IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1400 of 2019(O&M)
Date of Decision:13.03.2019

Salim

.................APPELLANT

Vs.

Randhir Singh and others

.................RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Munish Mittal, Advocate
for the appellant.

****

DR. RAVI RANJAN, J.(Oral Judgment)

This appeal is directed against the Judgment and Decree dated 09.01.2019 passed in Civil Appeal No.CA-190-2014 passed by Ld. Addl. District Judge, Yamuna Nagar at Jagadhri by which, the Judgment and Decree passed in Civil Suit No.36-CS of 2009 dated 19.07.2014 passed by Civil Judge (Jr. Divn.), Yamuna Nagar at Jagadhri has been affirmed and the appeal has been dismissed by the First Appellate Court.

Short facts, which would be necessary for consideration of the *lis*, stands enumerated as under:-

The plaintiff-appellant filed a suit seeking a decree of permanent injunction restraining the defendants from interfering in the actual and physical possession of the plaintiff in one house consisting of three rooms, latrine, bathroom and open yard, fully described in the plaint. It is alleged in the plaint that in the month of September, 2009, the plaintiff was in dire need of Rs.5,000/- because the wife of plaintiff wanted to file nomination papers for contesting election of M.L.A. from Jagadhri constituency. The plaintiff came into contact with the defendants who assured the plaintiff that they will provide the required amount of Rs.5,000/- and asked the plaintiff to purchase a stamp paper and the defendants got the signatures of the plaintiff on the said blank stamp paper on the front and back side and also on some other printed papers. Thereafter, Rs.5,000/- was given to the plaintiff on 24.09.2009. However, due to some technical reasons, the nomination papers filed by wife of the plaintiff was rejected and she could not contest election for the legislative assembly of Haryana from Jagadhri constituency. In October, 2009, the plaintiff contacted the defendants so that the loan amount of Rs.5,000/- could be returned back along with interest of Rs.500/- but the defendants flatly refused to accept aforesaid amount from the plaintiff. They informed the plaintiff that they have prepared an agreement to sell on the stamp paper which was procured by the defendants from plaintiff and as per the agreement to sell, it was shown that the plaintiff has received the aforesaid loan amount of Rs.5,000/- as earnest money from the defendants and the total value of the property was shown to be Rs.5,50,000/-. The last date for execution and registration of the sale deed was fixed as 30.10.2009. It has been alleged that, under the garb of said agreement to sell, defendants are now interfering into the actual and physical possession of the property and hence the suit was filed.

Defendant No.1 appeared and contested the suit by filing written statement along with a counter claim stating therein that the plaintiff had executed an agreement to sell of the house in dispute on 24.09.2009. The plaintiff received an amount of Rs.5,000/- as earnest money at the time of execution of agreement to sell in the presence of the witnesses and signed the agreement to sell.

It has further been averred that as per the agreement to sell, defendant No.1 paid Rs.95,000/- to the plaintiff on 01.10.2009 towards the consideration amount in the presence of the witnesses, i.e., defendants No. 2 and 3 and again paid Rs.25,000/- on 20.10.2009. However, on 30.10.2009, i.e., the last date of the execution of the sale deed, plaintiff did not turn up in the office of Sub-Registrar for execution of the sale deed whereas defendant No.1 was present in the office of Sub-Registrar, Mustafabad during the office hours along with balance sale consideration, stamp charges, registration fee of sale deed. Defendant No.1 got his presence marked in the office of the Sub-Registrar by affidavit attested. It was claimed that the intention of the plaintiff was malafide and due to that reason, the plaintiff has filed the suit even prior to the date fixed for execution and registration of the sale deed in favour of defendant No.1. Defendant No.1 requested the plaintiff to the get the sale deed executed and registered as per the agreement but he flatly refused the same and even threatened to alienate or transfer the suit property to some other person though the defendant was ready with the balance consideration and was ready and willing to perform his part of the agreement. Hence, a counter claim was made.

However, in the written statement, it has been averred that the plaintiff has not executed any agreement to sell dated 24.09.2009 and even if it is assumed that total sale consideration was Rs.5,50,000/-, there was no question of executing an agreement to sell by merely accepting Rs.5,000/- as earnest money. The subsequent payment of Rs.98,000/- by defendant No.1 on 01.10.2009 and then again Rs.25,000/- on 20.10.2009 was also denied.

Defendants No. 2 to 4 also filed their common written statement supporting the stand of defendant No.1 and stating that defendant No.1 had paid

Rs.95,000/- to the plaintiff on 01.10.2009 in the presence of the aforesaid defendants. The plaintiff also received Rs.25,000/- on 20.10.2009 from defendant No.1 in the presence of the aforesaid defendants.

The Trial Court, on consideration of the pleadings of the parties, framed following issues:

> "1. Whether the plaintiff is entitled for a decree for a permanent injunction in respect of the property as fully detailed and described in the head note of the plaint, as alleged? OPP
>
> 2. Whether the present suit is not legally maintainable? OPD
>
> 3. Whether the plaintiff has no locus-standi to file the present suit? OPD
>
> 4. Whether the plaintiff has concealed the true and material facts from the Court ? OPD
>
> 5. Whether the defendant is entitled for a decree for possession by way of specific performance of agreement to sell dated 24.09.2009 of the suit property, as fully detailed and described in the counter claim, as alleged? OPD
>
> 6. Whether the suit is bad for mis-joinder of necessary parties? OPD.
>
> 7. Whether the counter claim filed by the defendant not is false and frivolous, as alleged? OPD.
>
> 8. Relief."

In order to prove his case, the plaintiff examined four witnesses. PW1, i.e., plaintiff-Salim examined himself, PW2 Shamsheeda, PW3 Dhanpat (re-examined as PW4) and Om Parkash as PW5. The plaintiff also placed and relied upon the copy of the notice by Registrar Office Ex.P1.

On the other hand, to rebut the case of the plaintiff, the defendants examined three witnesses. Defendant No.2 himself appeared as DW1. Bhagwan

Singh (defendant No.3) appeared as DW2 and Randhir Singh as DW3. The defendants have also placed on record the original agreement dated 24.09.2009 (Ex.D1), Part payment receipts (Ex.D2 & D3). Affidavit before the Sub-Registrar (Ex.D4), Jamabandi for the year 2007-08 and mutation is Ex.D6.

After considering the submissions raised on behalf of the parties, the Trial Court has decided issue Nos. 1 and 5 in favour of respondent/defendant No.1 holding that the plaintiff has clearly admitted his signatures on the agreement to sell in his testimony. Defendant No.1 has proved the document by producing the marginal witnesses also before whom the transactions of Rs.5,000/- and thereafter Rs.95,000/- and then again Rs.25,000 were made. Though the plaintiff has stated that his signatures were taken on blank stamp papers but the Trial Court has opined that once he admits the signatures on the agreement to sell and the defendants produces the witnesses who have signed the agreement to sell on the margin and are also witness of the money transaction, the onus will shift upon the plaintiff to prove claimed fraud that the signatures on blank papers signed as a security to loan amount have been utilized fraudulently by converting it into an agreement to sell.

The plaintiff has produced PW3-Dhanpat and PW5-OM Parkash as witnesses of the borrowing of loan of Rs.5,000/- as the wife of the plaintiff was going to contest assembly elections but the Trial Court has noticed that there is no reason as to why other persons would sign as a witness but none of them could put their signatures on the concerned documents. That apart, PW-3 and PW-5 were not able to say as to what was the interest rate on which the said loan was given to the plaintiff.

In the facts and circumstances, the Trial Court has held that since no fraud could be proved by the plaintiff and the aforesaid vital flaws are there in the testimonies of PW3 and PW5, they are not worth reliance. To the contrary, defendant No.1 has proved the execution of the agreement to sell by producing DW2 and DW3 as witnesses who have also filed their written statement and has also proved payment of Rs.95,000/- to the plaintiff on 01.10.2009 and also a sum of Rs.25,000/- on 20.10.2009. Therefore, the question raised by the plaintiff why only Rs.5,000/- would be accepted as earnest money also would be of no value as subsequent payment of Rs.1,15,000/- has also been proved by the defendants. That apart, the defendants have also proved that defendant No.1 was ready with the consideration amount and all necessary requisites on 30.10.2009 showing his willingness and readiness so that sale deed can be executed but the plaintiff did not appear before the registrar. As such, the counter claim was allowed and the plaintiff was directed to execute the sale deed.

The plaintiff-appellant preferred appeal before the First Appellate Court assailing the aforesaid Judgment and Decree. However the same was also dismissed upholding the findings recorded by the Trial Court.

Learned counsel for the appellant has vehemently argued before this Court that a fraud has been played upon the plaintiff by defendant No.1 as he had never executed agreement to sell(Ex.D1) or the receipts under Ex.D2 and Ex.D3 in his favour. Rather defendant No.1, in collusion with defendants No. 2 and 3, has procured the signatures of the plaintiff-appellant on blank stamp papers on the pretext of security for a loan and same were converted into agreement to sell and receipts.

It is also urged on behalf of the appellant that even if the Courts below had come to the conclusion that defendants have been able to prove the agreement to sell by leading cogent and convincing evidence still the suit property being the only residential house of the plaintiff, the discretion should have been exercised by the Courts below by directing for refund of the consideration earnest money/entire money paid by the defendant in place of directing the plaintiff to execute a sale deed of the only residential house of the plaintiff which definitely would be very harsh upon him.

However, having given anxious consideration to the submissions raised on behalf of the appellant and upon going through the impugned Judgment, this Court does not find any force in the same.

Both the Courts below have noticed that the plaintiff has accepted his signatures on the documents including the agreement to sell(Ex.D1), which have been Mark-A, Mark-B, Mark-C, Mark-D, Mark-E, Mark-F, Mark-G and Mark-H. Once the signatures are admitted by the plaintiff and defendant No.1 has produced the marginal witnesses to prove the execution of the document and passing of consideration, if a plea of fraud is taken by the plaintiff then the onus would shift upon him to prove it beyond all reasonable doubt by raising specific pleading and proving it by leading cogent evidence.

Both the Courts below have noted that the allegations of fraud levelled by the appellant-plaintiff are general in nature and the same are not corroborated by leading cogent evidence.

In my view also, mere pleadings cannot take place of prove as the allegations of fraud are to be proved like a criminal trial and the burden of proof would always be upon the party who has levelled such allegation.

So far as next issue is concerned, though a contention was raised by learned counsel for the plaintiff-appellant before the First Appellate Court that he has no residential property except the suit property and, as such, he would suffer hardship if he is directed to sell the suit property, the Court has noticed that neither such plea has been taken in the pleadings of the plaintiff nor could the same be proved by leading any convincing evidence. In such a situation, such limb of argument cannot be accepted.

In my considered view, no substantial question of law or cogent ground could be raised by the appellant at the time of hearing of this appeal warranting interference in the concurrent finding made by the Courts below.

In the result, this appeal, being devoid of any merit, is dismissed.

(DR. RAVI RANJAN)
JUDGE

13.03.2019
Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No