

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

**R.S.A No.708 of 2016(O&M)
Date of decision :06.09.2018**

Om Parkash

..... Appellant

Versus

Sanjiv Kumar and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Shalini Atri, Advocate
for the appellant.

LISA GILL,J

Present appeal has been filed against the judgement and decree dated 24.05.2012 passed by the learned Addl. Civil Judge (Sr. Division), Karnal, whereby the suit filed by the plaintiff-appellant has been dismissed as well as judgement and decree dated 11.08.2015, passed by the learned Additional District Judge, Karnal, whereby their appeal has also been dismissed.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit for specific performance on the basis of agreement to sell dated 02.01.2006 with a further prayer of permanent injunction restraining the defendant-respondents from alienating the suit land. It was further prayed that the relinquishment deed dated 13.03.2006, mutation no. 925, sale deed dated 30.03.2006 and subsequent mutations on the basis of the said transactions were illegal, null, void and not binding on the rights of the plaintiff. It was pleaded that the defendants

are recorded as owners of the agricultural land as detailed in the plaint. Defendant no.1 entered in an agreement to sell dated 02.01.2006 in favour of the plaintiff for land measuring 14 Kanal 3 Marlas at the rate of ₹5 lakhs per acre. Defendant received a sum of ₹6,70,000/- as earnest money on the said date and the target date for execution and registration of the sale deed was allegedly fixed as 15.05.2006. Appellant pleaded that the possession of the property was handed over after execution of the agreement to sell. The plaintiff was always ready and willing to perform his part of the contract. He remained present before the Sub-Registrar, Karnal on the stipulated date, but the defendant did not turn up. Notice dated 20.05.2006 was issued, but still defendant did not come forward to perform his part of the agreement. To the contrary, a relinquishment deed was executed by defendant no.1 on 13.03.2006 in favour of his mother Parmila Devi (defendant no.2). Mutation was sanctioned. Parmila Devi further sold this property in favour of Krishna Devi (defendant-respondent no.3), which was still further sold by Krishna Devi to Jasbir Singh (defendant-respondent no.4). Hence the present suit was filed.

Defendants contested the claim by taking various preliminary objections. It was pleaded that plaintiff played a fraud upon the answering defendants as they had never entered into any agreement to sell the property as alleged. The said agreement is a bogus and void document. No consideration amount was handed over to the answering defendants. The plaintiff is alleged to have taken undue advantage of the mental ailment suffered by respondent no.1 and taken him to Karnal on the pretext that the appellant had to borrow some loan from a bank and

defendant no.1 should stand witness to the said transaction. Therefore, by misrepresentation signatures of defendant no.1 were obtained on some papers. Misusing the same, agreement to sell dated 02.01.2006 was drawn out. A complaint was also made before the police authorities and it was found on an inquiry conducted by the police authorities that in-fact, a sum of ₹1,70,000/- had been paid to defendant no.1, but the plaintiff has mentioned ₹6,70,000/- in the agreement to sell. Dismissal of the suit was prayed for.

Replication was not filed. From the pleadings of the parties, the following issues were framed:-

1. Whether the defendant had entered into an agreement to sell dated 02.01.2006 in favour of the plaintiff @ Rs.5 lacs per acre and received Rs.6,70 lacs as earnest money. If so to what effect?OPP
2. Whether the plaintiff was/is still ready and willing to perform its part of contract. If so to what effect?OPP
3. Whether the relinquishment deed dated 13.03.2006 and sale deed dated 30.03.2006 and subsequent mutations are illegal, null and void and not binding upon the rights of the plaintiff?OPP
4. If issues no.1 to 3 are proved in affirmative, then whether the plaintiff is entitled for the relief claimed? OPP
5. Whether the suit is not maintainable in the present form?OPD
6. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD
7. Whether the plaintiff has not come to the court with clean hands and suppressed the true and material facts from this court?OPD
8. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD
9. Whether the alleged agreement is bogus, frivolous, null and void and is a result of fraud played by the plaintiff upon the defendant. If so to what effect?OPD
10. Whether the suit is bad for non-joinder and mis-joinder of the necessary parties?OPD
11. Whether the suit is hopelessly time barred?OPD
12. Relief.

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

Learned trial Court after considering the evidence on record, facts and circumstances of the case concluded that receipt of ₹1,70,000/- by defendant no.1 from the plaintiff stood proved. However, it was held that agreement to sell was in-fact by way of securing the amount given to respondent no.1 and intention of the parties was not sale of the property in question. Accordingly, relief of specific performance of agreement to sell dated 02.01.2006 was declined. Suit was partly decreed to the extent that the plaintiff-appellant is entitled to recovery of sum of ₹1.70,000/- with interest at the rate of 10% per annum from the date of agreement to sell till actual realisation.

Aggrieved of decision dated 24.05.2012 by learned Additional Civil Judge (Sr. Division), Karnal, the plaintiff filed an appeal.

Cross-objections were also filed by respondent no.1-Sanjiv Kumar.

Learned Additional District Judge, Karnal, dismissed both, the appeal filed by the plaintiff as well as cross-objections by respondent no.1, vide impugned judgement and decree dated 11.08.2015.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant-plaintiff vehemently argues that both the learned Courts below have grossly erred in not decreeing the suit of the plaintiff-appellant throughout and wrongly directed the recovery of merely ₹1.70,000/-. It is contended that

agreement to sell dated 02.01.2006 has been duly proved on record. Both the attesting witnesses have specifically deposed about the execution of the said document as well as receipt of ₹6,70,000/- by respondent-defendant no.1-Sanjiv Kumar. Therefore, this appeal should be allowed.

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

In order to prove execution of the agreement to sell dated 02.01.2006 Ex.P-2, plaintiff examined PW-1-Joginder Gautam, PW-2-Prem Singh Kadyan and PW-4, Satish Kumar, latter two being the attesting witnesses of the agreement to sell. It is not in dispute that defendant-respondent no.1-SanjivKumar was the owner in possession of the suit property. Relinquishment deed dated 13.03.2006 was suffered by Sanjiv Kumar in favour of his mother Parmila Devi. The property in question was further alienated by Parmila Devi in favour of Krishna Devi (defendant-respondent no.3), and still further sold by Krishna Devi to Jasbir Singh (defendant-respondent no.4).

PW-2-Prem Singh Kadyan, one of the attesting witnesses stated that agreement to sell had already been drawn up when it was presented before him by Om Parkash and Sanjiv Kumar. He stated that he knew the plaintiff, but he did not know Sanjiv Kumar. Pw-2 did not depose about the amount handed over to Sanjiv Kumar. He clearly failed to prove the amount of consideration, if at all delivered in his presence to respondent no.1. PW-4-Satish Kumar, deposed that the agreement to sell was written in his presence and he was the attesting witness thereof. He further deposed that a sum of ₹6,70,000/- was paid by the plaintiff to

Sanjiv Kumar. He claimed to know both the parties personally, but in the cross-examination he deposed that he knew only Sanjiv Kumar, but not Om Parkash and he had seen Om Parkash-plaintiff for the first time at the time of execution of agreement to sell. PW-4, further deposed that Om Parkash-plaintiff is not his relative.

At this juncture, it is relevant to note that both Sunil Kumar and Satish Kumar, the attesting witnesses are real brothers. It has further come on record that both the said witnesses are in-fact the nephews of the appellant-plaintiff-Om Parkash (PW-5). Om Parkash(Pw-5) in his cross-examination admitted that both the said attesting witnesses are his nephews and they reside in the same locality. The manner in which an attempt has been made to conceal the relationship indeed is a suspicious circumstance. It is also proved on record that the plaintiff-Om Parkash had entered into similar kind of agreement to sell, Ex.D-1, with one Ishwar Singh. The said agreement to sell Ex.D-1 was also attested by Satish Kumar and Sunil Kumar. Not only Ex.D-1, but other agreements to sell in favour of the appellant i.e. Ex.D-2 and Ex.D-3 are on record as well. Sunil Kumar and Satish Kumar are the attesting witnesses in both the said agreements as well. In this view of the matter, both the learned Courts below have rightly discarded the evidence of the said witnesses.

A complaint Ex.DW2/A was preferred by the respondent-Sanjiv Kumar before the police authorities against the appellant-plaintiff-Om Parkash. The matter was looked into and as per inquiry report Ex.DW2/E, it emerged that only a sum of ₹1,70,000/- was paid by the appellant-plaintiff to respondent-defendant-Sanjiv Kumar. A sum of ₹5

lakhs in excess has been mentioned. It is duly proved on record that intention of the parties was not sale of the property in question. Moreover, it is a sum of ₹1,70,000/- and not ₹6,70,000/- which is proved to have been received by respondent-defendant no.1-Sanjiv Kumar. 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, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 24.05.2012 and 11.08.2015 passed by the learned Addl. Civil Judge (Sr. Division) Karnal and learned Additional District Judge, Karnal, respectively, which warrant any interference by this Court.

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

06.09.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No