IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3372 of 2018

Bimla Devi

...Appellant

Versus

Smt Rekha Kumra

....Respondent

Date of Order: 01.06.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Majithia, Sr. Advocate with
Mr. Inderjeet Singh, Advocate for the appellant.

AMIT RAWAL, J (ORAL)

Defendant-appellant is in second appeal aggrieved of the concurrent judgments and decrees passed by both the courts below whereby the suit filed by the plaintiff-respondent for possession by way of specific performance of an agreement to sell dated 29.4.2004 has been decreed vide judgment and decree dated 26.2.2015 passed by learned Addl. Civil Judge (Sr. Division), Mukerian and the appeal filed by him (defendant) has been partly allowed by the lower Appellate Court vide judgment and decree dated 12.1.2018.

Plaintiff-respondent instituted the suit for joint possession by way of specific performance of agreement to sell dated 29.4.2004 in respect of land measuring 13 kanal 7 marlas as detailed in head note of the plaint for total sale consideration of Rs.5,00,000/- out of which a sum of Rs.3,50,000/- was received by the defendant as earnest money and another sum of Rs.1 lacs was also paid by the plaintiff totalling Rs.4,50,000/-. The stipulated date for registration and execution of the sale deed was fixed as 23.7.2008. According to the averments in the plaint, the defendant did not turn up necessitating the plaintiff to institute the suit on 27.1.2009.

Upon notice, the suit was contested by the defendant-appellant by raising objections that the plaintiff has not approached the court with clean hands, suit was filed on the basis of forged and fabricated document, which was never executed by the defendant besides the suit being barred by limitation. It was averred that the defendcant along with her husband had taken loan of Rs.3,00,000/- from the husband of the plaintiff in the last week of February 2004 and in lieu thereof, husband of plaintiff obtained signatures of the defendant and her husband on some blank papers. The loan was re-paid but the plaintiff's husband had destroyed some false papers and original blank papers were retained by him, which have been converted into agreement to sell in question.

From the pleadings of parties, the following issues were framed by the trial Court:

> *"1. Whether the defendant ever executed an agreement to sell dated 29.4.2004?OPP*
> *2. Whether the plaintiff is entitled to the relief of specific performance of agreement to sell dated 29.4.2004?OPP*
> *3. Whether if issue no.2 is not proved, whether the plaintiff is entitled to the relief of recovery of Rs.7.00 lacs from defendant alongwith interest if so at what rate?OPP*
> *4. Whether the plaintiff has concealed material facts from the court at the time of institution of suit in hand?OPD*
> *5. Whether the suit is within limitation?OPD*
> *6. Relief."*

In order to prove their case, respondent-plaintiff besides appearing herself as PW1, examined Parmod Kumar, husband of plaintiff as PW2, Sukhdev Raj as PW3, Parminder Singh, Stamp Vendor as PW4. She also tendered certain documents i.e Ex.P.1 to Ex.P.9 including jamabandi for the year 2000-01 as Ex.P5, jamabandi for the year 2010-11 as Ex.P6, copy of order dated 1.7.2014 as Ex.P7, copy of application as Ex.P8 and copy of statement of Des Raj as Ex.P9.

On the other hand, defendant herself stepped into witness box as DW-1.

On the basis of preponderance of evidence, the trial court decreed the suit of the plaintiff-respondent by granting discretionary relief and the lower Appellate Court partly allowed the appeal of the defendant and confined only to refund of Rs.4,50,00,000/-, for, the respondent-plaintiff had not been able to prove readiness and willingness much less payment of Rs.1 lacs on 30.5.2005.

Learned counsel for the appellant submitted that the findings recorded by both the courts below are not sustainable in law and liable to be set aside, for, the plaintiff-respondent in her cross examination categorically admitted herself to be income tax assessee but did not disclose the amount of payment qua earnest money in the computation of income. No person is permitted to bye-pass statutory provisions of the Income Tax Act. Respondent-plaintiff has miserably failed to prove readiness and willingness but the trial Court while misconstruing the evidence on record erroneously decreed the suit, however, in respect of payment of earnest money, the alleged sum of Rs.1,00,000/- had not been proved through the testimony of the attesting witnesses. He thus prayed for setting aside the findings of both the courts below.

After hearing learned counsel for the appellant and appraising the paper book, I find no merit in the present appeal, for, the respondent-plaintiff discharged her onus through testimonies of the attesting witnesses. The Stamp Vendor has duly proved that the stamp papers were purchased for the agreement to sell and not for loan. Even passing of the sale consideration was also proved. The onus thus shifted on the defendant, who failed to discharge the same by leading any cogent evidence much less signatures on the agreement to sell had also been admitted.

No explanation as to how and under what circumstances, blank stamp papers bearing signatures of the defendant had been converted into the agreement to sell. No person sits idle at home if such an allegation is made and would endeavour to initiate appropriate proceedings. The lower Appellate Court being the last court of law and facts has rightly delivered the findings after examining the evidence afresh which do not suffer from any infirmity warranting any interference by this court, for, the defendant did not have title to sell the same to third party.

No other relevant document has been placed on record enabling this Court to form a different opinion than the one adopted by the Appellate Court much less no substantial question of law arises for adjudication.

Dismissed.

June 01, 2018 **`(AMIT RAWAL)**
manoj **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No