

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

RSA No.1344 of 2018 (O&M)

Date of Decision: November 01, 2018

Ramesh Parkash

...Appellant

Versus

Mangat Ram (since deceased) through LR.s. and others. ...Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

**Present: Mr. Deepak Girotra, Advocate
for the appellant.**

HARINDER SINGH SIDHU, J.

The plaintiff has filed this regular second appeal against the judgments of the Courts below, whereby, his suit has only been partly decreed to the extent of recovery of part of the earnest money with interest.

The plaintiff filed a suit for possession by way of specific performance of agreement to sell dated July 27, 2006 executed in his favour by defendants No.1 and 2. It was the case of the plaintiff that defendants No.1 and 2 being owners in possession of suit land measuring 16 kanals as fully detailed in para no.1 of the plaint, village Hassangarh Tehsil Sampla, District Ropar had agreed to sell the same to the plaintiff vide agreement to sell dated July 27, 2006 for a total sale consideration of Rs.14,00,000/-. Rs.12,00,000/- was received by them as earnest money. Two receipts dated 27.7.2006 for Rs.7,00,000/- and dated 12.1.2007 for Rs.5,00,000/- were executed by them. The date for execution of sale deed was fixed as 15.07.2008. Defendants No.1 and 2 failed to execute the sale deed.

sale consideration. He even sent legal notice dated 11.07.2008 to the defendants. The plaintiff appeared before the Sub-Registrar, Sampla on July 15,2008 alongwith the balance sale consideration and got his presence marked. The plaintiff later learnt that defendants No.1 and 2 had transferred a part of the suit land in favour of defendant no.3 by release deed no.900 dated 22.9.2008. Hence the suit seeking a decree of specific performance of agreement to sell dated 27.07. 2006 and a decree for declaration that release deed no.900 dated 22.09. 2008 be declared null and void.

The case of the defendants was that the plaintiff was engaged in the business of money lending. After lending money, he used to obtain thumb impressions/signatures of the borrowers on blank papers under the guise of security/guarantee. It was denied that the defendants had entered into an agreement to sell the suit land with the plaintiff. It was pleaded that the son- in- law of defendant no.1 (Rajesh) was in need of money and he had borrowed a sum of Rs.7,00,000/- from the plaintiff. The plaintiff obtained signatures/thumb impression of defendants no. 1 and 2 on some blank papers/stamp papers as guarantee and he had misused the same. It was also pleaded that the son- in- law of defendant no.1 had already repaid the loan amount vide cheque no. 0092420 dated 3.7.2007 of Rs.2,00,000/- in favour of the plaintiff and Cheque No. 17861 dated 17.7.2008 of Rs.7,00,000/- in favour of Lakhwinder son of the plaintiff. Alongwith the cheque of Rs.2,00,000/- the son-in- law of defendant no.1 had also paid Rs.4,00,000/- in cash to the plaintiff in the presence of one Ishwar Rathee. A receipt of Rs.6,00,000/- was prepared on 3.7.2007 which was duly signed by Ishwar Rathee as witness.

reiterated the averments in the plaint. He also tendered documents i.e. original agreement to sell dated 27.7.2006 Ex.P1, receipt Ex.P2, affidavit Ex.P3, part payment slip Ex.P4, affidavit dated 24.6.2011 Ex.P5, release deed dated 29.9.2008 Ex.P10 etc. PW2 Surinder Singh, witness to the agreement to sell dated 27.7.2006 supported the case put forth by the plaintiff. PW3 Rajbir Singh, Registration Clerk of Tehsil Rohtak brought the summoned record relating to the release deed, PW4 V.B. Kashyap, Handwriting and Fingerprint Expert, Jhajjar tendered his report Ex PW 4/B and photographs, PW5 Narender Lakra, Advocate, deposed that he had sent the legal notices Ex.P11 and Ex.P12 on instructions of the plaintiff.

The defendants examined defendant no.3 Poonam (daughter of defendant No.1) as DW1, Rajesh Kumar as DW2 who supported the version of the defendants and also proved the receipt Ex.D1. DW3 Ishwar Rathee stated that receipt Ex.D1 bore his signatures and that Rajesh Kumar had signed the same in his presence. DW4 Dharam Pal Rahtee stated that the plaintiff was involved in the business of money lending at very high rate of interest. While lending money he obtained the signatures of the borrowers on some blank papers. Even after repayment of the entire amount with interest, he does not return the said papers and misuses the same for extracting more money from the borrowers. He also stated that the plaintiff was a habitual litigant and had filed numerous cases against the borrowers. DW5 Satish Kumar, Niab Nazir brought the summoned record of case CS No. 107/14 dated 25.1.2014 titled as 'Ramesh Parkash vs. Ishwar Singh' which was a suit for recovery, filed by the plaintiff pending in the court of Additional District Judge, Tis Hazari, Delhi. DW6 Ajaib Singh, Junior

titled as 'Ramesh Parkash vs. Rajender Singh', which was a complaint filed by the plaintiff under Section 138 read with Section 142 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code. DW7 Rajender also reiterated that the plaintiff was personally known to him and that he was involved in the business of money lending. He further deposed on the same lines as DW4. DW8 Anil Singh, Ahlmad, Tis Hazari Court, Delhi, brought the case file titled as 'State vs. Ramesh Kumar' concerning FIR No. 265 /2014 under sections 323, 326, 341, 354 -B and 506 IPC Police Station Mundka. In that case, the plaintiff and his son Lakhwinder were the accused. DW9 Assistant Ahlmad, Tis Hazari Court, Delhi brought the record of the complaint titled as 'Rajender vs. Ramesh Parkash', which disclosed that as per order dated 20.10.2014 of the M.M. 08 West Tis Hazari Court, Delhi, FIR No. 815 dated 31.10.2014 under sections 420 and 506 IPC was registered against the plaintiff. DW11 Prem Dass, Assistant Ahlmad brought the file relating to complaint 'Rajender vs. Ramesh Parkash' which disclosed that a case under Sections 406 , 420, 506 ,467, 468, 471 and 120-B/34 IPC, P.S. Mundka had been registered against the plaintiff vide order dated 26.11.2015 of learned Metropolitan Magistrate, 08 West, Tis Hazari Court, Delhi on a complaint filed by Rajender son of Nafe Singh. DW12 Rajesh stated that defendant No.1 had executed an agreement dated 17.7.2006 in favour of the plaintiff. The said agreement was also signed by him as a witness. He proved a copy of the same as Ex.D3.

The Ld. Trial Court on scrutiny of the evidence concluded that the version of defendants No.1 and 2 that the agreement to sell dated 27.7.2006 Ex.P1 was prepared on blank papers containing the thumb

him at the time of advancing loan to the the son-in-law of the defendant No.1 could not be believed, as the signatures of defendants no.1 and 2 on the receipt Ex.P2 were in a manner that half the signature was on the revenue receipt and the other half was on the page of the receipt. The Court concluded that those signatures could not have been obtained without first affixing the revenue stamp on the receipt. The receipt Ex.P4 had been signed in a similar manner by defendant No.1. It was thereby concluded that the signatures of the defendants had been obtained after the revenue stamp had been affixed on the receipt. Furthermore, the agreement Ex.P1 and receipt Ex.P2 bore the signatures of Ishwar Singh and Surinder Singh as attesting witnesses. Surinder Singh had appeared as PW2 and deposed in favour of the plaintiff. Ishwar Rathee, the another attesting witness to Ex P1 and Ex. P2 had appeared as DW3 and supported the case of the defendants by stating that the plaintiff was involved in the business of money lending and that the son-in-law of defendant no.1 had borrowed a sum of Rs.7,00,000/- from the plaintiff in his presence. However, he chose to remain silent about his signatures on Ex. P1 and Ex. P2. Defendant no.1 had admittedly died. Though defendant no.2 had appeared before the Court to give his specimen signatures, he had not deposed to deny the execution of the agreement and the receipt. Thereby the Court concluded that adverse inference could be drawn against the defendants. The evidence of DW 1 Poonam (defendant no.3) was not held sufficient to disprove the agreement to sell as she was not a signatory to the same. The Ld. trial Court thereby concluded that defendants No.1 and 2 had executed the agreement to sell dated 27.7.2006 in favour of the plaintiff and received a sum of

on the receipt Ex.P4 matched with his admitted signatures. The defendant had not examined any handwriting and fingerprint expert to prove that the signatures on this receipt were not of defendant No.1. The receipt Ex. P4 was also proved by the plaintiff and PW2 Surinder Singh, attesting witness. The other attesting witness Ishwar, had appeared as DW3 but had given no explanation regarding his signatures on the receipt Ex.P4. Thereby trial Court concluded that the plaintiff had duly proved the receipt Ex.P4 regarding payment of Rs.5,00,000/- to the defendants by the plaintiff. The trial Court further held that as the plaintiff had appeared before Sub-Registrar on 15.7.2008 and got his presence marked and once again appeared before the Sub-Registrar on 24.6.2011 and also sent legal notice dated 11.7.2008 which was proved by examining PW5 Nagender Lakra, Advocate, his readiness and willingness to perform his part of the agreement stood proved. However, the learned Court was not persuaded to grant the relief of specific performance of agreement to sell as it held that the agreement to sell dated 17.7.2006 Ex.D3 relied on by the defendants also stood proved. The Court held that the agreement Ex.P1 which is the foundation of the case of the plaintiff itself made a mention of an earlier agreement dated 17.7.2006 having been entered into between the parties. But it was alleged to contain some typographical error necessitating the second agreement. The plaintiff had admitted in his cross-examination that the earlier agreement had been entered into at Sampla. The agreement Ex.D3 bears the name of deed writer B.R. Mudgil, Sampla with Rajesh and Surinder Singh as attesting witnesses. As per this agreement a sum of Rs.7,00,000/- was received as earnest money by defendant no.1. Rajesh

witness Surinder Singh in their depositions had remained silent regarding the same. In view thereof, the trial Court concluded that the agreement dated 17.7.2006 had also been proved.

In the light of the documents Ex.P1, P2, P4 and D3 having been proved and the evidence of the defendants showing the pendency of number of cases for and against the plaintiff, which had also been admitted by the plaintiff in his cross-examination by stating that he had filed cases relating to property against eight to ten people in Delhi, the Court was persuaded to believe that the plaintiff had advanced loan to the defendant on interest at the rate of 2% per month and the documents were got prepared as security for the said loan. There was no intention of the parties to transfer the suit property. The Court concluded, that though the defendants had admitted receiving only Rs.7,00,000/-, however, as the plaintiff had proved the receipts Ex.P2 of Rs.7,00,000/- and P4 of Rs.5,00,000/- it stood proved that the defendants had received a total amount of Rs.12,00,000/-. The claim of the defendants regarding return of two lacs by cheque No.009420 dated 3.7.2007 and Rs.4,00,000/- in cash which was evidenced by receipt Ex.D1 was not believed as the receipt Ex.D1 only contained the signatures of Ishwar Singh and the defendant but not of the plaintiff. The defendants had also failed to prove that the cheque of Rs.2,00,000/- was encashed by the plaintiff. However, the encashment of cheque of Rs.7,00,000/- in favour of Lakhwinder son of the plaintiff was proved from the statement of account of Rajesh Kumar. Taking note of the fact that as per the original agreement Ex.D3, a sum of Rs.7,00,000/- was to be returned to the plaintiff by 15.7.2008 alongwith interest and the cheque of Rs.7,00,000/- was

towards the amount of Rs.7,00,000/- advanced to the defendants by the plaintiff. Moreover, the plaintiff had not examined his son Lakhwinder to prove that the payment was in regard to any other transaction that may have been entered into between him and the defendants. Accordingly, the suit was only partly decreed. It was held that the plaintiff was entitled to recover an amount of Rs.5,00,000/- alongwith interest at the rate of 6% per annum from 12.1.2007 till realization and further interest at the rate of 6% per annum on Rs.7,00,000/- from 27.7.2006 till 17.7.2008.

The judgment and decree of learned trial Court was assailed by both the plaintiff and the defendants. The plaintiff was aggrieved to the extent that his suit was only partly decreed whereas the defendants were aggrieved by the decree of recovery against them. Learned lower Appellate Court affirmed the findings of learned trial Court and dismissed both the appeals.

Findings of fact have been recorded by both the Courts below. Ld. Counsel for the appellant has not been able to establish as to how these findings are perverse or against the record.

No question of law arises for decision in this appeal.

Dismissed.

November 01, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No