IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5985 of 2014 (O&M)
Date of Order:07th February, 2018

Ramesh Chander Virmani

..Appellant

Versus

Prem Lata Jain

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Chetan Mittal, Sr. Advocate, with
Mr. Kunal Mulwani, Advocate,
for the appellant.

Mr. Lokesh Sinhal, Advocate,
for the respondent.

ANIL KSHETARPAL, J.

Defendant-appellant is in regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 23.05.2005. It is the case of the plaintiff that out of total sale consideration of Rs.70,00,000/-, earnest money of Rs.7,00,000/- was paid and it was agreed between the parties that the sale deed shall be executed on 23.11.2005. It is further the case of the plaintiff that an additional payment of Rs.3,00,000/- was paid on 28.05.2005 and further additional payment of Rs.5,00,000/- was paid on 30.06.2005. It is further the case of the plaintiff that on 16.11.2005, the date for execution and registration of the sale deed was extended from 23.11.2005 to 16.12.2005. It is further the case of the plaintiff that on 06.12.2005, defendant further received four cheques for a sum of Rs.8,00,000/- and the date for execution of the sale deed was extended to 31.12.2005. It is further the case of the plaintiff that thereafter on 15.12.2005, 5 cheques of Rs.2,00,000/- each i.e. Rs.10,00,000/- total were handed over to the defendant and the date was extended to 04.01.2006. However, the defendant did not execute the sale deed, hence the suit was filed.

Defendant contested the suit and pleaded that in fact these documents were executed as a security, whereas the defendant had in fact borrowed an amount of Rs.15,00,000/- from the plaintiff.

On appreciation of the evidence available on the record, both the courts have decreed the suit filed by the plaintiff.

It may be noticed that the defendant himself applied to the Haryana Urban Development Authority seeking permission to transfer the plot in favour of the plaintiff, which was granted vide letter dated 02.01.2006. It is further significant to note that on 27.12.2005, parties had entered into a settlement, wherein defendant-appellant admitted receipt of various cheques on 06.12.2005 (Rs.8,00,000/-) and on 15.12.2005 (Rs.10,00,000/-) and had undertaken to encash those cheques. It may further be significant to note that the agreement to sell is signed by Sanjay Virmani son of the defendant-appellant, whereas writing dated 15.12.2015 is signed by other son of the defendant-appellant. Each of the extension is duly signed by one son of the defendant-appellant or the other. Even compromise deed dated 27.12.2005 is signed by Sanjay Virmani.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below as well as the record.

Learned counsel for the appellant has submitted that in fact the amount was taken as a loan and therefore, decree for specific performance could not be passed. He has further submitted that the plaintiff has not appeared in the witness box, therefore, adverse inference ought to have been drawn against the plaintiff. He has further submitted that the plaintiff is not proved to be ready and willing as she has failed to produce evidence on record that she was having sufficient money to pay the sale consideration. He has further submitted that the agreement to sell was cancelled and since the cancellation has not been challenged, therefore, suit for specific performance of the agreement to sell is not maintainable. He has submitted that learned courts have not exercised the discretion properly.

On the other hand, learned counsel for the respondent has supported the judgment passed by the courts below and has submitted that once the signatures on the agreement to sell, subsequent payments under receipts, signatures on the compromise dated 27.12.2005 are admitted, the courts have not committed any error in decreeing the suit.

Agreement to sell is in writing and it specifically provides that in case the defendant does not honour the agreement, plaintiff shall be entitled to get the sale through Court of law under the Specific Relief Act. The agreement further provides that the vendor shall arrange completion certificate from Estate Office. It is not in dispute that the Defendant sought permission from the Haryana Urban Development Authority to transfer the plot in favour of the plaintiff vide application dated 20.12.2005, which was granted by the authority on 02.01.1996. A compromise was also reduced into writing on 27.12.2005. A reading thereof does not prove that the agreement to sell was a loan transaction. As per the compromise, defendant-appellant had undertaken to get the cheque encashed. In these circumstances, there is no force in the submission of learned counsel for the appellant that it was only a loan transaction.

In the present case, husband of the plaintiff-respondent is signatory to the agreement to sell. It is specific case of the plaintiff that the husband of the plaintiff was in knowledge of all the notices and had played active role while entering into an agreement to sell. Such being the position, on account of non-appearance of the plaintiff, adverse inference cannot be drawn against the plaintiff. Learned counsel for the appellant could not point out from the evidence that the husband of the plaintiff did not answer the relevant facts or any prejudice was caused to the appellant on account of non-appearance of the plaintiff herself.

This court has considered the submission, however, do not find any substance in it. As per the agreement to sell, out of total sale consideration of Rs.70,00,000/-, earnest money of Rs.7,00,000/- was paid. Thereafter, before the date for execution and registration of the sale deed, additional payment of Rs.8,00,000/- was made, which is admitted by the defendant-appellant. Plaintiff has also handed over cheques for a further sum of Rs.18,00,000/-. It is a different matter that the defendant-appellant did not encash the same. As per the extended target date for execution and registration of the sale deed, the sale deed was to be executed on 04.01.2006, suit was filed on 15.02.2006.

Learned counsel has referred to the statement of accounts of the plaintiff to assert that she was having balance of Rs.25,00,000/- approximately on the target date.

In the considered opinion of this Court, there is no evidence available on the file that the plaintiff was having only one account. It is not in dispute that 4 sons and husband of the plaintiff are income tax payee. On the date for execution and registration of the sale deed, plaintiff had also purchased stamp papers for execution of the sale deed. In this situation, it cannot be said that the plaintiff was not ready and willing to perform her part of the contract.

Next argument of learned counsel is that the agreement to sell was cancelled but the cancellation has not been challenged. It is not in dispute that the courts below had neither framed any issue on this plea nor this argument was ever raised before the courts below. Defendant-appellant while replying to the notice sent by the plaintiff had denied the execution of the agreement to sell. He had even denied receipt of the cheques. A reading of the letters written by the defendant to the plaintiff does not establish that the agreement to sell was ever cancelled for any justifiable reason. Defendant-appellant through various communications, starting from 06.01.2006 is only requesting the plaintiff to take back the money and return him the documents. Hence, there is no substance in the argument of learned counsel.

Last submission of learned counsel for the appellant is that the court has not exercised its discretion properly. This court has considered the submission.

As per Section 20 of the Specific Relief Act, the discretion has to be exercised by the court guided by judicial principal and on sound and reasonable reasoning. This court does not find that the discretion exercised by the courts below was not guided by judicial principles and on sound and reasonable reasons.

In view thereof, there is no scope for interference in the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

07th February, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

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