

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

RSA No. 1373 of 2019 (O&M)

Date of decision : October 31, 2019

Basant

.....Appellant

Versus

Balwan Singh

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Saurabh Dalal, Advocate
for the appellant.

Mr. B.K. Bagri, Advocate and
Mr. Shivraj Malik, Advocate
for the caveator/respondent.

LISA GILL, J.

Appellant – defendant is aggrieved of judgment and decree dated 29.01.2018 passed by the learned Civil Judge (Senior Division), Rohtak whereby the suit for specific performance filed by the respondent – plaintiff has been decreed, as well as judgment and decree dated 05.12.2018 passed by the learned Additional District Judge, Rohtak, wherein the defendant's appeal has been dismissed.

Brief facts necessary for the adjudication of the case are that the plaintiff – respondent filed a suit for specific performance of agreement to sell dated 12.09.2013, stated to have been executed by the defendant – appellant in favour of the plaintiff, in respect to the suit property as detailed in the plaint for a total sale consideration of ₹36 lakhs. The entire amount of ₹36 lakhs is claimed to have been paid to the defendant on 12.09.2013 itself. It is pleaded that the agreement to sell and the receipt of payment was duly executed in the presence of witnesses and it was agreed that the sale deed

would be executed and registered, as and when desired by the plaintiff. Legal notice dated 07.07.2015 was served by the plaintiff upon the defendant asking him to execute the sale deed in respect to the suit property on 17.07.2015. The plaintiff claimed to have remained present in the office of Registrar, Rohtak alongwith the stamp charges but the defendant did not turn up to perform his part of the contract. The suit for specific performance was, accordingly, filed.

Defendant – appellant contested the suit. Various preliminary objections were taken in the written statement. Defendant – appellant denied that he ever entered in agreement to sell dated 12.09.2013 with the plaintiff, alleging the said document to be a forged and fabricated one. Dismissal of the suit was sought.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- 1) Whether the defendant executed an agreement to sell dated 12.09.2013 in favour of the plaintiff with regard to the suit land for valuable consideration as alleged?OPP.
- 2) Whether the plaintiff was and is willing to perform his part of contract?OPP
- 3) If issues No. 1 and 2 are proved, whether the plaintiff is entitled to the specific performance of agreement to sell dated 12.09.2013 as prayed?OPP
- 4) If issue no. 1 and 2 are proved, whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP
- 5) Whether the suit is not maintainable in the present form? OPD.
- 6) Whether the suit of the plaintiff has not been correctly valued for the purpose of court fees? OPD.

7) Whether the plaintiff has concealed true and material facts from the court and if so, its effect?OPD

8) Relief.

Evidence was led by both the parties to prove their respective claims.

Learned trial Court concluded that the plaintiff had successfully proved the execution of agreement to sell dated 12.09.2013 as well as payment of the entire consideration amount, besides giving of the possession of the property to the plaintiff and the defendant had failed to prove the document to be a fraudulent one. Therefore, the suit was decreed in favour of the plaintiff. Appeal filed by the defendant was dismissed by the learned Additional District Judge, Rohtak vide judgment dated 05.12.2018. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant submits that both the learned courts below have grossly erred in decreeing the suit for specific performance filed by the respondent – plaintiff. It is argued that the plaintiff failed to prove the execution of agreement to sell dated 12.09.2013 on the basis of the evidence on record. Moreover, in case, it is pleaded by the plaintiff that possession of the demised property was handed over pursuant to the said agreement to sell, it was necessary for agreement dated 12.09.2013 to be registered. No benefit can be availed by the plaintiff – respondent on the basis of the unregistered agreement to sell. It is further contended that the application for additional evidence moved by the appellant before the learned Additional District Judge was not decided by the learned Additional District judge, therefore, impugned judgment and decree dated 05.12.2018 should be set aside on this count alone and the matter remanded for a decision afresh. It is, thus, prayed that this appeal be

allowed, impugned judgment and decree dated 29.01.2018 passed by the learned Civil Judge (Senior Division), Rohtak as well as judgment and decree dated 05.12.2018 passed by the learned Additional District Judge, Rohtak be set aside.

Learned counsel for the respondent/caveator, however, refutes the abovesaid arguments and submits that both the learned courts below have rendered concurrent findings of fact against the appellant – defendant which call for no interference. Thus, it is prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have perused the file with their able assistance.

Plaintiff – respondent in order to prove his case has himself testified as PW1. PW2 Neeraj Tyagi, one of the attesting witnesses of the agreement to sell has fully supported the case of the plaintiff. PW3 Gulab Singh, Tehsildar has identified his signatures on the affidavit Ex.P5, which was executed by the plaintiff to prove his presence for execution and registration of the sale deed on 17.07.2015 pursuant to legal notice dated 07.07.2015. Agreement to sell dated 12.09.2013 has been duly proved on record as Ex.P1. Argument on behalf of the appellant that the scribe of the agreement to sell (Ex.P1) has not been examined, therefore, the same is not proved is clearly bereft of any merit, hence rejected. It is relevant to note that the defendant – appellant has taken a stand that agreement to sell dated 12.09.2013 is a forged and a fraudulent document. Learned counsel for the appellant is unable to deny that no particulars of the alleged fraud have been mentioned or stated by the defendant though a suggestion has been put on behalf of the defendant to the plaintiff that there were family relations

between the plaintiff and the defendant, a number of transactions took place between them and it is by taking advantage of the same that the plaintiff obtained signatures of the defendant on blank papers and misused these papers for preparing an agreement to sell in question. Learned trial Court has rightly negated the said plea of fraud in the wake of complete absence of any material particular coming forth on behalf of the defendant. The defendant in his written statement has set up an evasive defence of the agreement to sell and the receipt being forged documents. At this stage, it is relevant to mention that defendant vide order dated 01.05.2017 passed by the learned trial Court was directed to give specimen signatures for the purpose of comparison with his disputed signatures on agreement to sell dated 12.09.2013. It is specifically noted by the learned trial Court vide order dated 01.08.2017 that in case he did not turn up to give specimen signatures, an adverse inference shall be drawn against him regarding his signatures on agreement to sell dated 12.09.2013. The defendant admittedly did not come forward to give his specimen signatures. Learned Additional District Judge, Rohtak in his judgment dated 05.12.2018 has observed that the signatures of the appellant are available on his affidavit Ex.DW1/A as well as at the end of his testimony recorded on 08.12.2017, the written statement, affidavit and the power of attorney. It is opined by the learned Additional District Judge, Rohtak that a perusal of the said signatures shows that they are very much similar to the signatures found present on the agreement (Ex.P1) and the receipt of payment of money (Ex.P6). While taking judicial notice, it is concluded that the said signatures have been appended by one and the same hand. There is no infirmity in this finding.

Another argument vehemently pressed into service by the

learned counsel for the appellant is that the agreement to sell 12.09.2013 is admittedly an unregistered one and in case the plaintiff pleads that he is in possession of the demised premises pursuant to execution of the agreement to sell dated 12.09.2013, it has to be compulsorily registered. In the absence of registration of the said document, the plaintiff, it is submitted, is not entitled for the specific performance of the agreement to sell dated 12.09.2013. The suit, it is submitted, should be dismissed on this ground alone. There is no merit in this argument as the same has admittedly been answered against the defendant – appellant by a Division Bench of this Court in **Ram Kishan and another vs. Bijender Mann alias Vijender Mann and others 2013 (2) RCR (Civil) 419**, wherein it is specifically held that:-

- (a) A suit for specific performance, based upon an unregistered contract/agreement to sell that contains a clause recording part performance of the contract by delivery of possession or has been executed with a person, who is already in possession shall not be dismissed for want of registration of the contract/agreement;
- (b) the proviso to Section 49 of the Registration Act, legitimises such a contract to the extent that, even though unregistered, it can form the basis of a suit for specific performance and be led into evidence as proof of the agreement of part performance of a contract.

The plaintiff has, thus, clearly proved execution of the agreement to sell dated 12.09.2013 besides the receipt of money (Ex.P6). Possession of the property is also proved to be with the plaintiff. The plea raised by learned counsel for the appellant for remand of the case for decision on the application for leading additional evidence is noticed, only to be rejected. The appellant submitted an application for additional

evidence before the learned Additional District Judge, Rohtak. Copy of the same is attached as Annexure A1 with this appeal. It is submitted that this application was not decided by the learned Additional District Judge, therefore, the impugned judgment and decree dated 05.12.2018 passed by the learned Additional District Judge, Rohtak be set aside and the matter be remanded for a decision afresh after deciding the application seeking to lead additional evidence. I have perused the said application which admittedly bears no date and learned counsel for the appellant is unable to inform about the date on which the said application was moved. Perusal of this application reveals that the applicant sought recalling of the respondent – plaintiff Balwan for further cross examination in the interest of justice. It is stated in para 2 of this application that the statement of PW1 Balwan/respondent – plaintiff was recorded before the learned trial Court. He was cross examined by the appellant's earlier counsel but some material and important questions were somehow not put to him, therefore, the said plaintiff be recalled for further cross examination. Perusal of the application reveals that there is no description or delineation of the material and important questions which remained to be put to PW1 Balwan/respondent – plaintiff. Learned counsel for the appellant is unable to point out the said material and important questions even at this stage on a pointed query, therefore, in the given facts and circumstances there is no justification or requirement for remanding the matter before the learned Additional District Judge, Rohtak for a decision afresh on the appeal filed by the defendant – appellant after deciding his application for additional evidence.

Both the learned courts below have rendered concurrent

findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law, is involved for consideration in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 29.01.2018 passed by the learned Civil Judge (Senior Division), Rohtak as well as judgment and decree dated 05.12.2018 passed by the learned Additional District Judge, Rohtak which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

October 31, 2019
rts

(Lisa Gill)
Judge

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