

RSA-658-2016 (O&M)

106

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

RSA-658-2016 (O&M)

Date of decision : 07.12.2018

Kamal Kumar Sharma

... Appellant

Versus

Ravinder Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Nikhil Sabharwal, Advocate
for the appellant.

Mr. V.M. Gupta, Advocate
for the respondent-caveator.

AMIT RAWAL, J.

The appellant-defendant is aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit of the respondent-plaintiff seeking specific performance of agreement to sell dated 08.06.2006, has been decreed, though the trial Court had confined the decree only to the alternative relief.

The facts which emanate from the pleadings of the parties are that the respondent-plaintiff sought the specific performance of agreement to sell *ibid* in respect of house No.2956 measuring 153 sq. yds. J-Block, Sector 49, Sainik Colony Extension-II, Faridabad, agreed to be sold for a total sale consideration of ₹10,00,000/- against the payment of ₹6,50,000/- as earnest money. The stipulated date for execution and registration of the sale deed was kept as 10.07.2006. The plaintiff was ready with the cash and

RSA-658-2016 (O&M)

appeared before the office of Sub-Registrar, but the defendant did not come forward. The suit was preceded by a legal notice dated 14.07.2006 and filed on 08.08.2006.

The defendant opposed the suit and denied the intention of the parties to enter into agreement to sell in respect of the suit property and came out with a plea that he had borrowed the money of ₹50,000/- from the plaintiff, in lieu thereof, the plaintiff obtained the signatures on the blank papers and kept the same, as security and agreed to return the same on receipt of the loan amount. The aforementioned blank papers had been converted into agreement to sell.

Since the parties were at variance, the trial Court framed the following issues:-

1. *Whether the defendant entered into an agreement to sell the suit property vide agreement dated 08.06.2006 and received ₹6,50,000/-? OPP*
2. *Whether the plaintiff has been ready and willing to perform his part of contract? OPP*
3. *If issue No.1 and 2 are proved, then whether the plaintiff is entitled for the specific relief of contract/OPP*
4. *Whether the suit is not maintainable in the present form? OPD*
5. *Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
6. *Relief.*

The plaintiff in support of the case examined five witnesses and brought on record Ex.P1 to P4, whereas the defendant despite availing four effective opportunities failed to produce any oral and documentary evidence and the evidence was closed by order.

The trial Court on examination of the documents brought on

RSA-658-2016 (O&M)

record by the plaintiff, did not grant the discretionary relief, but ordered for refund of the money. As notice above, the appeal taken before the lower Appellate Court reversed the findings.

Mr. Vikas Bahl, learned Senior Counsel assisted by Mr. Nikhil Sabharwal, learned counsel appearing on behalf of the appellant-defendant submitted that the plaintiff has, in the affidavit prepared for marking the presence, alleged that he had taken the cheque of balance consideration, but one of the attesting witnesses as well as himself, in cross-examination admitted to have taken the cash. No replication was filed to the pleadings with regard to the factum of execution of a document as a security. The tenor and mode, in which, the thumb-impressions on the agreement to sell were obtained, revealed that it had been on the blank papers as on the back side of the stamp paper, the name of purchaser and vendor as well as their thumb-impressions were reflected. Stamp vendor-PW5 did not produce the register. The legal notice was not received by the defendant. The lower Appellate Court has not considered the fact that money decree was passed in favour of the plaintiff, discretionary relief, even if, the appellant-defendant had not led any evidence, could not have been granted as the plaintiff miserably failed to prove the intention of the parties for selling and purchasing of the piece of land. The trial Court had allowed the application submitted for amendment of the written statement as plea of sale of the property was sought to be incorporated, but this Court in Civil Revision No.716 of 2011, set aside the order. The plaintiff failed to discharge the onus with regard to the execution of the agreement to sell. While exercising the discretionary relief, the Court has to look into all the sets of facts and circumstances and conduct of the parties. The lower Appellate Court did not

RSA-658-2016 (O&M)

independently assess the evidence of the parties in reversing the findings, therefore, the judgment is not in accordance with Order 41 Rule 31 of the Code of Civil Procedure. In support of his contentions, he relied upon the following *ratio decidendi* culled out by Hon'ble the Supreme Court as well as by this Court:-

- 1. "Bhupinder Kaur V/s Surinder Singh" 2016 (3) PLR 244;**
- 2. "Mangat Singh V/s Rakesh Kumar Gupta and another" 2014 (4) RCR (Civil) 387;**
- 3. "H. Siddiqui (d) by LRs V/s A. Ramalingam" 2011 (4) SCC 240.**

I have heard learned counsel for the parties, appraised the paper book and the judgments cited above as well as the statement of the witnesses appended with the application bearing CM No.11572-C of 2018 and of the view that there is no force and merit in the submissions of Mr. Bahl, for, the respondent-plaintiff/vendee, in cross-examination, stated that he had gone to the office of Sub-Registrar and had taken cash besides the blank cheque, thus, in such circumstances, it cannot be believed that the affidavit containing the recital of cheque is contrary to the record. Nityanand Sharma-PW3, in cross-examination, gave the description of the denomination of rupees and bundles of balance amount of consideration. The legal notice dated 14.07.2006 was served through the registered post, but the same remained un-replied. The target date was 10.07.2006, whereas the plaintiff had filed the suit 08.08.2006, therefore, the readiness and willingness has been proved on record. No details of loan has been explained or any evidence, in this regard, has been led. It is not understandable how a stranger would extend a loan, until and unless the defendant had led the evidence to establish that through intervention of

RSA-658-2016 (O&M)

some independent person, the plaintiff was introduced. Even the hardship as per the provisions of sub-Section 3 of Section 20 of the Specific Relief Act, cannot be pressed as in view of Explanation II, hardship has to be on account of the Act of the plaintiff. No such evidence, in this regard, has been brought on record as the defendant neither led oral and documentary evidence. The argument that the plaintiff failed to prove the ownership to the land of the defendant, is merit-less, for, in the application submitted for amendment of the written statement, the factum of sale of the property to third person i.e. G.K. Gupta, was sought to be introduced, thus, it was itself proved that the defendant was the owner.

There is no dispute to the *ratio decidendi* culled out in the judgments cited above, but the facts and circumstances of each case has to be examined. The first case pertained to the payment of substantial amount of sale consideration and there was extension. However, the facts, as indicated above, are totally different.

In this view of the matter, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

07.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**