

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

RSA No.2186 of 2011 (O&M)

Date of decision: 26.03.2019

Sat Pal

..... Appellant

Versus

Sham Lal

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Pritam Saini, Advocate
for the appellant.

Mr. Munish Gupta, Advocate
for the respondents/cross-objectors.

ANIL KSHETARPAL, J. (ORAL)

Vide this order, appeal as well as cross-objections (XOBS-12-C-2013) shall stand disposed of. The appeal has been filed by the plaintiff against the judgment passed by the learned First Appellate Court refusing decree for possession by way of specific performance of the agreement to sell whereas the defendant has filed cross-objections pleading that the order of refund of the amount is also erroneous.

Some facts are required to be noticed. The plaintiff-appellant Satpal and Ranjit Singh are brothers. Ranjit Singh claims an agreement to sell from Sham Lal i.e. the defendant-respondent dated 01.02.2000 with regard to the property in dispute i.e. shop for a total sum of Rs.3,00,000/- in which Rs.1,60,000/- is said to have been paid as earnest money. Ranjit Singh filed a suit for specific performance of the aforesaid agreement to sell dated 01.02.2000. During the pendency of the suit, on 13.03.2000, Ranjit

Singh as well as Sham Lal i.e. defendant-respondent entered into a settlement and earnest money of Rs.1,60,000/- was to be refunded and agreement to sell was to be cancelled. It is the case of the plaintiff-Satpal that on that day itself, the defendant entered into an agreement to sell with him for sale of same shop for a total sum of Rs.3,00,000/- and received Rs.1,60,000/-.

Now the present suit was filed seeking specific performance of the agreement to sell dated 13.03.2000.

The defendant contested the suit and pleaded that on the day, first agreement to sell was cancelled, his thumb impressions/signatures were taken under the impression that first agreement to sell is being cancelled and the second agreement to sell is forged and fabricated.

Learned trial Court decreed the suit by recording a finding that agreement to sell as well as payment of earnest money has been proved. However, First Appellate Court has found the circumstances of the case and the events which have taken place create a suspicion and therefore, the Court has refused to grant relief of possession by way of specific performance of the agreement to sell and ordered refund of the earnest money. That is how two appeals have been preferred.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant submitted that once the execution of the agreement to sell and payment of earnest money has been proved, the decree for specific performance is obvious and therefore, First Appellate Court has erred in refusing to pass a decree. He has further

submitted that the defendant had pleaded that the agreement to sell is forged and fabricated and since he has failed, therefore, the Court has erred in refusing specific performance. On the other hand, learned counsel for the respondent has submitted that the First Appellate Court has recorded cogent reasons to refuse specific performance of the agreement to sell. He submitted that on 13.03.2000, on the one hand, agreement to sell in favour of the brother of the plaintiff was cancelled whereas on the other hand, agreement to sell is being entered into for the same amount for the same property with same amount of earnest money in favour of the plaintiff. He submits that the facts of the case clearly prove that the signatures/thumb impression on the agreement to sell were obtained on the pretext of canceling first agreement to sell i.e. dated 01.02.2000.

This Court has analyzed the argument of learned counsel. There are certain facts which remain unexplained are as under:-

1. There is no reason forthcoming as to why the defendant would get an agreement to sell in favour of the brother of the plaintiff cancelled and enter into a fresh agreement with the plaintiff for the same property, same amount of earnest money at same total sale consideration. If there was any intention to sell, the defendant would have conceded to the claim of the brother of the plaintiff and the decree would have been passed particularly when the suit of specific performance of the agreement to sell filed by the brother was pending and the Court fee has been paid.

2. The plaintiff has not disclosed these facts in his plaint. Thus, the plaintiff has not filed the suit with clean hands.

3. It is undisputed that brother of the plaintiff is a commission agent who normally indulge in lending the amount.

4. The plaintiff is a signatory as a marginal witness to the agreement of cancellation dated 13.03.2000, however, when he was confronted with this fact in the cross-examination, he denied knowledge of agreement to sell between his brother and the defendant. Still further, the evidence of the scribe-Ankur Goyal is not above board. The entry of cancellation in his register is at serial No.35 whereas the agreement to sell is entered in his register at item No.36. The conduct of this witness has been found to be worthy of censure by the First Appellate Court.

Keeping in view the aforesaid facts, this Court does not find any good reason to interfere with declining the relief of specific performance of the agreement to sell.

Let us now deal with order of refund which has been challenged in the cross-objections. It will be noted that the defendant is not a rustic villager rather he is also a shop keeper. In the agreement to sell, he has not only thumb impression but has also signed. Still further, the execution of the agreement to sell has been found to be proved by both the Courts below.

In view thereof, there is no ground to interfere.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Hence, the appeal as well as cross-objections (XOBS-12-C-2013) are dismissed.

26.03.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No