

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

RSA No.1115 of 2019 (O&M)

Date of Decision:14.05.2019

Nirbair Singh

.....Appellant

Versus

Avinash Gupta and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Birinder Singh, Advocate
for the appellant.

LISA GILL, J.

Appellant-defendant no.1, is aggrieved of judgement and decree dated 07.07.2017, passed by learned Civil Judge (Jr. Division), Phillaur, as well as judgement and decree dated 21.09.2018, passed by the learned Additional District Judge, Jalandhar.

Brief facts necessary for the adjudication of the case are that the plaintiff-Avinash Gupta wife of Surinder Kumar Gupta, filed a suit for possession by way of specific performance of the agreement to sell dated 14.07.2011 executed by the present appellant in respect to the suit property as detailed in the plaint. It is further prayed that the alleged transfer deed of ownership dated 20.07.2011 executed by the present appellant-defendant no.1 in favour of his wife-Sukhdeep Kaur (defendant no.2 before the learned trial Court and arrayed as respondent no.2 in this appeal) and sale deed dated 11.10.2013 executed by defendant no.1 in favour of defendant no.3-Pawan Kumar and the subsequent mutations consequent thereto, be set aside being null and void *qua* the rights of the plaintiff. It is pleaded that defendant no.1 being the owner in possession of the suit property entered in an agreement to sell the suit property in favour of the plaintiff on 14.07.2011, for a total sale

consideration of ₹5,50,000/-. A sum of ₹4,00,000/- was received by defendant no.1 as earnest money at the time of execution of the agreement to sell. It was agreed that the sale deed would be executed on 14.06.2012. Remaining sale consideration of ₹1,50,000/- was handed over to defendant no.1 by the plaintiff on 02.01.2012, itself, through a cheque no. 00415 drawn on Allahabad Bank, Phillaur. It was reduced into writing on 02.01.2012 and it was stated therein that the plaintiff was free to get the sale deed executed as and when required. However, defendant no.1 failed to execute the sale deed. Therefore, a legal notice dated 16.08.2012 was served through counsel asking defendant no.1 to come present at the Tehsil Complex, Goraya on 30.08.2012, but defendant no.1 did not turn up. Plaintiff, thereafter, obtained a certified copy of the jamabandi of the suit property for the year 2009-10 and it emerged that defendant no.1 had transferred part of the suit property to his wife-defendant no.2 in a fraudulent manner and mutation no. 4011 was sanctioned. Defendant no.1 further executed sale deed dated 11.10.2013, in favour of defendant no.3 in a fraudulent manner. It is however explained that in the legal notice dated 16.08.2012, it was inadvertently mentioned that defendant no.1 was paid ₹4,00,000/- as earnest money through a cheque, whereas the same was a separate transaction and the earnest money was in-fact paid in cash. It is pleaded that another transaction had been entered between the plaintiff and defendant no.1, wherein a sum of ₹4 lakhs was taken as a loan by defendant no.1. A postdated cheque for the re-payment of the said amount was issued by defendant no.1. The same was dishonoured and a complaint under Section 138 of the Negotiable Instruments Act, (for short 'NI Act') was filed by the

plaintiff. It is pleaded that all the defendants connived with each other and the instruments in favour of defendants no.2 and 3, were executed by defendant no.1 only with a view to deprive the plaintiff by avoiding the execution of the sale deed. Hence the suit was filed.

Defendants no.1 to 3 contested the suit and filed separate written statements. In his written statement defendant no.1 raised various preliminary objections. It is denied that defendant no.1 ever agreed to sell the suit property to the plaintiff or that any such agreement to sell was executed. It is denied that any amount had been borrowed by defendant no.1 from the plaintiff. Defendant no.2- i.e., the appellant's wife also denied the execution of the agreement to sell dated 14.07.2011. She claimed to be the exclusive owner in possession of the portion of the suit property sold to her, being a *bona fide* purchaser. Defendant no.3, in his written statement also claimed to be a *bona fide* purchaser of the property for consideration and he denied the execution of the agreement to sell. Dismissal of the suit was prayed for by all the defendants.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to possession by way of specific performance of agreement to sell dated 14.07.2011 executed between the plaintiff and defendant as prayed for?OPP
2. Whether the mutation No. 4011 dated 09.04.2012 on the basis of alleged transfer deed is illegal, null and void and is liable to be set aside?OPP
3. Whether the alleged transfer deed of ownership dated 20.07.2011 in favour of defendant no.2 is liable to be set aside as prayed for?OPP
4. Whether the sale deed dated 11.10.2013 executed by defendant no.1 in favour of defendant no.3 is also liable to be set aside?OPP
5. Whether all the defendants are liable to execute regular

- sale deed in favour of the plaintiff?OPP
6. Whether plaintiff is entitled to permanent injunction as prayed for?OPP
 7. Whether the suit is not maintainable in the present for,?OPD
 8. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD
 9. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD
 10. Whether the plaintiff has suppressed the material facts from the Court?OPD
 11. Whether defendant no.2 and 3 are bona fide purchaser for consideration?OPD
 12. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances, as well as the evidence on record observed that, defendant no.1 has denied entering in an agreement to sell dated 14.07.2011, Ex.P-2, but while appearing as DW-1, defendant no.1 has introduced another story that the plaintiff and her husband were pressurizing and forcing him to append his thumb impressions on blank papers and stamp papers for allegedly securing a loan of ₹4,00,000/-, borrowed by him from the plaintiff in July, 2011. Stand taken by the defendant that the amount of ₹4,00,000/- as borrowed by him was returned and no such agreement to sell was executed by him in favour of the plaintiff, was disbelieved by the learned trial Court while observing that no such defence was ever taken by defendant no.1 in the criminal proceedings, neither is the same mentioned in the compromise which resulted in culmination of the proceedings under Section 138 of the NI Act. It is held by the learned trial Court that the payment of the entire amount of ₹5,50,000/- was duly proved on record. Therefore, suit filed by the plaintiff was decreed and defendant no.1 was directed to execute the sale

deed of the suit property as per Ex.P-2, in favour of the plaintiff within two months of preparation of certified copy of the judgement.

Appeal preferred by the present appellant and his wife was dismissed by the learned Additional District Judge, Jalandhar, vide impugned judgement and decree dated 21.09.2018.

Defendant no.3-Pawan Kumar, did not appeal against the judgement and decree dated 07.07.2017, passed by the learned trial Court.

Aggrieved from both the judgements and decrees dated 07.07.2017 and 21.09.2018, present appeal has been filed by appellant-defendant no.1 alone.

Learned counsel for the appellant vehemently argues that both the learned Courts below have wrongly decreed the suit filed by the respondent-plaintiff. It is submitted that in-fact a sum of ₹4,00,000/- was taken as a loan from the respondent-plaintiff in July 2011. A cheque in this regard was issued by the appellant. A false complaint under Section 138 of the Act was filed against the present appellant. Certain blank cheques had been got signed by the plaintiff at the time of advancing of the amount in question. The appellant had never agreed to sell his land in favour of the plaintiff. Learned trial Court has wrongly observed that no such defence had been taken by the appellant in the proceedings under the Act. It is further submitted that the agreement to sell dated 14.07.2011 is not proved by the evidence on record. Reference is made to the cross-examination of PW-5-Satnam Singh, the scribe of the agreement (Ex.P-2). It is pointed out that PW-5 admitted that the entry regarding the agreement to sell was not effected by him in his register and in any case, PW-5, was not working as an

independent scribe at the Tehsil Complex. PW-5, was working with one Pawan Kumar, who was a licenced deed writer. It is thus prayed that this appeal be allowed and the judgements and decrees passed by the learned Courts below be set aside.

I have heard learned counsel for the appellant and have gone through the file as well as the photocopy of the relevant record furnished in Court today by learned counsel for the appellant.

Learned counsel for the appellant has urged that the alleged agreement to sell dated 14.07.2011 is a forged and fabricated document. In fact, the plaintiff had given financial assistance of ₹4,00,000/- in cash to the appellant and at that time signatures of the present appellant were obtained by the plaintiff on blank documents, stamp papers etc. It is these papers which have been misused to prepare the agreement to sell, Ex.P-2. However, the evidence on record does not lend any kind of credence to the arguments raised by learned counsel for the appellant. It is a matter of record that the plaintiff has specifically pleaded in regard to two separate transactions with defendant no.1. First, is regarding the agreement to sell dated 14.07.2011 executed by defendant no.1 in respect to the suit property for a total sale consideration of ₹5,50,000/-. Second transaction is in regard to the loan amount of ₹4 lakhs given by the plaintiff to defendant no.1 by way of a cheque. ₹4,00,000/- in cash, it is pleaded, was handed over to defendant no.1 as earnest money. The remaining amount of ₹1,50,000/- is proved to have been received by defendant no.1 as is evident from the testimony of PW-4- Pankaj Kumar Jha, Clerk, Allahabad Bank, Phillaur. PW-4 has proved the copy of the cheque, EX.P-15, as well as signatures of defendant no.1 on the

backside as Ex.P-16, besides its due encashment by said Nirbair Singh, present appellant. PW-4, was admittedly not cross-examined on behalf of the defendants.

Execution of the agreement to sell is duly proved by Nirotam Pamma son of Subhash Chander-PW-2, an attesting witness of the agreement to sell. PW-2 specifically stated that a sum of ₹4,00,000/- was handed over to defendant no.1-Nirbair Singh at the time of execution of the agreement to sell, Ex.P-2. PW-3, Rishu Gupta, has proved the issuance of a legal notices, Ex.P-6 and P-8 and has clarified the inadvertent mistake regarding mention of ₹4,00,000/- being given by a cheque as earnest money. PW-5-Satnam Singh, the deed writer has proved that he scribed Ex.P-2 and Ex.P-3. Much stress has been laid by learned counsel for the appellant on the testimony of Satnam Singh to urge that he was admittedly not a licenced deed writer, but was working with one Pawan Kumar, a licenced deed writer at Tehsil Complex, Phillaur. Moreover, he did not make the relevant entry of Ex.P-2, in his register. However, I do not find any merit in the said argument because this by itself does not detract from the credibility of the plaintiff's case.

Defendant no.1 in his cross-examination has admitted his photograph on the agreement to sell, Ex.P-2., but denied his signatures and thumb impressions at certain places on the agreement. At the same time, he has taken a plea that his signatures were obtained on blank papers. It is a matter of record that no effort was made by the said defendant to have his thumb impressions/ signatures examined from an expert to substantiate his case.

Argument raised on behalf of the appellant that it was only a loan of ₹4,00,000/- which was taken by defendant no.1 from the plaintiff, which stood returned and no agreement to sell was executed by defendant no.1, is clearly negated from the evidence on record. Subsequent receipt of ₹1,50,000/- is proved on record. Learned counsel for the appellant is unable to deny that in the proceedings under Section 138 of the Act, the complaint was decided against defendant no.1. Copy of judgement dated 11.02.2014, passed by the learned Sub-Divisional Judicial Magistrate, Phillaur, is on record as Ex.P-18. In the appeal filed by the appellant, the matter was compromised and the terms and conditions were reduced into writing on 15.05.2015, Ex.P-19. It is not denied that in the said compromise, there is not a whisper of the agreement to sell, as to whether it was indeed executed or it was only a document otherwise drawn up by the plaintiff to secure the loan. No such stand of agreement to sell, Ex.P-2, being illegally drawn up by the plaintiff was ever taken by defendant no.1 in the proceeding under the NI Act. Both the learned Courts below have rightly concluded that the agreement to sell dated 14.07.2011, Ex.P-2, was indeed executed between the parties. Total consideration amount is proved to have been received by defendant no.1. Merely, because the sale deed was not executed on 14.06.2012, when the remaining amount of ₹1,50,000/- was handed over to defendant no.1, cannot be a reason to detract from the credibility of the plaintiff's case.

Learned counsel for the appellant-defendant no.1, is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the

learned Courts below after proper appreciation and consideration of the evidence on record, have returned concurrent findings of fact vide impugned judgements, which call for no interference.

No other argument has been addressed.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 07.07.2017 and 21.09.2018 passed by the learned Civil Judge (Jr. Division) Phillaur and learned Additional District Judge, Jalandhar, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

14.05.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.