

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

RSA No.2101 of 2019 (O&M)
Date of Decision: May 13, 2019

Ajay Kumar (since deceased) through his LRs

...Appellant

Versus

Ravi Goyal and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Darshan Singh Malwai, Advocate
for the appellant.

JAISHREE THAKUR, J. (Oral)

1. The instant regular second appeal has been filed against the judgment and decree dated 17.01.2019 passed by the first Appellate Court whereby, the appeal filed by the appellant-defendant No.1 against the judgment and decree dated 10.08.2017 passed by the lower court, decreeing the suit of respondent No.1-plaintiff, has been dismissed.

2. The brief facts of the case are that respondent No.1-plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 24.12.2011 against the appellant-defendant No.1 and others, regarding the residential house, as detailed in the headnote of the plaint. Respondent No.1-plaintiff averred that the appellant-defendant No.1 and others offered to purchase the suit property, pursuant to which, he agreed to purchase the suit property for a total sale consideration of ₹ 15,00,000/- vide agreement to sell dated 24.12.2011, which was duly signed by the parties and an amount of ₹ 14,00,000/- was paid as earnest money. It was averred

that on 01.12.2012 i.e. the last day of execution of the sale deed as well as on 02.12.2012 there were holidays, as such, respondent No.1-plaintiff remained present before the office of Sub Registrar, Malerkotla on 30.11.2012 and 03.12.2012 along with the balance sale consideration and other expenses, but the appellant-defendant No.1 and other defendants did not come present and as such, respondent No.1-plaintiff got his affidavits attested regarding his presence. It was submitted that after 03.12.2012, respondent No.1-plaintiff approached the appellant-defendant No.1 and others defendants to perform their part of the agreement number of times and ultimately they refused to do so. In their written statement, the appellant-defendant No.1 and others defendants denied the execution of the agreement to sell dated 24.12.2011, while submitting that they alone are not owners of the suit property, rather, they are joint owners of the suit property to the extent of $\frac{1}{2}$ share and remaining $\frac{1}{2}$ share is owned by Parkash Wati wife of Sohan Lal and said Parkash Wati is in possession of the entire suit property. It was claimed that the appellant-defendant No.1 along with other defendants being out of possession, wanted to get their share separated. Respondent No.1-plaintiff was familiar with their entire position and instigated them to execute an agreement to sell in his favour to the extent of their share and possession, so that he may be able to put them in the possession of the suit property, on the basis of alleged agreement to sell. It was further claimed that the alleged agreement to sell is forged and result of misrepresentation.

3. From the pleadings of the parties, issues were framed and both the parties led their respective evidence. After hearing both the sides, the

lower court decreed the suit of respondent No.1-plaintiff. Aggrieved, the appellant-defendant No.1 along with other defendants preferred an appeal before the first Appellate Court, which stood dismissed, affirming the findings recorded by the lower court. Now, both the judgments and decrees passed by the courts below are under challenge in this regular second appeal.

4. Learned counsel for the appellant-defendant No.1 argues that both the courts below have erred in decreeing the suit of respondent No.1-plaintiff. It is submitted that respondent No.1-plaintiff has failed to prove the existence of the amount of ₹ 14 lacs paid as earnest money. It is also contended that name of the attesting witnesses was got typed by respondent No.1-plaintiff on the agreement to sell subsequently, which is apparent, as it is with a different type writer, showing that the agreement to sell is a forged and fabricated document.

5. I have heard learned counsel for the appellant-defendant No.1 and have also gone through the case file.

6. In the instant case, respondent No.1-plaintiff duly proved the execution of the agreement to sell in question by examining the attesting witness Kailash Chand as PW4, who proved that appellant-defendant No.1 along with other defendants agreed to sell the house in question for a consideration consideration of ₹ 15,00,000/- in his presence and in the presence of other witness Manoj Singla. He also proved the payment of ₹ 14,00,000/- as earnest money and the date fixed for execution of the sale deed as 01.12.2012. PW1 Irshad Ali, Stamp Vendor, PW2 Kuldeep Singh, Notary Public and PW3 Abdul Latif have duly proved and corroborated the

case of respondent No.1-plaintiff. Whereas, on the other hand, DW1 Hem Raj during his cross-examination admitted his signatures on the agreement to sell, apart from admitting the signatures of his son Ajay Kumar and daughter Shailja Singla. DW1 Hem Raj also admitted that copy of the sale deed was handed over to respondent No.1-plaintiff by his son Ajay Kumar. Moreover, DW3 Rana Bansal, Handwriting and Fingerprint Expert admitted in the cross-examination that her report is silent on the aspect whether all the signatures on agreement to sell were appended before the manual type material or after the material which was typed manually. She also admitted the fact that the document Ex.P7 i.e. agreement to sell except the part which has been typed on a manual typewriting, is a genuine document. The appellant-defendant No.1 along with other defendants set up the plea of fraud and misrepresentation, however, miserably failed to prove the same. It goes without saying that it is very easy to raise a plea of fraud but it is equally difficult to prove the same. It is so said, because a plea of fraud is to be proved like a criminal charge. However, since in the case in hand, appellant-defendant No.1 along with other defendants took the plea of fraud in a casual manner and did not make even a sincere effort to prove the said plea of fraud by leading relevant and cogent evidence in this regard, they were bound to fail. That is what has been held by both the learned courts below.

7. Under these circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their impugned judgments and decrees and the same deserve to be upheld, for this reason also. This view taken by this court also finds support

from the judgments of the Hon'ble Supreme Court and judgments of this court in *Gautam Sarup vs. Leela Jetly and others*, 2008(7) SCC 85, *Santa Singh vs. Tarsem Singh*, 2010(67) RCR (Civil) 520, *Devi Lal vs. Shekaran and another*, 2011(5) RCR (Civil) 615, *Usha and others vs. Subhash Chander and others*, 2014(5) RCR (Civil) 813, *M/s Machhi Ram Kishan Singh Sidana, Rice Mills vs. Sham Singh and others*, 2015(9) RCR (Civil) 506, *RSA No.4070 of 2016 (Chamkur Singh and another vs. Raghubir Singh and another)* decided on 13.1.2017, *RSA No.1239 of 2016 (Satbir Singh vs. Mukesh Rani and others)* decided on 17.1.2017, *State Bank of India vs. Ghamandi Ram (dead) by his legal representatives Gurbux Rai*, 1969 AIR (SC) 1330, *Surjit Lal Chhabda vs. Commissioner of Income-tax, Bombay* 1976 AIR (SC) 109, *Surjit Singh and others vs. Gurmit Singh and others*, 2010(3) PLR 122 (P&H), *Hawa Singh vs. Daya Nand and others*, 2010(21) RCR (Civil) 918, *Gurmail Singh vs. Rajbir Singgh and another*, 2014 (4) RCR (Civil) 397 and *Jagdev Singh and another vs. Major Singh and others*, 2014(82) RCR (Civil) 214. Thus, the plea of fraud and misrepresentation has been rightly rejected by the courts below.

8. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-defendant No.1, which has no merit.

9. Dismissed.

May 13, 2019

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No