IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

R.S.A No.3268 of 2016(O&M)
Date of decision :24.09.2018

Suresh Kumar

...... Appellant

Versus

Roop Lal

.... Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Bhag Singh, Advocate
for the appellant.

*****

LISA GILL,J

Appellant-plaintiff is aggrieved of judgement and decree dated 27.07.2015, passed by the learned Civil Judge (Jr. Division), Ambala, as well as judgement and decree dated 25.01.2016, passed by the learned District Judge, Ambala. The relief of specific performance of agreements dated 07.04.2008 and 02.06.2008, was denied. Recovery of ₹1 lakh i.e. the total amount of earnest money was decreed.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit for specific performance of agreements dated 07.04.2008 and 02.06.2008 executed by the respondent-defendant-Roop Lal in his favour in respect of one room/house situated at Topkhana Bazar, Ambala Cantt. for a consideration of ₹1,40,000/-. Defendant-respondent agreed to sell the abovesaid house vide agreement dated 07.04.2008. A sum of ₹30,000/- as earnest was received by him. It was agreed that sale deed would be executed on or before 15.08.2008 on receipt of balance sale consideration. It was pleaded that the defendant-respondent was in need of money, therefore on 02.06.2008 another agreement dated 02.06.2008 was arrived at additionally. The plaintiff averred to be ready and willing to perform his part of the agreement. As 15.08.2008 was a holiday, the plaintiff served the defendant-respondent with a legal notice dated 09.08.2008 vide registered AD asking him to come present on 14.08.2008 and 18.08.2008 for execution of the sale deed. Plaintiff claimed that he remained present in the office of the Sub-Registrar, Ambala Cannt on both the abovesaid dates. Affidavit in this respect was executed before the Executive Magistrate, Ambala Cantt. Defendant-respondent did not turn up nor complied with his part of the agreement. Per contra, a vague and false reply with *mala fide* intention was sent by the respondent. It is further stated that the respondent and his associates took forcible and illegal possession of the house in question. FIR No. 398 dated 27.09.2008, under Sections 147, 149, 448, 452, 506 IPC was registered at Police Station, Ambala Cantt. Despite requests, respondent-defendant did not come-forward to execute the sale deed. Hence the suit was filed.

Defendant-respondent upon notice filed written statement raising various preliminary objections. Averments on merits were controverted. It was stated that the property in question was in-fact owned by Sita Ram son of Ram Bakhsh, who had purchased the same from its previous owners. Sita Ram, died a number of years earlier leaving behind eight (08) sons and two (02) daughters. Five of his sons namely Mewa Lal, Chote Lal, Amar Nath, Ghanshyam and Bhola died leaving behind their legal heirs. One of Sita Ram's daughter namely Smt. Kailash also died leaving behind her legal heirs. All the legal heirs of Sita Ram inherited the house in question. It was claimed that the defendant-respondent was only one of the legal heir of Sita Ram having merely 1/10 share in the property in question. In-fact, the defendant was in need of money for the marriage of his son and he took a loan of ₹30,000/- from the plaintiff in April 2008 and again another loan of ₹20,000/- in June 2008. It was averred that the plaintiff-appellant obtained thumb impressions of the defendant-respondent on some blank papers in token of having received the loan amount. Respondent-defendant claimed himself to be totally illiterate. It was denied that agreements dated 07.04.2008 and 02.06.2008 were ever entered into by the defendant with the plaintiff. The said agreements to sell, it is stated were drawn up with the *mala fide* intention to grab the property of the respondent-defendant, who is owner of the same only to the extent of 1/10 share in the property in question. It was further averred that notice dated 03.08.2008 was served, but the same was duly replied to on 11.08.2008. It was denied that notice dated 09.08.2008 was ever served upon the respondent. Therefore, the question of taking forcible possession from the plaintiff does not arise. FIR No. 398 was claimed to be false, frivolous and registered only with a view to pressurise the defendant-respondent to yield to the illegal demands of the plaintiff. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the defendant executed agreements to sell in

favour of the plaintiff?OPP
2. Whether the plaintiff was ready and willing to perform his part of contract?OPP
3. Whether the defendant was incompetent to execute the agreements to sell in favour of the plaintiff?OPD
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Whether the plaintiff is estopped from filing the present suit by his own acts and conduct?OPD
6. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court held that due execution of the agreements to sell Ex.P1 and Ex.P-2 was successfully proved by the plaintiff-appellant. However, it was concluded that as the decree for specific performance can not be enforced against the defendant with respect to the whole property, who is owner of only 1/10 share, relief of specific performance was denied while directing recovery of ₹1 lakh i.e. double the amount of earnest money.

Appeal filed by the appellant-plaintiff was also dismissed by the learned District Judge, Ambala, vide impugned judgement and decree dated 25.01.2016.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that defence of defect in the title cannot be raised by the vendor. It is further contended that the vendor-defendant did not even step into the witness box to prove his case. Mere admission on the part of the appellant is not sufficient to prove that defendant was the owner of the suit property to the extent of 1/10 share only. Learned counsel further argues that even if for the sake of arguments, it is accepted that defendant-vendor was owner of the property only to the extent of 1/10 share, the present appellant is entitled to specific performance of the agreement to sell, to the extent of 1/10 share of the property at least. It is thus prayed the impugned judgements and decrees be set aside and the suit filed by the appellant-plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

There is indeed no dispute regarding the proposition that a vendor cannot set up a defect in his own title as a defence in a suit for specific performance by the purchaser. However, in the present case, the defence primarily set up by the respondent-defendant is that he had in-fact raised a loan on account of marriage of his son. His signatures were taken on blank papers by the plaintiff appellant by way of security of the said loan. Learned trial Court has held that execution of the agreements to sell Ex.P-1 and Ex.P-2 has been duly proved on record. It was however observed that the defendant-respondent failed to lead any cogent evidence in support of his stand regarding the loan transaction and once thumb impressions by the defendant-respondent were admitted on the documents, he is presumed to have signed the same after reading the document properly unless there is proof of forgery or fraud.

In the present case, it is not in dispute that the house in question is in-fact a one room 'house'. Plaintiff-appellant-Suresh Kumar-PW-1, specifically admitted that the suit property was owned by the father of the respondent-defendant namely Sita Ram. PW-1 admitted that

Sita Ram had eight (08) sons and after his death, all his children became the owners of the suit property. Defendant-respondent-Roop Lal, is admitted to be the owner of only 1/10 share of the suit property. There is indeed no evidence on record to indicate that the suit property in its entirety had ever fallen to the share of the respondent-defendant.

The property involved in this case is a small one room house. In this situation, learned trial Court held that a decree for specific performance even if granted, could not be executable *qua* the whole property. It is thus rightly held by both the learned Courts below that relief of specific performance cannot be afforded to the appellant-plaintiff. As receipt of ₹50,000/- has been duly proved on record, learned trial Court rightly directed the defendant-respondent to pay double the amount of earnest money i.e. ₹1 lakh in terms of the agreements dated 07.04.1008 and 02.06.2008 and in view of the specific clause contained therein in this regard.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 27.07.2015 and 25.01.2016 passed by the learned Civil Judge (Jr. Division) Ambala and learned District Judge, Ambala, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

24.09.2018 **(LISA GILL)**
s.khan **JUDGE**

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