IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6180 of 2014 (O&M)
Date of Decision: July 13, 2018

Subhash Chand ...Appellant

Versus

Balwinder Kaur and ors. ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. K.D. Sachdeva,Advocate for the appellant.

HARINDER SINGH SIDHU, J.

This plaintiff has filed regular second appeal against the judgments of the Courts below whereby his suit for specific performance of agreements dated 8.7.2002 and 30.7.2002 executed by Mohan Singh (deceased) with the plaintiff and for declaring the registered sale deed No.3575 dated 13.1.2003 executed by Mohan Singh in favour of M/s M.S.B. Healthy Foods Private Limited Benra (defendant No. 4) as illegal and null and void has been dismissed.

For convenience reference to the parties is being made as per their status in the civil suit.

The case set up in the plaint was that Mohan Singh (since deceased) had agreed to sell land measuring 5 kanals i.e. 2/3rd share of land measuring 7 kanals as mentioned in the head note of the plaint to the plaintiff. An agreement to sell dated 8.07.2002 was executed between Mohan Singh and the plaintiff. As per this agreement Mohan Singh, (since deceased) agreed to sell the land @Rs.42,000/- per bigha. The plaintiff paid

Rs.25,000/- to Mohan Singh as advance at the time of execution of agreement. The sale deed was to be executed on or before 30.7.2002. On 30.07.2002 Mohan Singh requested the plaintiff that he required more money as he was to purchase some machinery parts for his factory. He also requested that the date of execution of the sale deed be extended. The plaintiff advanced a further sum of Rs.75,000/- to Mohan Singh and a writing dated 30.7.2002 was executed whereby the time was extended to 10.04.2004.

Mohan Singh died on 25.8.2003. Defendant no.1 is his widow. Defendants No.2 and 3 are the sons of Mohan Singh. It was pleaded that they being the only legal heirs of Mohan Singh are legally bound by the said agreement.

The plaintiff served a legal notice dated 31.3.2004 calling upon defendants No.1 to 3 to be present in the office of Sub-Registrar, Dhuri on 9.4.2004 for execution of sale deed. However, they refused to receive the registered notice. The plaintiff went to the office of Sub-Registrar on 9.4.2004 alongwith the balance sale consideration and money for miscellaneous expenses. However, it turned out to be a holiday. The next two days i.e. 10.4.2004 and 11.4.2004 also happened to be holidays. The plaintiff after duly informing the defendants again went to the office of Sub-Registrar, Dhuri on 12.4.2004 to get the sale deed executed. However, the defendants did not turn up.

When the plaintiff obtained a copy of jamabandi to file a suit for specific performance he learnt that Mohan Singh had executed a sale deed dated 30.1.2003 in favour of M/s M.S.B. Healthy Food Pvt. Limited Benra-defendant no.4 which sale deed was illegal, null and void and not binding on the rights of the plaintiff. Hence the suit.

The case of defendants No 1 to 3 was that the agreements dated 8.7.2002 and 30.7.2002 were forged and fabricated documents. Defendant no.4 while also asserting that the agreements were forged and fabricated and had been prepared after the death of Mohan Singh stated that Mohan Singh had executed the sale deed of the property in its favour through its Director Pawan Kumar Jain. The plant was in existence on the suit land and it was already in its possession. Defendant no.4 was a bonafide purchaser for valuable consideration without notice. It was also their case that the plaintiff had not approached the court with clean hands. Late Mohan Singh was Director of M/s M.S.B. Healthy Foods Pvt. Limited. The suit land was on lease over which the plant was installed and was operating. It was in possession of the Defendant No. 4 from the year 2000. Also it was already mortgaged with OBC Dhuri as Collateral security. Moreover Mohan Singh was not competent to execute any agreement to sell as he was never authorized to do so by the Board of Directors. .

On the basis of the evidence the learned Trial Court concluded that the agreement dated 8.7.2002 had been duly proved. However, the agreement dated 30.7.2002 was forged and fabricated. In reaching this conclusion, the learned Trial Court relied on the evidence of DW 1 Dr. Inderjit Singh, Fingerprint Expert who opined that the signatures of Mohan Singh on the agreement dated 30.7.2002 did not tally with his standard signatures. The opinion of PW5 Sukhjinder Singh Handwriting Expert relied on by the plaintiff was discarded on the basis of his cross examination wherein he was not able to substantiate his assertion about the signatures of Mohan Singh on the second agreement dated 30.07.2002. The learned Trial

Court concluded that the second agreement mentioning about the further advance of Rs. 75,000/- appeared to have been prepared only to make the transaction appear as genuine. The amount of Rs.25,000/- shown as advance in the first agreement was too meagre amount for purchase of land measuring 5 kanals. The plaintiff apprehended that on those terms the agreement may not be considered as a genuine agreement to sell executed between the parties with intention to comply with its terms and conditions.

It was thereby concluded that the agreement dated 8.7.2002 was in fact an arrangement made by the parties to secure the amount of Rs. 25,000/- advanced by the plaintiff to deceased Mohan Singh.

The learned trial Court also noted that in the agreement dated 8.7.2002 there was an averment that Mohan Singh would execute the sale deed uptil 30.7.2002 and if there was any encumbrance with the bank he would get it cleared. It was also stipulated that if he could not get the sale deed executed then he would pay Rs.25,000/- as penalty alongwith earnest money of Rs.25,000/-. From this it was concluded that the plaintiff had knowledge that the land was mortgaged with the bank at the time of execution of the agreement. The bank documents in fact revealed that the property already stood mortgaged with the bank for a huge amount and hypothecated for cash credit limit of Rs.4,00,000/- term loan (plant and machinery), Rs.15,00,000/- and term loan (building) Rs.7,80,000/- as per Ex.D-28. The said document was issued by Oriental Bank of Commerce on 18.1.2001. The land had been duly transferred by Mohan Singh in favour of defendant no.4 for valuable consideration. For these reasons as well it was concluded that specific performance of agreement dated 8.7.2002 could not be allowed as the property had already been sold to defendant no.4, who was held to be a bonafide purchaser for a valuable consideration.

The suit of the plaintiff was partly decreed for the alternative relief for recovery of Rs.25,000/- in view of agreement dated 8.7.2002 alongwith interest at the rate of 9% per annum from the date of execution of agreement to sell dated 8.7.2002 till the date of decree. However, the suit for specific of agreement dated 8.7.2002 and 30.7.2002 and for setting aside the registered sale deed dated 13.1.2003 in favour of defendant no.4 was dismissed.

The learned lower Appellate Court has affirmed the findings of learned Trial Court.

Concurrent findings of fact have been recorded by learned courts below. Learned counsel for the appellant has not been able to point out as to how the said findings are perverse or contrary to the record.

No question of law arises for consideration in the appeal.

Dismissed.

July 13, 2018 **(HARINDER SINGH SIDHU)**
dinesh **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No