

101

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.6087 of 2017(O&M)
Date of Decision: 12.07.2018**

SHAILENDER GOEL

.....Appellant

Vs

PARDEEP

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Mukesh Kumar Mittal, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Defendant is in Regular Second Appeal in a suit for mandatory injunction and permanent injunction against the concurrent findings recorded by the Courts below.

[2]. Plaintiff filed a suit for mandatory injunction with consequential relief of permanent injunction with the pleadings that defendant had purchased 1/3rd share of the suit property vide registered sale deed dated 24.05.1996 within municipal limits of Rohtak along with 2/3rd share of his mother and wife total measuring 1200 sq. yards situated near Lal Nath Hindu College, Rohtak. Defendant was in need of Rs.5 lakhs and he pledged the property in question for the amount of Rs.5 lakhs.

Plaintiff paid the said amount w.e.f. 01.06.2010 to 31.05.2014 and in lieu of said payment, possession of 1/3rd share of the defendant including 2/3rd share belonging to his mother and wife was given to the plaintiff. Usufructuary arrangement was made in order to ward off interest over the amount viz.-a-viz. rental of the land. The property was pledged till 31.05.2014 with a liberty to the defendant to get the same redeemed by giving one week notice to the plaintiff. In the event of non-redemption within the time stipulated, the plaintiff would have the right either to get the sale deed executed or to effect recovery of the amount advanced to the defendant. A written agreement was executed between the parties on 01.06.2010 (Ex.PA). The time for redeeming the property had already lapsed. In order to restrain the defendant from creating 3rd party interest in the suit property, the suit in question was filed.

[3]. Defendant contested the suit. Factum of agreement was admitted. Taking of loan was also admitted, but it was pleaded that the amount of Rs.5 lakhs was deemed to be clear in all respect on 31.05.2014 after adjusting the amount towards rent of the suit property including 2/3rd share of his mother and wife equivalent to the principal amount and the interest payable on the said principal amount. After 31.05.2014, possession of the suit land was to be returned to the defendant. Concealment

in the pleadings of the plaint was alleged by the defendant and he prayed for dismissal of the suit.

[4]. In the replication filed by the plaintiff, pleas of written statement were denied and that of plaint were reiterated.

[5]. After framing of issues, both the parties led their respective evidence in order to prove their case.

[6]. The plaintiff tendered agreement dated 01.06.2010 as Ex.PA along with discharge summary as Ex.P-2. Plaintiff himself appeared as PW-1. The defendant on the other hand examined himself as DW-1.

[7]. The trial Court on the basis of interpretation attached to the agreement Ex.PA held that the plaintiff has succeeded in proving issue No.1 to the extent of effecting recovery of amount of Rs.5 lakhs from the defendant, but the plaintiff is not entitled to get the sale deed executed in his favour as the same was an act of creating pressure upon the defendant. Execution of agreement Ex.PA was admitted between the parties. Terms and conditions of the agreement (Ex.PA) were held to be binding between the parties.

[8]. Defendant was held liable by the trial Court to make repayment of loan amount upto 31.05.2014. Plaintiff was not entitled to any interest on the said amount as the possession was delivered to him. Defendant was also not entitled to any

rent on the mortgaged property. Defendant was entitled to get the mortgage cancelled by giving one week notice to the plaintiff after making payment of loan amount. In the event of failure on the part of the defendant, plaintiff was entitled to get the said amount recovered through the process of the Court. Though the recital was to the effect that plaintiff was entitled to get the sale deed executed in his favour and the amount so advanced was to be considered as complete sale consideration.

[9]. In the facts and circumstances of the case, it was observed that the clause of getting the sale deed executed from the defendant was incorporated only to create pressure upon the defendant and such a clause would give undue advantage to the plaintiff over the defendant. Therefore, the Courts below did not adhere to the aforesaid clause, thereby not directing the defendant to execute the sale deed. Plaintiff was held entitled for the mortgage amount of Rs.5 lakhs, whereby defendant was directed to make payment of loan amount of Rs.5 lakhs to the plaintiff within one month from the date of passing of decree by the trial Court, failing which the plaintiff was held to be entitled to get the share of the defendant auctioned in the total land.

[10]. In view of aforesaid, finding of facts recorded by the Courts below are not found to be the result of any misreading of evidence, nor the impugned judgments and decrees are found

to be suffered with any illegality or perversity. No law point worth consideration is involved in the present appeal. Consequently, the appeal is dismissed.

July 12, 2018
Atik

(RAJ MOHAN SINGH)
JUDGE

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