In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:9.7.2018

RSA-822 of 2015(O&M)

Hardeep Singh

---Appellant

vs.

Bhupinder Singh

---Respondent

RSA-866 of 2015(O&M)

Hardeep Singh

---Appellant

vs.

Bhupinder Singh

---Respondent

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr.G.S.Punia, Senior Advocate
with Ms. Jagriti Kalia, Advocate
for the appellant
Respondent ex parte

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Rekha Mittal, J.

This order will dispose of RSA Nos. 822 and 866 of 2015 as these have emerged out of the same judgments and decrees passed by the courts whereby suit filed by the appellant-plaintiff for specific performance of agreement to sell dated 27.1.2006 was partly allowed and he has been granted alternative relief of recovery of Rs. 9.5 lakhs alongwith interest. For the sake of convenience, facts are taken from RSA No. 822 of 2015.

The appellant-plaintiff filed suit for specific performance on the premise that the respondent-defendant agreed to sell the suit land, detailed in para 1 (unnumbered) of the judgment of trial court for Rs. 4 lakhs per acre and executed agreement to sell dated 27.1.2006. The appellant paid

Rs. 9 lakhs as earnest money to the respondent in the presence of marginal witnesses and target date for registration of sale deed was 27.1.2007. On request made by the respondent, appellant paid Rs. 50,000/- more on 24.3.2006 and after receiving money, respondent made an endorsement on reverse of the agreement to sell. The appellant always remained ready and willing to perform his part of the contract. On the stipulated date i.e. 27.1.2007, it was Saturday and 28.1.2007 was Sunday which were holidays in the office of Joint Sub Registrar. On 29.1.2007, appellant met the respondent and requested him to execute and register the sale deed but he refused to do so. The appellant alongwith money attended office of the Joint Sub Registrar, Guruharsahai for performing his part of the contract but the respondent did not turn up. He got his presence marked by way of moving an application which was returned with endorsement. Possession of the suit land was delivered to the appellant at the time of execution of agreement to sell. In the alternative, he has prayed for recovery of Rs. 34,77,500/- towards refund of earnest money/part of sale consideration and damages.

The respondent/defendant filed the written statement raising a plea that agreement dated 27.1.2006 set up by the appellant is forged and fabricated, prepared in connivance with the typist, attesting witnesses and Kulwinder Singh by forging signatures of defendant from another agreement dated 19.1.2006, executed by respondent jointly with his nephews through attorney Satinder Singh in favour of the plaintiff for sale of 126 kanal 12 marlas under which the appellant paid Rs. 15,00,000/- towards earnest money to executants of that agreement. It has further been averred that the answering defendant was ready and willing to perform his part of the agreement dated 19.1.2006 but the appellant failed to perform his part of the agreement and as such, the earnest money paid by him under the said agreement stood forfeited. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The plaintiff preferred replication, re-asserted stand taken in the plaint and denied averments of the written statement with regard to agreement to sell dated 19.1.2006.

Controversy between the parties led to framing of issues, reproduced in para 6 of the judgment of trial court. After the parties concluded their evidence and having heard counsel for the parties in the light of materials on record, the trial court accepted plea of the appellant-plaintiff that agreement to sell dated 27.1.2006 was executed by the respondent/defendant but the court allowed alternative relief of recovery in view of observations recorded in paras 16 and 17 of the judgment whereby it has been held that from replies of Hardeep Singh PW1 and Kulwinder Singh PW2, it is clear that agreement to sell was got scribed by the party in a formal manner just to create a receipt of the loan facility provided to the defendant. These facts got corroborated from the fact that stamp papers were purchased on 25.1.2006 but the agreement to sell was scribed on some other day by keeping blank space for putting the date which was later put as 27.1.2006 as per convenience of the appellant. The findings recorded by the trial court came to be affirmed by the Appellate Court vide judgment and decree dated 20.11.2014 whereby the Court in Appeal decided appeal preferred by Hardeep Singh-appellant and cross objections filed by Bhupinder Singh.

Counsel for the appellant would urge that it was neither the case of respondent nor there is any materials on record for the courts to introduce a case that agreement to sell was executed as a security qua loan raised by the respondent from the appellant. It is argued with vehemence that in absence of any such pleadings raised by the respondent-defendant who has altogether denied agreement to sell with a categoric plea that the same is the result of forgery and fabrication, findings recorded by the courts that it was a money transaction between the parties and, therefore, allowing relief of recovery with interest cannot be allowed to sustain and liable to be set aside. In addition, it is argued that the respondent-defendant had raised a plea that agreement dated 19.1.2006 was executed by the respondent jointly with his nephews for sale of 126 kanal 12 marlas (though not proved in accordance with law), it demolishes the story created by the courts with regard to there being money transactions between the parties or the agreement in question being executed as security for repayment of loan.

The respondent failed to appear despite service through publication.

I have heard counsel for the appellant, perused the paper book and records.

Indisputably, courts have recorded concurrent findings rejecting plea of the respondent-defendant that agreement to sell dated 27.1.2006 was not executed by him much less the same being the result of forgery and fraud. Bhupinder Singh, the unsuccessful defendant who filed cross objections before the Court in Appeal has not filed appeal against the judgment and decree dated 20.11.2014, meaning thereby that findings recorded by the Courts with regard to execution of agreement to sell have attained finality.

The question that calls for determination is "whether the courts have rightly allowed alternative relief of recovery by treating the agreement to sell being executed as a document of security for repayment of amount of Rs. 9.5 lakhs, held to be paid by the appellant to the respondent. As has been rightly argued by counsel for the appellant, it was none of the plea of the respondent -defendant that there was ever any money transactions between the parties or the agreement in question was executed to create security for repayment of loan taken by the respondent-defendant. On the contrary, it is candid, unequivocal and clear plea of the respondent-defendant that the agreement to sell has been manufactured by the appellant in connivance with the scribe and marginal witness by taking advantage of his signatures available on the agreement to sell dated 19.1.2006. The respondent-defendant failed to lead satisfactory much less cogent and convincing evidence to counter case of the appellant or to establish his plea that the agreement in question is the result of fraud/forgery. Not only this, respondent examined a handwriting expert to substantiate his plea that the agreement does not bear his signatures. Interestingly, when he appeared in the witness box, he admitted that the agreement to sell bears his signatures. No sooner the respondent admitted his signatures on the agreement, law imposes an obligation upon him to explain as to the circumstances under which he appended his signatures on the agreement to sell. In this view of the matter, I find merit in contention of the appellant that once the respondent has not raised any plea of any money transactions between the parties much less the agreement being executed as a security document for repayment of loan obtained by the respondent, the courts are guilty of introducing a case alien to pleadings of the parties. In this view of the matter, findings of the courts that the agreement is a security document and, therefore, the appellant is not entitled to specific performance of agreement of sale or he is entitled for refund of money alongwith interest cannot be allowed to sustain and liable to be set aside.

This apart, the respondent has raised a plea that another agreement dated 19.1.2006 was executed by him alongwith others in favour of the appellant for sale of land measuring 126 kanal 12 marlas. The respondent-defendant failed to prove agreement dated 19.1.2006, in accordance with law. Had it been true that there was agreement to sell dated 19.1.2006 executed by the respondent, where was the occasion for the parties to execute another agreement on 27.1.2006, after 8 days of execution of earlier agreement. The plea of the respondent that he had agreed to sell the suit land vide agreement dated 19.1.2006 demolishes the story introduced by the courts that instant agreement was executed to create security for repayment of loan. Moreover, it has been brought on record that all other co-sharers have already sold land of their share to the appellant-plaintiff. Analyzed from any angle, the courts misdirected themselves and proceeded totally on assumptions and hypothesis that the agreement in question was a security document and thereby denied principal relief of specific performance of agreement to sell.

The respondent/defendant denied execution of agreement of sale. Hardeep Singh appellant appeared in the witness box and tendered into evidence his affidavit by way of examination-in-chief. The witness was cross examined at length but there is no challenge to his testimony with regard to his having remained ready and willing to perform his part of the agreement. He has proved that on 29.1.2007, he appeared in the office of Joint Sub Registrar, Guruharsahai for performing his part of the agreement and submitted an application in this regard. The suit for specific performance was filed on 23.10.2007 just within a period of nine months from the stipulated date for execution of sale deed. There is nothing on record suggestive of the fact that the appellant was not ready or willing to perform his part of the agreement. In this view of the matter, the appellant is entitled to principal relief of specific performance of agreement to sell and the judgments and decrees passed by the Courts are liable to be modified accordingly.

For the foregoing reasons, the appeals are allowed with costs. The judgments and decrees passed by the courts are modified to the effect that the appellant shall be entitled to possession by way of specific performance of agreement of sale dated 27.1.2006. The appellant is directed to deposit the balance sale consideration with the trial court within a period of three months failing which the appeals shall be deemed to be dismissed. The respondent-defendant shall execute the sale deed in favour of the appellant within another one month failing which the appellant shall be entitled to get the sale deed executed and decree enforced through process of the court.

(Rekha Mittal)
Judge

9.7.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No