

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 5087 of 2017 (O/M)
Date of decision : 14.2.2018

Rajan Kumar and another

..... Appellants

Versus

Professor Bhupinder Singh through LRs and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sapan Dhir, Advocate, for appellants.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J.

Impugned in present Regular Second Appeal is the judgment dated 18.8.2017, passed by learned Additional District Judge, Ludhiana, affirming the judgment and decree dated 20.2.2014, passed by learned Additional Civil Judge (Senior Division), Ludhiana, vide which suit of plaintiff for specific performance by way of agreement of sale dated 18.7.2003 was decreed. Further declaration was granted that sale deed dated 24.5.2005 regarding property measuring 24 square yards out of the suit property executed during the pendency of suit by defendants No. 1 (A), 2 and 3 in favour of defendant No. 4 is illegal, null and void having no effect on the rights of plaintiff and is hit by the doctrine/rule of lis pendens. A decree for permanent injunction was also passed, restraining defendants from making any alienation and transfer of the suit property to someone else except to plaintiff. Defendants were directed to execute and register

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the sale deed in favour of plaintiff regarding suit property and deliver possession of same within a period of two months, failing which plaintiff will be entitled to get sale deed executed and registered and get possession through agency of Court by filing execution application after two months from the date of passing of this judgment and decree. Consequently, alternative relief for recovery of the earnest money with interest was declined.

The facts of the case, as coming out from the lower Court file, are that initially, plaintiff filed a suit for mandatory injunction directing defendants to execute the sale deed before the Office of Sub Registrar, Ludhiana, with regard to one shop measuring 24 square yards, constructed with basement and having its constructed area around it with fitted iron shutter along with the water connection and sewerage, as shown in the site plan and detailed in the headnote of plaint. In this original suit, plaintiff had claimed that he had entered into an agreement of sale to purchase a shop, measuring 24 square yards for total consideration of Rs. 1,91,500/-, which was payable by plaintiff to defendants at the time of execution of sale deed. Defendants had agreed to execute the sale deed on 18.7.2003. Plaintiff arranged for Rs. 1,91,500/-, payable to defendants on 18.7.2003. Plaintiff was ready and willing to perform his part of contract to get the sale deed executed. Defendants had purchased stamp papers on 18.7.2003 under the signatures of one of defendants Sajjan Kumar. Terms and conditions of sale deed were settled during the working hours before the Deed Writer, namely, Jaswinder Singh, at District Courts, Ludhiana, in the presence of witnesses, namely, Dr. Gurdev Singh Sandhu, Senior Research Professor, retired from PAU and Parminder Singh son of Kartar Singh, resident of

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Gali No. 17, Dashmesh Nagar, Ludhiana. Defendants got scribed the sale deed from Jaswinder Singh, Deed Writer, in the presence of witnesses and received Rs. 1,91,500/- as sale consideration. After admitting the contents of sale deed to be correct, defendants put their thumb impressions over the sale deed and site plan attached with the proposed sale deed. The sale deed was to be produced before the Sub Registrar, Ludhiana (West), but defendants slipped away from the office of Deed Writer on the same day and did not turn up. Defendants did not perform their part of contract. Hence, the suit.

In the original suit, defendants No. 1 to 3 filed the written statement, in which it was pleaded that sale deed dated 18.7.2003 is vitiated by misrepresentation and fraud committed by plaintiff in conspiracy with Manjit Singh, Property Dealer. There was no free consent of defendants to prepare the sale deed with total sale consideration of Rs. 1,91,500/-. Defendants denied that there was any agreement to purchase shop measuring 24 square yards for Rs. 1,91,500/-. It was stated that they are migrants from Uttar Pradesh. They are owners of the said property, which they have purchased by sale deed dated 21.3.2002. Defendants are owners in possession of said property which is in the nature of residential-cum-shop. Defendants had raised construction of two storied building on the said property. They have taken a personal loan of Rs. 2,00,000/- from Manjit Singh son of Gopal Singh, resident of Shimlapuri, Ludhiana, by pledging their original sale deed with him. Manjit Singh, Property Dealer, got some blank papers thumb marked at that time. On or about middle of March, 2003, defendants had paid back Rs. 70,000/- to said Manjit Singh, property dealer. Plaintiff contacted defendants through said Manjit Singh

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in July, 2003 and agreed to purchase property from defendants for a sale consideration of Rs. 7,50,000/-. For the purpose of execution of agreement of sale on 18.7.2003, plaintiff and Manjit Singh, property dealer took defendants to New Courts, Ludhiana, where plaintiff paid Rs. 1,80,000/- which were taken by property dealer Manjit Singh, claiming to be due from him towards his balance loan amount and interest accrued thereon. Plaintiff and Manjit Singh, property dealer, in conspiracy and in connivance with each other dishonestly instead of getting agreement of sale executed, got prepared a sale deed of said property and by misrepresentation and fraud, obtained thumb impressions of defendants. But when Paramjit Singh son of Gurdev Singh, read the document and informed defendants that it is a sale deed and not agreement of sale, defendants demanded back remaining sale consideration of Rs. 5,70,000/- from plaintiff. In the meanwhile, Manjit Singh, property dealer, who had taken Rs. 1,80,000/- from defendants, slipped away from the spot even without delivering back the original sale deed of their (defendants) property and without delivering back blank papers which were got thumb marked from them. Plaintiff instead of making payment of balance amount threatened defendants that he was having links with high ups in political circles and officers and criminally intimidated defendants. Defendants had submitted a complaint to police on 1.8.2003, but the police failed to take any action, despite reminder to complaint dated 4.8.2003. Defendants denied the fact with regard to execution of sale deed in the office of Sub Registrar, Ludhiana (West), and purchase of stamp papers on 18.7.2003 under the signatures of one of defendants Sajjan Kumar for Rs. 11,500/-. It was stated that plaintiff in conspiracy with Manjit Singh, property dealer, forged the record of

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purchase of stamp papers.

It comes out that vide order dated 20.9.2007, plaintiff on account of no objection from defendants, was allowed to amend the plaint, so as to convert the suit into the suit for possession by way of specific performance and also claims declaration regarding sale deed dated 24.5.2005, registered during the pendency of suit in favour of defendant No. 4. In the said amended plaint, some additional averments were made that sale deed date 24.5.2005, is executed by defendants No. 1(A), 2 and 3 in favour of defendant No. 4 during the pendency of suit and hit by doctrine/rule of lis pendens and is liable to be set aside.

In the amended written statement, defendants somersaulted and completely changed their stand. In the amended written statement, defendants denied to have executed any agreement of sale. They also denied to have received any amount. They also denied to have agreed to execute sale deed with the office of Sub Registrar, Ludhiana. It was also denied that terms and conditions were settled. Purchase of stamp papers was also denied. The story of defendants slipping away from the office of deed writer was also denied. In the amended written statement, defendants made complete denial of the facts made in the plaint.

From the pleadings, following issues were framed :-

1. Whether defendants No. 1 to 3 executed sale agreement dated 18.7.2003 in favour of plaintiff qua the suit property ? OPP
2. Whether defendants No. 1 to 3 have received the entire sale consideration of Rs. 1,91,500/- ? OPP
3. Whether the plaintiff is still ready and willing to perform his party of the contract ? OPP

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4. Whether plaintiff is entitled to the relief of specific performance as prayed for ? OPP
5. Whether the sale deed executed by defendants No. 1 to 3 dated 24.5.2005 is illegal null and void and without any consideration ? OPP
6. Whether plaintiff is entitled to the relief of declaration as prayed for ? OPP
7. Whether the suit of the plaintiff is not legally maintainable in the present form ? OPD (1 to 3).
8. Whether the agreement dated 18.7.2003 was not executed by defendants No. 1 to 3 in favour of plaintiff ? OPD
9. Whether the plaintiff has suppressed the material facts from the knowledge of the Court ? OPD
10. Whether the defendant No. 4 is a bonafide purchaser for consideration without any notice about the rights of the plaintiff qua the suit property ? OPD4
11. Relief.

After going through the evidence and the documents placed on file, the trial Court decreed the suit. The judgment was upheld in the appeal.

I have heard the learned counsel for appellants and have also carefully gone through the file and the lower Court file as well.

The trial Court has taken into consideration the admissions made in the unamended written statement where defendants had admitted that they were approached by plaintiff through one Manjit Singh, property dealer and had received a sum of Rs. 1,80,000/-, which they had given to Manjit Singh, property dealer. They also admitted to have thumb

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marked the writing, though, it was claimed to be agreement of sale and not sale deed. They had pleaded misrepresentation and fraud in the execution of said sale deed. In this way, execution of a document, which is sale deed, was admitted, though, misrepresentation and fraud was pleaded. Though, it was claimed that infact they wanted to execute agreement of sale, however, at the same time, they have stated that when they came to know that it is a sale deed and not agreement of sale, they demanded back remaining amount of sale consideration of Rs. 5,70,000/- as they had agreed to execute agreement of sale for Rs. 7,50,000/- and not for Rs. 1,80,000/-.

Present plaintiff is a professor by profession. In order to prove execution of sale deed, plaintiff examined Parminder Singh (PW8) and Gurdev Singh (PW5), marginal witnesses. In unamended written statement, plea of misrepresentation and fraud was taken and admission was made that the said document, which is infact a sale deed, was executed. Though, it was pleaded that defendants wanted to execute agreement of sale and fraud and misrepresentation were pleaded. However, such misrepresentation and fraud were never proved. The sale consideration was also admitted. Plaintiff has otherwise proved that total sale consideration of Rs. 1,91,000/- was paid which was recorded in the sale deed. Plaintiff has also proved that stamp papers were purchased through one of the vendees. The entry regarding purchase of stamp papers (Annexure-P-1) also bears thumb impression of one of defendants, Sajjan Kumar. The original sale deed (Ex.PW6/1) bears the thumb impressions of all the defendants. They have not led any evidence as to how fraud and misrepresentation were committed with them. It is specifically recorded in the said sale deed that

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entire amount has already been received.

The learned counsel for appellants has tried to rely upon the statement of a deed writer, who says that he does not know the parties and payment was not made in his presence. However, one of the witnesses says that payment was received by sellers. Defendants have failed to discharge heavy burden of proving misrepresentation and fraud played with them. Therefore, there is no illegality or infirmity in the findings recorded by both the Courts below. The findings of facts have been recorded. No law point arises. Hence, instant Regular Second Appeal is dismissed in limine.

(KULDIP SINGH)
JUDGE

14 .2.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No