

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

RSA No.2474 of 2014

Karnail Singh and Anr.

....Appellants

Versus

Kanwaljit Singh

....Respondent

Date of Order: 08.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Surinder Mohan Sharma, Advocate for the appellants.

Mr. D.S. Randhawa, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

Appellants-defendants have preferred this second appeal against the judgments and decrees passed by both the courts below whereby the suit filed by the respondent-plaintiff seeking possession by way of specific performance of the agreement to sell dated 20.4.2001 has been decreed by the trial Court vide judgment and decree dated 21.10.2010 and the Appellate Court upheld the findings vide judgment and decree dated 13.12.2013.

Respondent-plaintiff instituted the suit seeking possession by way of specific performance of the agreement dated 20.4.2001 in respect of the building bearing house tax no.477-A, Block no.12, consisting of two shops on the ground floor and residential house on the first floor, constructed on the plot no.61-62-63-64 measuring 66 sq yds comprised in Khasra Nos.13//3/3 min, situated in the abadi of Geeta Nagar, Raqba Patti Suba Akabarpur, Tehsil and District Ambala for a consideration of Rs.1,80,000/- out of which he received a sum of Rs.1,15,000/- as earnest money. Stipulated date for registration of sale deed was fixed as 19.4.2002,

which was executed by the Deed Writer, who entered the same in his register vide entry No.348 dated 20.4.2011. The plaintiff was ready and willing to perform his part of contract/agreement and requested the defendants to get the sale deed registered in his favour after receiving of balance sale consideration but the defendants did not come to get the needful done, necessitating the plaintiff to file the present suit.

The defendants filed written statement and took the preliminary objections qua maintainability averring that defendant No.2 was not necessary party. On merits, the defendants denied the agreement to sell but stated that it was a loan transaction whereas the money was obtained from the plaintiff for purchase of a truck, who obtained four cheques from their sons and also obtained the original sale deed of the property in dispute apart from obtaining their signatures on some blank papers to secure the loan amount.

From the pleadings of the parties, the trial Court framed the following issues:

- “1. Whether the defendants entered into any agreement dated 20.4.2011 for selling the house in dispute to the plaintiff for a sale consideration of Rs.1,80,000/-?OPP*
- 2. Whether the plaintiff is entitled to the relief of possession by way of specific performance of agreement dated 20.4.2001?OPP*
- 3. Whether the plaintiff has no locus standi to file the present suit?OPD*
- 4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD*
- 4-A. Whether the defendant no.2 is not owner of the property in dispute and not a necessary party in the present suit?OPD*

4-B. Whether the alleged agreement to sale is a forged and fabricated document?OPD

5. Relief.”

In order to prove their case, plaintiff examined as many as four witnesses including himself as PW1 besides tendering documents, namely, Ex.P1 to Ex.P.7 and Ex.PX.

In defence, the defendants also produced four witnesses apart from tendering the documents on record.

The trial Court on the basis of preponderance of evidence decreed the suit and the lower Appellate Court affirmed the judgment and decree of the trial Court.

Learned counsel for the appellants submitted that both the courts below have gravely erred while decreeing the suit. Respondent-plaintiff has not been able to prove the execution of the agreement in question rather the signatures of the defendants were taken on some blank papers. Even the plaintiffs' witnesses have not deposed in respect of payment of the money whereas in fact, it was a loan transaction, which was repaid. He submitted that the compromise allegedly arrived at between the parties was only with regard to the return of money and not in respect of the property. Discretionary relief should not have been granted by the Courts below and that the defendants/appellants are the victims of the plaintiff/respondent, who prepared false documents in the shape of agreement to sell and the evidence in this respect has not been appreciated at all.

Learned counsel for the respondent/plaintiff submitted that although the defendants have even denied the existence of property but the compromise dated 5.4.2005 Ex.PX was arrived at during the pendency of

the suit, in pursuance of which, they agreed to pay Rs. 2,50,000/- but did not identify the property. He submitted that the defendants have totally failed to perform their part of contract and that the case of the plaintiff has been fully proved by the witnesses, the Courts below have rightly decreed the suit.

After hearing learned counsel for the parties and appraising the paper book, I find no force in the contentions raised by learned counsel for the appellants.

It is not in dispute that an entry has already been made by the Deed Writer in his register and the attesting witnesses proved the agreement to sell much less handing over the earnest money. From the record available, it cannot be disputed that the plaintiff has shown willingness and readiness to mark his presence before the Registrar on the stipulated date with the balance sale consideration but the defendants did not turn up. As per the compromise Ex.PX, the defendants/appellants have identified the property and this all shows that such kind of defence was taken only to delay the execution of the sale deed and wriggle out of the contents of the agreement which they have not been able to prove through cogent or any corroborative evidence. Thus, I do not find any illegality and perversity in the judgment and decree passed by both the Courts below much less any substantial question of law.

Dismissed.

March 08, 2018
manoj

^(AMIT RAWAL)
JUDGE

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