

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1205 of 2014 (O&M)
Date of Decision: April 06, 2018

Jogi Ram

...Appellant

Versus

Jagroop Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Rakesh Kondal, Advocate for
Mr.Rakesh Nagpal, Advocate,
for the appellant.

Mr.Rakesh Gupta, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-defendant is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the suit of the respondent-plaintiff seeking specific performance of the agreement to sell dated 2.11.2004 granting discretionary relief under Section 20 of the Specific Relief Act, has been decreed, though the trial Court had only granted the alternative relief.

Respondent-plaintiff instituted the suit seeking specific performance of the agreement to sell, *ibid*, in respect of land measuring 2 kanals, agreed to be sold for a total sale consideration of ₹1,20,000/- against payment of earnest money of ₹99,000/-. The stipulated date for registration and execution of the sale deed was fixed as 10.11.2005. During the subsistence of the agreement to sell, appellant-defendant sent a legal notice dated 25.12.2004 to the respondent-plaintiff that he had obtained the money and agreement to sell was executed as a security and willing to return the same. The aforementioned notice was replied by the plaintiff vide reply

dated 3.1.2005 denying all the averments and reiterated the fact that it was an agreement to sell. On 9.11.2005, respondent-plaintiff sent a legal notice to the appellant-defendant for execution and registration of the sale deed. Since he did not turn up on the stipulated date, the suit was filed on 16.11.2005 after the target date.

The appellant-defendant contested the suit by denying the agreement to sell and stated that it was a forged and fabricated document.

Respondent-plaintiff, in support of his case, examined attesting witness Parmeshwara as PW-2, Satyadev, Registration Clerk as PW-4 to prove the execution of the agreement to sell and as well as passing of the earnest money and Scribe Satish Kumar as PW-6.

The trial Court, on the basis of the evidence brought on record, found it to be a loan transaction and granted alternative relief. The aforementioned judgment and decree was assailed by filing two Civil Appeals, i.e., 104 of 2011 at the instance of Jagroop Singh (respondent-plaintiff) and 124 of 2010 by Jogi Ram (appellant-defendant). The appeal filed by the appellant-defendant has been dismissed, whereas that of the respondent-plaintiff has been allowed by granting discretionary relief. Only one Regular Second Appeal has been filed.

Mr.Rakesh Kondal, learned counsel appearing on behalf of the appellant-defendant submitted that the respondent-plaintiff had not proved the execution of the agreement to sell. It was a loan transaction and as the defendant had taken a loan amount which was to be returned and in that background, the legal notice dated 25.12.2004 was sent. In support of the aforementioned pleadings, the defendant examined three witnesses, i.e., DW-1 Kavarjeet, attesting witness of the agreement to sell, DW-2 Jogi Ram

himself and DW-3 Shri D.S.Handa, Advocate, who had sent the legal notice. He admitted the signatures on the agreement to sell, but said that the parties had not intended to sell the land as it was a loan transaction and the agreement was signed for the purpose of security, therefore, the Lower Appellate Court ought not to have granted discretionary relief as the case of the respondent-plaintiff was not falling within the provisions of Section 20 of the Act and, thus, urged this Court for setting-aside the findings of the Lower Appellate Court.

Per contra, Mr.Rakesh Gupta, learned counsel appearing on behalf of the respondent-plaintiff submitted that the trial Court observed that it had been established that there was an enmity between the appellant-defendant and the family members of the respondent-plaintiff. On the contrary, registered document had been proved through the testimony of the aforementioned witnesses, whose examination-in-chief and cross-examination have gone uncontroverted. In essence, the appellant-defendant had not been able to ascertain nothing contrary to what has been actually and factually done. Execution of the agreement to sell, much less passing of the consideration has been proved and the plaintiff has also proved readiness and willingness and, thus, urged this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-defendant, for, the appellant-defendant had not been able to prove the categorical defence taken in the written statement that on the date, he intended to sign the document as a loan transaction, much less that the agreement was

a forged and fabricated document. In order to prove the aforementioned fact, the defendant was required to take the assistance of the expert, from the examination of his admitted signatures vis-a-vis disputed. No such effort has been made.

PW-4 Satyadev Registration Clerk proved the execution of the agreement to sell, much less its registration and passing of the consideration of ₹99,000/-. The legal notice dated 9.11. 2005 has also been proved by PW-5. The aforementioned factors have been examined by the Lower Appellate Court for the purpose of granting discretionary relief as the respondent-plaintiff had been able to prove the readiness and willingness.

For the reasons stated above, appellant-defendant has not been able to make out a case enabling me to form a different opinion than one arrived at. I do not find any illegality or perversity, much less any substantial question of law. Resultantly, the appeal stands dismissed.

April 06, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No