IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.582 of 2018 (O&M)
Date of Decision: 14.5.2018

Mahender Pal ---Appellant

Versus

Boota Singh ---Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.Gaurav Khera , Advocate
for the appellant.

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HARINDER SINGH SIDHU, J.

The defendant has filed this regular second appeal against the judgments of the Courts below, whereby, suit of the plaintiff-respondent for specific performance of agreement to sell has been decreed.

The case of the plaintiff was that defendants No.1 to 3 who were real brothers were owners in joint possession of land measuring 141 kanals 18 marlas situated within the revenue estate of village Kasan Khera, Tehsil and District Sirsa. They executed an agreement to sell dated 4.7.2005 with the plaintiff for sale of land measuring 13 kanals 13 marlas out of the joint land owned by them. The total sale consideration of the land was fixed for Rs.4,27,000/-. Rs.1,20,000/- was paid as earnest money in the presence of witnesses. The date for registration of the sale deed was 2.7.2006 and on that date the balance sale consideration would be paid to the defendants. The expenses for registration were to be borne by the plaintiff. On

4.7.2005, a civil suit was pending against the defendants and the property had been attached. It was agreed that the sale deed would be executed after decision of the case for compensation. That case was decided on 2.6.2008 and the land which had been attached in those proceedings was released. On 4.6.2008 the work of registration was completed but the defendants did not turn up to execute the sale deed. It was pleaded that the plaintiff had always been ready and willing to pay the balance sale consideration along with other expenses, but the defendants had avoided to execute the sale deed. The plaintiff had also served a legal notice on the defendants but to no effect. Hence the suit.

Defendants No.2 to 3 were given up by the plaintiff as they had already executed the sale deed qua their share of the suit land in his favour.

Defendant No.1 in his written statement took the plea that he had never agreed to sell the suit land to the plaintiff at any point of time. In fact, the document dated 4.7.2005 had been executed between the plaintiff and the defendants as security because the defendants had borrowed a sum of Rs.1,20,000/- from the plaintiff on interest @ 2% per month. It was pleaded that defendants No.2 and 3 in collusion with each other and the plaintiff had executed a sale deed in favour of the plaintiff to the extent of land falling to their share after deducting the amount of earnest money without any notice to defendant No.1. At the time of the execution of the alleged agreement dated 4.7.2005, the suit land was attached in execution proceedings tilted as *Asha Rani* Vs. *Balwinder* on the basis of a decree. Hence, the suit land could not be sold. Vide order dated 2.6.2008, the land was released and defendants No.2 and 3 executed the sale deed with mala fide intention to cause loss to defendant No.1 who at that time was confined in the District Jail, Sirsa in a criminal case under Section 302/307/452/323/324 IPC. Defendant No.1 stated that he was ready to pay Rs.40,000/- as per his share along with interest. It was further pleaded that as the document was executed as security, no date was fixed for registration of the sale deed. The plaintiff had also not gone to the Tehsil to get the sale deed registered on 2.7.2006 nor had he got his presence marked.

Learned Trial court concluded that the plaintiff had placed on record the agreement Ex.P-1 which clearly shows that the defendants had entered into agreement to sell their land measuring 13 kanals 13 marlas to the plaintiff for sale consideration of Rs.4,27,000/- and Rs.1,20,000/- had been received by them as earnest money. There was a writing at Point-C in the Agreement in the hand of defendant No.1 to the effect that the amount of Rs.1,20,000/- had been received. This fact was also admitted by him when he appeared before the court as DW-3. He also admitted that at Point-B of Agreement Ex.P-1 there were his signatures and the date had also been written by him. Regarding the writing at Point-C in Ex.P-1 he explained that this amount was due since 24.7.2002 and the defendants were paying interest thereon.

The Trial Court held that the contention of the defendant that the alleged agreement was executed as security for loan amount which was due since 24.7.2002 was not tenable; firstly the earlier agreement dated 24.7.2002 which had been placed on record as Mark D-1 had not been proved, secondly, the agreement Ex.P-1 was a fresh agreement. Further, if there had been an earlier loan transaction of the year 2002 then the amount mentioned in the agreement Ex.P-1 would have been much higher on account of the interest accrued on the loan. Further, defendants no.2 and 3, brothers of defendant No.1 had already honoured the agreement Ex.P-1 by getting executed sale deeds Ex.PW4/E and PW4/F executed in favour of the plaintiff qua their shares. This in fact was a major factor which belied the contention of defendant no.1 that the agreement was only a security for an earlier loan transaction.

The contention of learned counsel for the defendant that the suit was time barred was also negated by the Trial court by observing that in the agreement Ex.P-1, it had been specifically mentioned that a civil suit was pending in which the land had been attached. The sale deed was to be executed after the decision of the case. The land was released from attachment only in the year 2008. The defendant never informed the plaintiff about this. As soon as the plaintiff learnt of this, he issued a legal notice and filed the suit on 22.02.2009 which was within limitation.

The plea of the defendant regarding hardship was negated by the court by holding that there was no pleading to that effect.

The suit was decreed. The defendant No.1 was directed to get the sale deed of the land pertaining to his share executed in favour of the plaintiff after receipt of proportionate sale consideration.

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

Findings of fact have been recorded by the Courts below. Learned counsel for the appellant has not been able to establish as to how these findings are perverse or against the record.

No question of law arises for decision in this appeal.

Dismissed.

May 14, 2018 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No