

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

RSA No.1988 of 2011 (O&M)

Date of decision : 01.04.2019

Raees Ahmad

...Appellant

Versus

Smt. Dayawanti

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Kunal Mulwani, Advocate for the appellant.

Mr. J.S. Brar, Advocate for the respondent.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court dismissing the suit filed for specific performance of the agreement to sell dated 24.03.1998 with reference to a shop while reversing the judgment and decree passed by the learned trial Court.

The plaintiff is already in possession as a tenant.

Defendant contested the suit and pleaded that the agreement to sell was got thumb marked under coercion and undue influence with the assistance of the police of that area.

Learned First Appellate Court has recorded various reasons for refusing the specific performance of the agreement to sell.

Learned Senior Counsel appearing on behalf of the appellant has submitted that the stand taken by the defendant in the written statement

is different than the stand taken in the notice which was got served by the defendant to the plaintiff. He has further submitted that the defendant has failed to prove fraud. He has further submitted that in the notice Ex.P7, receipt of earnest money of ₹30,000/- was admitted whereas in the written statement, this fact has also been denied. He has further submitted that the reasons recorded by the First Appellate Court are beyond pleadings. He also drew attention of the Court to the fact that Vijay Kumar, one of the signatory to the agreement to sell is brother of Dayawanti, defendant-respondent.

On the other hand, learned counsel appearing on behalf of the respondent has defended the judgment. He has submitted that there was dispute between the parties and the complaint was lodged by the plaintiff on 26.10.1997 which resulted into FIR dated 10.03.1998 Ex.P6. He further drew attention of the Court to the fact that nephew of the defendant was arrested and was in police custody when the alleged agreement to sell is alleged to be executed. Hence, he submitted that the agreement to sell was not on account of free will and volition. He submitted that if one looks at the cross-examination of the plaintiff, he has admitted that he had lodged the complaint against the defendant and his sons in the Police Station, Mani Majra and they were called in the Police Station. Ultimately, Police also presented a challan against the defendant and her family members but the defendant and her family members were acquitted.

This Court with able assistance of the learned counsel for the parties had gone through the judgments passed by the Courts below and the record.

No doubt, when the notice was served by the defendant to the plaintiff dated 27.03.1998, he had admitted the receipt of ₹30,000/- but the assertions with regard to the pressure of the police on the basis of false complaint of the plaintiff were specifically made. It was also asserted in the notice that Hans Raj, nephew of the defendant was arrested and, therefore, the defendant was forced to enter into an agreement to sell. In the notice itself, it was alleged that the police official-S.S. Rana and Fateh Singh had joined the plaintiff in this entire episode. It may be noted here that this notice is dated 27.03.1998. Through this notice, the agreement to sell was revoked and rescinded and offer was made to refund the amount. It was rather mentioned that the draft is enclosed. Hence, substantially the stand of the defendant is consistent.

The learned First Appellate Court has not hold that the agreement to sell is result of fraud. The First Appellate Court has after finding that the agreement to sell was result of coercion, declined to grant relief of specific performance of agreement to sell.

Argument of the learned Senior Counsel that the reasons given by the First Appellate Court to refuse the specific performance of the agreement to sell are beyond pleadings, does not have substance because only the facts are required to be pleaded. The decree for specific performance of the agreement to sell is discretionary and the Court has to apply its mind that whether in the facts and circumstances of the case, decree of the specific performance of the agreement to sell should or should not be granted. The reasons which have been given by the First Appellate Court are on the basis of examination of the record which has been produced by the

parties. Therefore, the defendant was not required to plead the reasons to refuse the decree for specific performance of the agreement to sell.

It is apparent that the plaintiff claimed that he is in possession of the property in dispute as a tenant under defendant-respondent. It has also come on record that the plaintiff filed a complaint against the defendant on 26.10.1997 which resulted into registration of FIR dated 10.03.1998. It has also come on record that Hans Raj, nephew of the defendant was arrested. In such circumstances, it is highly improbable that there would be an agreement to sell with free will and volition. Still further, it is not normal that Fateh Singh who is marginal witness of the agreement to sell is taking unusual interest in the litigation. When he appeared in evidence, he admit that he comes to the Court on each and every date of hearing with the plaintiff. When plaintiff also appeared in evidence, he also admit this fact. It is not clear why Fateh Singh who is alleged to be a marginal witness is prosecuting the suit like a party to the litigation. Still further, learned First Appellate Court has rightly noticed that in such circumstances, it was necessary for the plaintiff to examine the Stamp Vendor to prove that the stamp paper was purchased by the defendant. The non-judicial stamp paper on which the agreement to sell was scribed is issued by a Stamp Vendor. However, the thumb impressions of the defendant at the time of purchase of the non-judicial stamp paper does not exist. The Stamp Vendor is required to issue the stamp paper to the person purchasing after getting his or her signatures/thumb impressions on the reverse side of the paper, as also in his register (Notebook) maintained.

Still further, in this case, the alleged agreement to sell is not

scribed by a Regular Document Writer. The plaintiff has failed to disclose the name of typist from whom Ex.P1, the alleged agreement to sell was got typed, although it has come in evidence that it was got written in the premises of the Estate Officer, Chandigarh where many regular Scribes are available.

In view of what has been observed above, this Court does not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court. However, learned First Appellate Court has committed an error which is required to be rectified. The defendant in her notice Ex.P7 has admitted the receipt of ₹30,000/-, the alleged earnest money and has offered to repay the amount.

Learned First Appellate Court has accepted the appeal without ordering refund. Obviously the First Appellate Court has committed an error.

Accordingly, the present Regular Second Appeal is partly accepted. There shall be decree of refund of earnest money i.e. ₹30,000/- alongwith interest at the rate of 9% p.a. from the date of institution of the suit till repayment.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

01.04.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No