IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) **RSA No. 2316 of 2017**
Date of Decision: 12.09.2018

Naresh Kumar

......Appellant

Vs.

Sumesh Rana and others

....
Respondents

2) **RSA No. 4218 of 2017**

Naresh Kumar

....Appellant

Vs.

Amit Verma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Neeraj Jain, Advocate, for
Mr. Jagmohan S. Ghuman, Advocate,
for the appellant.

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AMOL RATTAN SINGH, J.

These two regular second appeals have been filed by the plaintiff in a suit by which he sought possession of the suit property after specific performance of an agreement of sale dated 18.03.2004, contended by him to have been entered into between respondent-defendant no.1, Sumesh Rana and himself.

The said suit having been decreed in the appellants' favour by the learned trial Court, that judgment and decree was partly reversed by the first appellate Court vide the impugned judgment and decree dated 21.11.2016, granting the appellant-plaintiff the alternative relief of refund of the earnest money paid by him to respondent no.1, plus damages equal to the amount of earnest money, i.e. Rs.1,30,000/- plus Rs.1,30,000/- = Rs.2,60,000/-, (which was the alternative relief claimed by the appellant-plaintiff in his suit). Thus, the decree of specific performance awarded by the trial Court was set aside and the suit decreed to the extent of the alternative relief.

2. As per the appellant, the suit land was in the ownership of respondent-defendant no.1 who had executed the aforesaid agreement of sale with the appellant for a total sale consideration of Rs.1,85,938/- (@ Rs.2.5 lacs per acre), with earnest money of Rs.1,30,000/- paid by the appellant to him. The date by which the sale deed was to be executed, as per the appellant, was 18.09.2004 (six months after the date of agreement).

However, as per the appellant, defendant no.1 failed to get the sale deed registered despite the appellant being present in the office of the Sub-Registrar on 20.09.2004 (18.09.2004 and 19.09.2004 being Government holidays), with the appellant-plaintiffs' presence also marked in that office, with respondent-defendant no.1 not having turned up.

3. The appellant had further contended in his plaint that respondent-defendants no.2 to 5, despite being aware of the agreement dated 18.03.2004 in his favour, had claimed that a part of the suit land had been transferred to them and consequently, they too were impleaded in the suit as defendants.

4. Upon notice issued in the suit, the mother of defendant no.1, Soma Rani, who, as per the appellant-plaintiff, was also the said defendants' attorney and in fact he had been impleaded through her, filed a written statement taking usual preliminary objections that the suit was not

maintainable, etc. She, in fact, denied being her sons' attorney and further denied having executed any agreement on his behalf in favour of the appellant herein.

A preliminary objection with regard to improper court fee was also taken by her.

On merits, the ownership of defendant no.1 over the suit property was admitted but with, again, the execution of the agreement of sale wholly denied.

5. Respondent-defendants no.2 to 5 also filed a written statement again taking the usual preliminary objections, as also one that the suit had in fact been filed in collusion with defendant no.1 and further, they being bonafide purchasers of the suit property, for lawful consideration, the suit deserved to be dismissed.

On merits, it was contended by respondents no.2 to 5 herein that they had purchased a part of the suit property from respondent-defendant no.1, vide different sale deeds executed in their favour, after which mutation had also been made in the revenue record in their favour and that they had become owners of their respective shares therein.

6. The State Bank of India being the 6th defendant (also respondent no.6 in the present appeal), also filed a separate written statement taking the same preliminary objections as defendants no.2 to 5 and further contending that respondent-defendant no.1 had mortgaged his land measuring 2 kanals with the bank, vide a mortgage deed dated 19.04.2004, registered as document no.112 on 19.04.2006 with the Sub-Registrar, Mukerian, as security for a loan disbursed by the bank to the said respondent, for an amount of Rs.6,00,000/-.

It was further contended by the defendant bank that defendant no.1 had also obtained a non-encumbrance certificate from the Sub-Registrar, to the effect that the land was free from all types of encumbrances, with no charge or lien on it.

The reply on merits of respondent-defendant no.6 was also essentially to the same effect, (as per the judgments of the learned Courts below).

7. Upon the aforesaid pleadings, the following issues were framed by the learned trial Court:-

> "1. Whether the plaintiff is entitled to possession as prayed for? OPP
> 2. Whether the defendant no.1 has executed an agreement to sell dated 18.3.2004 in favour of the plaintiff for selling his land measuring 5 K-19M after receipt of Rs.1,30,000/- as earnest money, as alleged? OPP
> 3. Whether the plaintiff was and is ready and willing to perform his part of agreement to sell? OPP
> 4. Whether the defendants no.2 to 5 are bona fide purchasers for consideration without notice of the agreement? OPD 2-5
> 5. Whether the plaintiff is entitled to alternative relief as prayed for? OPD
> 6. Relief."

8. The appellant-plaintiff examined Rakesh Kumar, Deed-Writer, Gurdial Singh, the attesting witness to the agreement and himself, as PWs1 to 3 respectively and relied upon the following documents:-

Original agreement to sell dated 18.03.2004	Ex.P1
Affidavit dated 20.09.2004 of the plaintiff for marking presence in the office of Sub Registrar	Ex.P3

Certified copy of extract of register of deed writer	Ex.P4
Khasra girdawari for the year 2000-2009	Ex.PX
Jamabandi for the year 1999-2000	Ex.PY

The respondents-defendants examined Kamaljit Singh, Rakesh Kumar, Ashwani Kumar, Kashmir Singh and Ajit Singh as DWs1 to 5 respectively, the said Rakesh Kumar, Kamaljit Singh and Kashmir Singh being defendants no.3 to 5.

They relied upon the following documents by way of evidence:-

Certified copy of order dated 24.10.2008	Ex. DA
Original sale deed dated 30.06.2004	Ex.D2
Original sale deed dated 28.06.2004	Ex.D3

However, respondents-defendants no.1 to 4 were subsequently proceeded against *ex parte* by the trial Court.

9. The learned trial Court having considered the pleadings, the arguments and the evidence before it, came to the conclusion that on the basis of such evidence, the agreement of sale dated 18.03.2004 stood proved, with the plaintiffs' readiness and willingness to execute the sale deed also proved, by virtue of his affidavit, Ex.P3, showing his presence in the office of the Sub-Registrar, Mukerian, on 20.09.2004.

The argument on behalf of the defendants that the agreement was a forged and fabricated document was rejected by the trial Court on the ground that no evidence to that effect had been led and that in fact even Soma Rani, i.e. the mother of respondent-defendant no.1 (vendor), in whose favour he is also stated to have executed a power of attorney, also never allowed herself to be cross-examined and consequently, the document could not be accepted to be a forged and fabricated one.

10. Next considering the question whether respondents-defendants no.2 to 5 were bonafide purchasers for consideration, without notice of the agreement dated 18.03.2004, that Court referred to the testimony of DW2 Rakesh Kumar where he was found to have admitted that a sale deed was executed in favour of defendant no.2, Amit Verma, a neighbour near his shop, with whom “a talk took place 8 to 10 days before the execution of sale deed”, but that no transaction took place, with one witness being Malkiat Singh and another a Lambardar whom he did not know. He also did not know where Malkiat Singh resided, though he stated that he was from Mukerian. The witness also, as per the judgment of the trial court, stated that the scribe to the document was Rakesh Kumar, with defendant no.1 Sumesh Rana also present at the time of the registration of the sale deed (in favour of the defendants) on 29.06.2004.

This witness was also found to have stated that he had neither seen the papers pertaining to the revenue record or any other paper showing the ownership of Sumesh Rana over the suit property.

11. DW1 Kamaljit Singh was also found to have deposed that talks for execution of the sale deed took place between him and Sumesh Rana, with the sale deed executed by Soma Rani about 2-3 days later. This witness was found to have deposed that he had not asked as to why Sumesh Rana had executed a power of attorney in her favour.

As per DW2, Sumesh Rana was not present at the spot though his mother came to the Tehsil Complex.

He also could not state as to on what date he took the *fard* from the Patwari, nor did he remember any fee paid to the Patwari.

He too stated that he did not enquire about the land being purchased by him, except from its owner, i.e. Sumesh Rana.

He was also found to have deposed that the payment was made in cash, with the sale deed executed in July 2004, though he could not tell the exact date.

12. Ashwani Kumar, who was a witness to the sale deed dated 30.06.2004 (there being two sale deeds), was found to have deposed that no consideration was paid in his presence, with the sale deed executed in favour of defendant Amit Verma by Soma Rani.

13. Thereafter, the trial Courts' judgment reveals that evidence qua defendants no.2 to 5 was closed by order, with only defendant no.3, i.e DW2, called for re-examination, and consequently the evidence of DWs2 and 4 not to be taken into consideration.

14. Consequently, on the basis of the aforesaid evidence, the trial Court came to the conclusion that the subsequent vendees, i.e. defendants no.2 to 5, not having examined either Soma Rani or Sumesh Rana to support their case, even though their contention was that the said sale deeds were executed actually by Soma Rani, but with even the instrument of power of attorney in her favour not having "seen the light of the day", with no specific proof of consideration being paid, all showed that the sale deeds were only executed to frustrate the right of the plaintiff, that he claimed on the basis of the agreement dated 18.03.2004.

15. Holding as above, the suit of the plaintiff was decreed in his favour, with him directed to pay the balance sale consideration of Rs.55,938/- within one month of the date of the decree, upon which, thereafter, Sumesh Rana, defendant no.1, was directed to get the sale deed executed in the

plaintiffs' favour, failing which the plaintiff was given liberty to get it executed through the process of Court.

While holding so, the first charge of the defendant bank, over the suit property, was duly recognised by the trial court for recovery of the loan amount.

16. The said judgment and decree was challenged by way of 2 separate appeals; one by defendant no.4 (also respondent no.4 in RSA no.2316 of 2017 before this Court, i.e. Kamajit Singh), and the other by defendants no.2, 3 & 4 in the suit (presently respondents no.1 to 3 in RSA no.4218 of 2017).

Their contention essentially was that they were bonafide purchasers of the suit land from Sumesh Rana, defendant no.1 in the suit (presently respondent no.1 in RSA no.2316 of 2017 and respondent no.4 in RSA no.4218 of 2017).

The learned first appellate Court, after noticing the pleadings, the issues framed and appraising the evidence led before the trial Court, came to the same conclusion; that as regards the execution of the agreement of sale it had been indeed executed in favour of the plaintiff.

However, that Court eventually went on to hold that even the plaintiff himself (appellant herein) in cross-examination admitted that he is a jeweller who did not know of the prevailing market rate of the land at the time when the agreement was executed. He also admitted that he had 5 or 6 other cases going on in different courts and that in all the cases the dispute was actually qua agreements of sale.

He was also found to have admitted in his cross-examination that he lends money on interest after keeping gold in lieu thereof and that the other cases instituted by him were also because the prospective vendees did not execute the sale deeds in his favour.

He was further found to have admitted in his cross-examination that defendants no.2 to 5 had got registered a sale deed and had also "constructed four walls", further denying knowledge of whether they had any knowledge with regard to the agreement in his favour.

Yet further, the appellate Court found that he had admitted that defendants no.2 to 5 had got the sale deed executed after making payment.

17. Hence, having found that the plaintiff had actually admitted that even consideration was paid by respondents-defendants no.2 to 5 for purchase of the suit land from defendant no.1 and that he himself (plaintiff) was a moneylender with 4/5 cases of the same nature instituted by him seeking execution of agreements of sale, the 1st Appellate Court drew an inference that he was actually getting such agreements executed by way of security for loan transactions.

While holding so, that Court noticed that though the said plea had not been taken by the first defendant in his written statement, that would make no difference, in view of the fact that he having sold the land, had already lost interest in it, with a further finding at that stage recorded by the Court (reference paragraph 9 of its judgment), that the plaintiff himself had actually admitted in his cross-examination that the agreement of sale was executed by way of security for a loan transaction.

Consequently, while referring to Section 19 of the Specific Relief Act, 1963, the Court came to the conclusion that in the circumstances of the case the plaintiff was at best entitled to the alternative relief of earnest money, and damages alongwith, from respondent-defendant no.1, especially as nothing had come on record that the subsequent vendees were related to defendant no.1.

18. Hence, holding as above, the judgment of the trial Court was modified by holding the plaintiff entitled to the alternative relief sought by him, of recovery of Rs.2,60,000/-, i.e. Rs.1,30,000/- by way of earnest money and Rs.1,30,000/- by way of damages, though instead of interest @ 12%, the 1st Appellate Court awarded interest @ 6% per annum, running from the date of the agreement till the date that payment was made.

19. Thus, the plaintiff is in appeal before this Court against the said judgment and decree, seeking the setting aside thereof and revival of the decree issued in his favour by the trial Court.

20. Mr. Neeraj Jain, learned counsel for the appellant, virtually reiterated the reasoning given by the trial court to submit that with the respondents-defendants not able to give specifics with regard to payment of consideration etc., they did not deserve to be considered as bonafide purchasers and consequently, the learned first appellate Court had wholly erred in passing a decree by holding in their favour and awarding only the alternative relief of damages to the appellant-plaintiff.

21. Having considered the aforesaid argument, though it would seem an attractive one especially with the reference made by the trial Court to the lacuna in the testimony of the DW2, i.e. Rakesh Kumar, however, considering that the learned lower appellate Court has recorded a finding of fact that in his cross-examination, the appellant himself had admitted that consideration was paid by the subsequent vendees to the vendor and that he himself was in the business of money lending, with 5/6 other cases also instituted by him for non-execution of the sale deeds by those who had entered into an agreement

of sale, I find no fault with the conclusion drawn by that Court, that, in fact, the said agreements were only by way of security for loan transactions and consequently, any discrepancy in the testimony of the subsequent purchasers, who were found not to be related to the vendor in any manner, i.e. defendant no.1, the appellant would be entitled to only the alternate relief prayed for.

22. The appellant-plaintiff having been granted the relief of recovery of earnest money of Rs. 1,30,000/- plus Rs. 1,30,000/- as damages, along with interest @ 6% per annum running from 18.03.2004, i.e. the date of the agreement of sale (on which date the said earnest money was stated to have been paid by him to respondent-defendant no. 1 in RSA no. 2316 of 2017), with the learned appellate Court also having found that similar cases instituted at the instance of the present appellant-plaintiff were also pending, he himself also having admitted in his cross-examination that he lends money to people against gold, and with him not knowing even the rates of land in the area of the suit land, with further, the suit land having actually been sold to respondents-defendants no. 2 to 5 (in RSA no. 2316 of 2017 and respondents no.1 to 3 and 5 in RSA no.4218 of 2017), even though learned counsel for the appellant has submitted that respondent-defendant no. 1, i.e. the vendor, never took a stand with regard to any money having been lent to him by the appellant, it is seen that the learned lower appellate Court has held that defendant no. 1 having already sold off the land to defendants no. 2 to 5, and for that reason obviously he did not step into the witness box as he has lost interest in the land, I see no error in the final relief granted to the appellant-plaintiff as above, i.e. recovery of the earnest money + double the amount of the earnest money, along with interest @ 6% per annum, running from the date that the earnest money was so paid.

Consequently, finding no merit in these appeals, they are dismissed in *limine.*

September 12, 2018 **(AMOL RATTAN SINGH)**
nitin/dinesh **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable Yes