.2013 passed by learned Additional District Judge, Sangrur, whereby their appeal against the judgment and decree dated 30.09.2011 passed by learned Additional Civil Judge (Senior Division), Sangrur, was dismissed.

Briefly stated, plaintiff Rajinder Kumar (since deceased and represented by the appellants as his legal heirs) had filed a suit for specific performance of the agreement to sell dated 02.07.2004 and 15.11.2004 seeking direction to defendant Manoj Kumar (respondent No.1 herein) to get the sale deed executed and registered in favour of the plaintiff after receipt of balance sale consideration of the suit property, as detailed in the plaint.

As per the plaint, the defendant was owner of the suit property and on 02.07.2004, he entered into an agreement with the plaintiff to sell the suit property. The sale consideration of the suit property was fixed as Rs.1,10,000/-. An amount of Rs.1,00,000/- was received by the defendant as earnest money at the time of execution of the agreement to sell dated 02.07.2004 in the presence of witnesses. The sale deed was required to be executed on or before 15.11.2004 on payment of balance sale consideration. On 15.11.2004, the defendant requested the plaintiff to extend the date of execution and registration of the sale deed which was extended upto 30.04.2005. However, the terms and conditions of the agreement dated 02.07.2004 remained unchanged except the date of execution of the sale deed. In view of the agreement dated 02.07.2004 and 15.11.2004 (subsequently extended date), the plaintiff had appeared before the Sub-Registrar, Bhawanigarh on 28.04.2005 and 02.05.2005 so that the sale deed could be executed, as 29.04.2005 and 01.05.2005 were holidays on account of Saturday and Sunday. The plaintiff had requested the defendant to appear before the Sub-Registrar, but the defendant did not appear from 09.00 A.M. to 05.00 P.M. on the date so fixed though the plaintiff remained present on 29.04.2005 and 02.05.2005 along with balance sale consideration. The plaintiff also got his presence marked and got attested the affidavit in token of his presence.

The defendant contested the suit, wherein it was admitted that the defendant is the owner of the suit property, but it was submitted that the suit property is an integral and inseparable part of a small house of the

defendant and, therefore, there was no question to sell the suit property. In case the suit property is sold, the very house in which the defendant is residing would become unfit for inhabitation. It was pleaded that, in fact, the plaintiff's brother Satpal was running a chemist shop near the house of the plaintiff and due to this, the defendant was on good terms with him. The plaintiff demanded Rs.50,000/- from him. Satpal told him that he would obtain the signatures of the defendant on stamp papers and would keep the same as security with him. The defendant agreed and put his signatures on various stamp papers and now, the plaintiff might have prepared the alleged agreement on those papers in connivance with witnesses and his brother Satpal. Said Satpal had also filed a suit for specific performance against the defendant and his wife alleging another agreement. The plaintiff and his brother had also prepared many documents against the defendant. When the defendant protested before them about it, they assured that they had prepared the documents as a jest. The agreement extending the time for execution of sale deed does not bear the signatures of the defendant. Had the plaintiff paid Rs.1,00,000/- as earnest money, he would not have waited for such a long time to get the sale deed executed and registered.

On the basis of pleadings of the parties, the civil Court framed the issues and one of the issues i.e. issue No.1 was that *"Whether the defendant on 02.07.2004 entered into an agreement to sell suit land to plaintiff, as alleged and received a sum of Rs.one lakh as earnest money from plaintiff, as alleged? OPP"*

This crucial issue No.1 was dealt with by learned civil Court. Since the plaintiff had not examined even the marginal witnesses of the agreement dated 02.07.2004 and there being no other witness except the plaintiff, stamp vendor and the scribe, the civil Court found that the plaintiff had failed to prove the execution of the very agreement dated 02.07.2004 or the fact that the defendant ever received Rs.1,00,000/- as earnest money from the plaintiff. Accordingly, vide impugned judgment and decree dated 30.09.2011, the suit of the plaintiff was dismissed by learned civil Court.

Aggrieved against the aforesaid judgment and decree dated 30.09.2011 passed by the civil Court, the appellant-plaintiffs preferred an appeal before the lower appellate Court. But the appeal was also dismissed by learned Additional District Judge, Sangrur vide impugned judgment and decree dated 16.07.2013.

Still aggrieved, the appellant-plaintiffs have filed the present regular second appeal.

Following questions of law have been raised by the appellant-plaintiffs:

- I. Whether it was incumbent upon both the learned Courts not to dismiss the case of the plaintiff-appellants especially when the execution of the agreement to sell dated 02.07.2004 was duly proved?
- II. Whether the findings contained in the impugned judgments are perverse, contrary to record and to law and the same are not legally sustainable in the eyes of law as the same have been returned without any reasoning?
- III. Whether both the learned Courts below have misread, misconstrued and misinterpreted the documentary evidence and as such gravely erred by not allowing the suit filed by the plaintiff-appellants?

- IV. Whether both the learned Courts below should have decided the case on proved facts rather to give judgments only on presumption and ignoring the legally proved documents on record?

Learned counsel for the appellant-plaintiffs has argued that the Courts below have not taken into consideration the fact that the execution of the agreement to sell dated 02.07.2004 was duly proved by the witnesses. The plaintiff as well as scribe and stamp vendor have proved the very execution of the agreement. In the written statement filed by respondent No.1-defendant, it has been pleaded that he never executed the agreement to sell dated 02.07.2004, but at the same time, he has admitted his signatures on the document by stating that these signatures were taken on blank papers. The execution of the agreement to sell dated 02.07.2004 was duly proved and established by the plaintiff by producing the scribe of the document on the asking of the defendant.

He has further argued that once the plea taken by the defendant is proved to be false, the agreement to sell dated 02.07.2004 should have been accepted in its entirety and as a consequence thereof, the suit should have been decreed. The plaintiffs have always been ready and willing to perform their part of the contract and even the plaintiff remained present in the office of Sub-Registrar on the relevant dates, but the defendant did not come present. The readiness and willingness on the part of the plaintiff is duly proved and, therefore, suit was liable to be decreed.

On the other hand, learned counsel for the respondent No.1-defendant has argued that the plaintiff-appellants have failed to prove the very execution of the agreement to sell dated 02.07.2004. The only marginal

witness as referred in the agreement to sell has not been examined and, therefore, it creates all the doubt on the version of the appellants. The suit property is integral and inseparable part of the small house of the defendant and he cannot think to sell it out. Even otherwise, the house in question cannot be practically sold out. In fact, the plaintiff's brother Satpal is running a chemist shop near the house of the plaintiff and the defendant has good terms with him. Once the plaintiff demanded Rs.50,000/- from him and Satpal had told him that he would obtain the signatures of the defendant on stamp papers and would keep the same as security with him. The defendant agreed and put his signatures on various stamp papers. The plaintiff must have prepared the alleged agreement on those papers in connivance with witnesses and his brother Satpal.

I have heard learned counsel for the parties.

The suit of the plaintiff is based on agreement to sell Ex.P5 and Ex.P6 allegedly executed by the defendant. The defendant has pleaded that the agreements are fabricated documents and have been written on blank signed papers kept with the plaintiff's brother Satpal.

In support of his case, the plaintiff examined Amrit Lal Singla as PW2, who is scribe of the agreement to sell. During his cross-examination, this witness had stated that he was not known personally to the defendant and other parties. Surprisingly, the most crucial witness i.e. the marginal witness of the agreement dated 02.07.2004 has not been examined by the plaintiff and except the plaintiff, there is no other witness on this agreement.

The plea of the plaintiff that he had examined himself, stamp vendor and the scribe is not sufficient to establish that the defendant ever executed an agreement to sell unless the only marginal witness is examined. Once the plaintiffs have failed to examine the marginal witnesses of the agreement to sell, the crucial issue No.1 was rightly answered by the civil Court against the appellant-plaintiffs and in favour of the defendant.

Similarly, the appeal filed by the appellant-plaintiffs has rightly been dismissed by learned lower appellate Court. The relevant part of paragraph No.14 of the impugned judgment dated 16.07.2013 passed by learned lower appellate Court is reproduced as under:

“The document which is imperfect, incomplete and vague and uncertain leads to the fact that there was no concluded contract and cannot be enforced and that the scribe cannot be taken as an attesting witness of the document scribed by him. The trial Court returned the findings that the plaintiff remained unsuccessful to prove that the defendant has entered into an agreement and received the earnest money of Rs.1,00,000/-. Nothing worthwhile has been shown from record, which could lead this Court to differ from the opinion expressed and the conclusions arrived at by the trial Court. The plaintiff himself appeared as his own witness and simply examined the person, who sold the stamp paper and who scribed the alleged agreement. The agreement has been denied by the defendant. In these circumstances, it was necessary that the attesting witness of the agreement must be examined. In the absence of which, sole testimony of the plaintiff, which is obviously interested in the success of his case is not sufficient to bind the defendant with the agreement. Even from the evidence brought by the defendant, the case of the plaintiff is not proved.”

In view of the above, this Court finds that there is no illegality in the concurrent finding of facts recorded by learned Courts below.

No other point was argued.

Since the controversy involved in the case has duly been considered by the Courts below, no substantial question of law arises in the present regular second appeal.

Therefore, affirming the judgment and decree dated 30.09.2011 passed by learned civil Court as well as the judgment and decree dated 16.07.2013 passed by learned lower appellate Court, the instant regular second appeal, being devoid of any merit, is dismissed.

March 23, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No