IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3513-2011(O&M)
Date of decision:-30.8.2019

Jage Ram

...Appellant

Versus

Tara Chand

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Anil Rathee, Advocate
for the appellant.

Mr.S.P. Chahar, Advocate
for the respondent.

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H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Jage Ram had filed a suit against defendant Tara Chand seeking possession of residential plot and shop situated within municipal limits of Jhajjar (hereinafter referred to as the suit property) by way of specific performance of agreement to sell dated 3.1.2006.

As per the case of the plaintiff, the defendant being owner of the suit property had agreed to sell the same with him on 3.1.2006 for a sum of Rs.4,30,000/- in presence of Devender Singh son of Ram Kumar, resident of Dulina receiving a sum of Rs.3,30,000/-; that the final date for execution of sale deed was fixed as 15.4.2006; however, the said date was extended up to 5.11.2006 on which date, the defendant had received a sum of Rs.10,500/- from the plaintiff i.e. Rs.2,500/- in cash and Rs.8,000/- in the form of cheque of Central Cooperative Bank dated 22.8.2006; that at request of the defendant, the date for execution of the sale deed was further extended up to 15.12.2006. According to the plaintiff, he has always been ready and willing to perform his part of contract and had gone to the office of Sub-Registrar on 15.12.2006 for the purpose of getting the sale deed executed by the defendant in his favour but the defendant did not turn up; thereafter the defendant in collusion with another person wanted to execute the sale deed in respect of suit property to some other person; that on final refusal of the defendant on 20.12.2006 to execute and get registered the sale deed in favour of the plaintiff, the plaintiff had brought the suit.

On being put to notice, the defendant appeared and filed written statement contesting the suit, raising preliminary objections to the effect that the suit was not maintainable; that no cause of action arose to the plaintiff to bring the suit; that the plaintiff did not have any locus standi to file the suit and that the plaintiff was estopped by his own act and conduct from filing the suit. On merits, the defendant denied having entered into an agreement to sell the suit property with the plaintiff on 3.1.2006 for a sum of Rs.4,30,000/- or having received Rs.3,30,000/- as earnest money on that very day or for that matter, final date for execution of the sale deed having been fixed as 15.4.2006, which was allegedly extended up to 5.11.2006 or 15.12.2006. The defendant denied having received a sum of Rs.2,500/- in cash and Rs.8,000/- by way of cheque. As per the version of the defendant, he had constructed an iron gate for the plaintiff and a sum of Rs.8,000/- was due towards him from the plaintiff, which the plaintiff was not bothering to pay and a dispute arose between the parties and finally, the plaintiff made payment of Rs.8,000/- through a cheque obtaining thumb impressions of defendant on some blank papers on the pretext of preparing a receipt for payment. Refuting the remaining allegations, the defendant prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the defendant vide agreement dated 3.1.2006 agreed to sell the suit land to the plaintiff for a consideration of Rs.4,30,000/- and actually received Rs.3,30,000/- at the time of execution of sale deed? OPP.
2. Whether the day of execution and registration of the sale deed was fixed 15.4.2006 and thereafter, it was extended up to

5.11.2006 by the defendant after receipt of sum of Rs.10,500/-? OPP.

3. Whether the plaintiff is ready and willing to perform his part of contract? OPP.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether the plaintiff has no cause of action to file the present suit? OPD.
6. Whether the plaintiff has no locus-standi to file the present suit? OPD.
7. Relief.

The parties were afforded adequate opportunities to lead their evidence.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 to 3 in favour of the plaintiff, issues No.4 to 6 against the defendant. Resultantly, the trial Court vide judgment and decree dated 25.8.2010 decreed the suit of the plaintiff with costs and a decree for specific performance of contract/agreement to sell regarding the suit property was passed in favour of the plaintiff and against the defendant and direction was issued to the defendant to execute the sale deed in favour of the plaintiff as per agreement to sell dated 3.1.2006 after receiving balance sale consideration amount of Rs.89,500/- from the plaintiff, failing which, the plaintiff could get the assistance of the Court agency in that regard.

Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Jhajjar, which was assigned to learned Additional District Judge, Jhajjar, who vide judgment dated 22.4.2011 accepted the appeal, set aside the judgment and decree passed by the trial Court and consequently, dismissed the suit of the plaintiff.

Now it was turn of the plaintiff to feel aggrieved and he has filed the present regular second appeal before this Court, notice of which was issued and the respondent-defendant appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I do not find any merit in this appeal.

Specific performance is a discretionary relief, which is to be granted by the Court keeping in view all facts and circumstances and such relief cannot be claimed as a matter of right. A perusal of the judgment passed by the Trial Court goes to show that it is result of non-application of mind and adoption of a very casual approach. The major part of the judgment contains pleadings of the parties, evidence adduced by them and arguments advanced by learned counsel. The discussion is confined in two paras, which for the purpose of ready reference are being reproduced as under:

"14. From the oral as well as documentary evidence available on the record it is clearly proved on the file

that the defendant has admitted his thumb impressions on the agreement Ex.P2 and it is also clear that defendant has received Rs.3,30,000/- at the time of execution of agreement from the plaintiff and lateron he received Rs.10,500/- but defendant did not appeared in the office of Sub Registrar in order to execute the sale deed and plaintiff marked his presence by filing affidavit in this regard. Therefore, in these circumstances plaintiff is entitled for a decree of specific performance of contract on the basis of agreement dated 3.1.2006. Therefore, all these issues are hereby decided in favour of the plaintiff.

ISSUES No:4,5,6:

15. The onus to prove all these issues was on the defendant. Learned counsel for the defendant has argued that suit of the plaintiff is not maintainable and plaintiff has no cause of action and locus standi to file the present suit. In view of above discussion in issues no.1 to 3, the suit of the plaintiff is very much maintainable and he has locus standi and cause of action to file the present suit. Hence, all these issues are hereby decided against the defendant.

A perusal of such paras go to show that no proper analysis of the evidence has been done and in a very vague and cursory manner verdict on issues has been given. There is no sound reasoning for arriving at the conclusions. The judgment was certainly not sustainable. The trial Court has admitted execution of the document simply for the reason that defendant has admitted his thumb impressions on the agreement Ex.P2. But the admission is to be seen in whole and not in parts and the context in which the admission had been made is also to be kept in mind. The defendant had no where admitted having entered into an agreement with the plaintiff and rather stated that his thumb impressions had been obtained by the plaintiff on the blank papers on the pretext of receipt of payment of Rs.8,000/- in the form of a cheque, which the plaintiff owed to defendant for making of an iron gate. It cannot be taken to be admission on the part of the defendant with regard to having entered into an agreement to sell with the plaintiff. The trial Court then goes on to observe that it is clear that defendant had received a sum of Rs.3,30,000/- at the time of execution of agreement from the plaintiff and later on received a sum of Rs.10,500/-, without discussing the evidence adduced by the parties on that point. From where the trial Court got the clarity in that regard had been left unexplained. There is no specific finding on the issues. It has not been specifically held that plaintiff had proved on record that defendant had entered into an agreement to sell with him or that he has always been ready and willing to perform his part of the agreement and is even now ready and willing to do so. Therefore, this judgment was not legally sustainable and the First Appellate Court was fully justified in setting aside the said judgment and decree passed by the trial Court. The judgment passed by Additional District Judge, Jhajjar is quite detailed and well reasoned showing due application of mind based upon proper appraisal and appreciation of evidence and correct interpretation of law. Learned Additional District Judge, Jhajjar had found the agreement set up by the plaintiff to be a suspicious document and he has given reasons for arriving at such conclusion, which are as follows:

(i) that an agreement to sell is typed by a professional scribe/typist but he was neither examined as a witness by the plaintiff nor any explanation was given by him for doing so and since the execution of agreement to sell was disputed, it was incumbent upon the plaintiff to examine the scribe of the said agreement as a witness during the trial, which the plaintiff did not do so intentionally rendering execution of agreement to sell to be highly doubtful;

(ii) that agreement to sell bears thumb impressions of the defendant but no date has been put below such thumb impressions, which is normally done at the time of execution of documents, that creates a doubt regarding genuineness of the agreement;

(iii)that the plaintiff claims to have paid a sum of Rs.3,30,000/- to the defendant at the time of execution of agreement to sell, however, the plaintiff failed to explain the source from which he had managed that amount;

(iv)that the sole attesting witness to agreement to sell namely Devender Singh is a close relative of plaintiff; the plaintiff had not examined any independent witness associated with the execution of the impugned agreement to sell; and

(v)that the plaintiff claims to have paid a sum of Rs.8,000/- by cheque to defendant out of remaining sale price of Rs.1 lakh in November, 2006; the plaintiff could not explain as to why he issued cheque for a sum of Rs.8,000/- only to the defendant, that rather proves the defence set up by the defendant that cheque for a sum of Rs.8,000/- was given by plaintiff to defendant as charges for fabrication of the gate and his thumb impressions obtained on the blank papers on the pretext of preparing receipt were converted into agreement to sell.

In addition to these lacunae observed by learned Additional District Judge, Jhajjar, there are certain other reasons to doubt the genuineness of the transaction. The stamp paper on which the agreement to sell is typed is shown to have been purchased in the name of the defendant but signatures of the defendant below the endorsement are not there. The plaintiff Jage Ram appearing as PW1 in his cross-examination stated that he had purchased the stamp paper on which the agreement was scribed, which seems to be somewhat unconvincing. If stamp paper was required to be purchased in the name of Tara Chand then he should have done so instead of plaintiff purchasing it in the name of defendant. The plaintiff as per his own admission in the cross-examination had put his signatures in the register of stamp vendor, which is also unnatural. Then the agreement does not bear name, address or seal of the scribe/typist.

Furthermore, the agreement is shown to have space for signatures of four witnesses. It does not contain name or address of any witness except with regard to space; at serial No.2 name of Devender singh, his father's name and address are hand written and his signatures appeared to be there. Then the space with regard to witness at serial Nos.1, 3 and 4 being vacant put a question mark over the authenticity of the document.

Furthermore, the positioning of the various thumb impressions purportedly those of defendant on the agreement rather point out that those were already there and document was typed later on.

One more factor to be considered is that as claimed by the plaintiff appearing as PW1, he and defendant had gone to the typist and both of them had got the agreement scribed. If they could have gone to the typist for that purpose then what prevented the said scribe/typist to enter the agreement in his register, obtain signatures of the parties and attesting witnesses. That would have gone a long way, in showing genuineness of the transaction ruling out the possibility of any forgery or fabrication later on and would have strengthened the case of plaintiff but that was not to be.

Furthermore, if the plaintiff had paid a substantial amount of Rs.3,30,000/- out of the total consideration amount agreed to be Rs.4,30,000/- then what prevented him from getting the sale deed executed at that very time since the balance amount of Rs.1 lakh could have been managed by him as he has stated that he has got 20 acres of agricultural land.

Furthermore, in the photocopy of the agreement, which is available on record, the date at the end appears to be typed as 33.1.2006, which could not be there by any stretch of imagination.

The endorsements also appear to be highly unnatural. As per version of the plaintiff, final date for execution of the sale deed was agreed to be 15.4.2006, which was extended to 5.11.2006. As per endorsement the defendant had stated that due to his domestic reasons, the date was being extended. What could be the domestic reasons for extension of date has not been explained specifically by the defendant. In any case, the defendant would have received the balance consideration amount and he should have been more than willing to get the amount at the earliest instead of extending the date in such a manner. With regard to second endorsement extending the date up to 15.12.2006, again that endorsement appears to be unnatural and improbable. Why should plaintiff give Rs.10,500/- to defendant out of alleged balance of Rs.1 lakh. The amount could have been in even figures say Rs.10,000/-, Rs.15,000/- and Rs.20,000/- but giving an amount of Rs.10,500/- appears to be somewhat unnatural and that too Rs.2,500/- in cash and Rs.8,000/- by way of cheque. The very genuineness of these endorsements is questionable. Interestingly, in none of these endorsements, the dates on which the extensions had been made are given. If we see the plaint, the plaintiff has very cleverly not given the dates on which the period for execution of sale deed had been extended vide the two endorsements.

If we see the application submitted by plaintiff to Sub Registrar, Jhajjar for the purpose of marking his presence Ex.P3, that application also contains several cuttings and over-writings in the date of cheque with regard to date of issuance of cheque and amount paid. Interestingly, it is mentioned therein that on the day of agreement a sum of Rs.3,40,500/- had been given as earnest money when according to the case of the plaintiff it was a sum of Rs.3,30,000/-. The original sum mentioned is Rs.3,45,000/-, which has been struck off. It does not contain any initials etc. of plaintiff rendering his version more doubtful.

Learned counsel for the appellant has referred to authority ***Bakhtawar Singh Versus Gurdial Singh, 2003(1) RCR(Civil)242***, wherein it was observed that when there is variations in figures in the agreement to sell, however the vendors denied the execution of agreement and admit his signatures and receipt of earnest money, though leading ignorance on account of illiteracy then such a person cannot be believed.

This judgment is not applicable since the agreement to sell has been found to be a document of doubtful nature for several reasons and not only for variation in figures. Here the defendant does not admit receipt of earnest money even.

The findings recorded by the Additional District Judge, Jhajjar do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgment and decree passed by the Additional District Judge, Jhajjar. Those are upheld.

Finding not merit in the appeal, the same stands dismissed.

30.8.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No