IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1551 of 2012 (O&M)
Date of decision: 05.03.2019

M/s Durga Traders (a registered partnership firm) Anaj Mandi Rajpura
... Appellant

Versus

Bajrang Dass and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rakesh Gupta, Advocate
for the appellant.

Mr. Peeyush Gagneja, Advocate
for respondent No.2.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against the judgment and decree dated 10.08.2011 passed by the Additional District Judge, Ferozepur whereby appeal against the judgment and decree dated 07.11.2008 passed by the trial Court filed by the appellant has been dismissed but appeal preferred by the respondents is allowed and as a consequence, suit filed by the appellant for specific performance of agreement was dismissed in toto by reversing the judgment and decree qua alternative relief of recovery passed by the trial Court.

The appellant/plaintiff filed a suit for specific performance of agreement to sell dated 12.06.1998 and the same was partly allowed by the trial Court by granting alternative relief of recovery of Rs.12,60,000/- with proportionate costs and interest @ 8% per annum from the date of agreement till filing of the suit and future interest @ 6% per annum from the date of suit till actual realization. The judgment and decree passed by the trial Court became subject matter of two appeals, one preferred by the appellant and the other by the respondents which were decided vide common judgment and decree dated 10.08.2011 passed by the Additional District Judge, Ferozepur.

The appellant/plaintiff, a registered partnership firm of Rajpura, District Patiala through Sh. Jatinder son of Sh. Tulsi Ram staked its claim to the suit property measuring 28 kanals situated in area of Abohar, District Ferozepur on the basis of agreement to sell dated 12.06.1998 whereby respondent No.2 being an attorney of his adoptive father Bajrang Dass respondent No.1 agreed to sell the suit land for Rs.12,60,000/- i.e. @Rs.3,60,000/- per acre and entire sale consideration was stated to be paid at the time of agreement on 12.06.1998 and sale deed was to be executed within six months of agreement. It is averred that the appellant always remained willing and ready to perform its part of the contract by incurring expenses qua registration of the sale deed. Sh. Dev Raj Aneja son of Gerri Ram, one of the partners of the appellant firm went to Abohar on 11.12.1996 and contacted the respondents for execution of sale deed but the respondents did not visit the Tehsil Courts Compound or Sub Registrar's office Abohar on that day.

Respondent/defendant No.1 contested the suit with the plea that neither any such agreement of sale was executed nor payment of Rs.12,60,000/- was made by the appellant. It is averred that there was a dispute between Durga Traders of Rajpura of District Patiala and Organic Chemical Oil Ltd., Malerkotla in which family of defendants were members and directors. In arbitration proceedings, signatures of defendant No.2-Ramesh Kumar were obtained on some blank non-judicial stamp papers and blank papers by the arbitrators, from both the parties. Later, the arbitrators joined hands with plaintiff and by misusing blank papers got prepared alleged agreement dated 12.06.1998 with regard to suit land. No consideration of agreement has been passed nor defendant No.2 general attorney of defendant No.1 had ever agreed to sell land measuring 28 kanal in favour of the plaintiff or any other person.

The trial Court framed issues, permitted the parties to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record the trial Court accepted plea of the appellant that the respondents/defendants entered into agreement to sell dated 12.06.1998 in respect of suit land and received entire sale consideration of Rs.12,60,000/- on the basis of agreement but the Court refused to allow specific performance of the agreement for the reason that decree of specific performance of contract would result in hardship, by referring to judgment of Hon'ble the Supreme Court **Nirmala Anand Vs. Advent Corporation (P) Ltd. and others, 2002(2) Latest Judicial Reports 616 and 2002(5) SCC 481.** As has been noticed hereinbefore, the appeal preferred by the appellant asserting its claim for specific performance of agreement to sell was dismissed but appeal filed by the respondents against decree of recovery was allowed and suit filed by the appellant was dismissed with costs.

Counsel for the appellant would argue that respondent No.1 in para 16 of the preliminary objections has alleged that the agreement has been prepared by misusing blank papers on which signatures of respondent No.2 were obtained in arbitration proceedings on account of some dispute between Durga Traders of Rajpura, District Patiala and Organic Chemical Oil Ltd., Malerkotla in which family of the defendants are members and directors. It is argued with vehemence that once the respondents have admitted signatures of Ramesh Kumar who is admittedly attorney of respondent No.1 Bajrang Dass, it was obligated upon the respondents to prove said fact. It is further argued that respondents have failed to lead even an iota of evidence to substantiate their plea of blank signatures when otherwise an adverse inference is liable to be drawn for the respondents withheld themselves from the witness box without any tangible explanation. It is further argued that the appellant has adduced all possible evidence in their possession to establish its case that agreement to sell was executed by respondent No.2 on behalf of respondent No.1 and he received the entire sale consideration of Rs.12,60,000/- on the date of agreement itself. He would further argue that Dev Raj Aneja, one of the partners of the appellant firm and signatory of the agreement on behalf of firm has categorically stated in his cross examination that agreement to sell was got typed by Ramesh Kumar in his absence, therefore, failure of the appellant to examine the person who typed the agreement cannot be commented adversely against the appellant.

Counsel representing respondent No.2, as respondent No.1 has since passed away and respondent No.2 is his legal representative has supported the judgment and decree passed by the Appellate Court with the submission that the appellant being a plaintiff has to stand on its own legs and cannot derive any advantage from weakness of defence of the contesting party. It is vehemently argued that the Appellate Court has rightly taken into consideration various relevant and material circumstances that cast cloud upon validity and genuineness of agreement of sale prepared by the appellant. It is further argued that evidence produced by the appellant itself is sufficient to show that agreement to sell cannot form the basis to grant any relief much less specific performance, a relief that is discretionary and based upon equity.

I have heard counsel for the parties, perused the paper book and records.

The Appellate Court has rejected the agreement of sale for the reasons assigned in paras 13 to 16 of the judgment. As has been noticed hereinbefore, the appellant firm is doing its business at Rajpura, District Patiala. The respondents are residents of Abohar, District Ferozepur and suit land is also situated at Abohar. The agreement of sale has been prepared on a stamp paper of Rs.10/- purchased on 21.04.1998 from Ludhiana. The endorsement on the back of stamp paper in respect of its purchase does not contain signature or thumb impression of Bajrang Dass. The appellant examined the stamp vendor Bhai Raj Singh PW7. In his cross examination, he has candidly admitted that parties of the agreement are not known to him personally and he cannot say if the stamp paper was purchased by Bajrang Dass or not. The register maintained by the stamp vendor containing entry qua sale of stamp paper of agreement in April, 1998 was not produced on the premise that the same has been lost and DDR in this regard has been registered. In the given circumstances, testimony of Bhai Raj Singh cannot be attached any weightage to advance cause of the appellant that stamp paper on which agreement has been typed was purchased by Sh. Bajrang Dass from Ludhiana.

The appellant examined Surinder Kumar, one of the marginal witnesses of the agreement and Dev Raj Aneja one of its partners and signatory of the agreement on behalf of the purchaser. Surinder Kumar PW8 is none-else but real brother of Jatinder, one of the partners of the firm through whom the suit has been instituted. There is a complete contradiction in the testimony of Surinder Kumar and Dev Raj Aneja with regard to typing of this agreement in their presence or otherwise. Surinder Kumar in his cross examination has deposed to the following effect:-

> This agreement was typed by the typist. I do not know the name of typist. I cannot tell about description of typist. I cannot tell the chamber/shop number, complex where the

> typist was sitting. The agreement on stamp paper was written in my presence. All the witnesses of agreement signed in my presence. I myself and Dharm Chand witnessed the agreement. Dev Raj was present. The agreement was typed at 1/1.30 pm. Ramesh Chander Jain was also present. We came from Rajpura to Abohar one day prior to the execution of the agreement.

Surinder Kumar was cross examined on 26.08.2004. Dev Raj Aneja was examined in chief on 26.08.2004 and was briefly/partly cross examined on the day and his cross examination was deferred. He was later cross examined in detail on 29.04.2005. In his detailed cross examination, he would state that the agreement was got typed by Ramesh Kumar. He cannot tell the name of typist. The agreement was not got typed in their presence. He did not know from where the same was got typed. This part of the statement of Dev Raj Aneja is contrary to testimony of Surinder Kumar. It is difficult to accept to reason that if Surinder and Dev Raj Aneja had gone to Abohar from Rajpura only for the purpose of execution of agreement of sale, one would be present at the place of typing and the other would not be there. No such fact has been brought on record that Surinder Kumar and Dev Raj Aneja were staying at different places in Abohar on 11.06.1998 or they visited Ramesh Kumar for the purpose of execution of agreement on 12.06.1998, separately. It appears to the Court that since Surinder Kumar could not divulge the relevant information with regard to typing of the agreement, Dev Raj Aneja knowing that he would also be confronted with similar type of questions with regard to typing/scribing of the agreement, tried to save his position by saying that the agreement was not typed in his presence.

The agreement does not contain the name, serial number or stamp etc. of the person who typed the same. It remains a complete mystery as to who typed the agreement. It also becomes an established position of the case that it was not prepared by a regular deed writer. Purchase of stamp paper of Rs.10/- in April, 1998 and there being no evidence as to who typed the agreement are certainly too important circumstances which have rightly been considered against the appellant by the Appellate Court.

It is well accepted that a man may tell lie but not the circumstances. As per plea of the appellant, the entire sale consideration of Rs.12,60,000/- was paid to the vendor at the time of agreement but sale deed was to be executed within six months of the agreement. There is nothing on record suggestive of the fact that the parties had any friendly relations much less related to each other. On the contrary, it is admitted by Dev Raj Aneja that there was a dispute between the appellant firm and Organic Chemical Oil Ltd., Malerkotla in which family of the defendants were members and directors. In the given scenario, it is difficult to accept to reason that if the appellant had paid the entire sale consideration, there was any reason for them to give six months time for execution of the sale deed more particularly in the circumstances that there is no tangible explanation forthcoming from the side of appellant or its partner Sh. Dev Raj Aneja. I would hasten to add that the agreement records that possession of land had been delivered to the vendee. This factum of delivery of possession would be examined from two different aspects. Had it been true that possession had been delivered to the vendee, giving time of six months for execution of sale deed could be justifiable. However, in the case at hand, there is no evidence on record that the appellant firm is in possession of suit land. On the contrary, a plea has been raised by the appellant that in case the appellant is found to be not in possession of suit land, a decree for possession be also passed. Counsel for the appellant has failed to point out any materials on record to prove that the appellant firm is in possession of suit land. The agreement contains a recital with regard to delivery of possession which is factually incorrect. That being so, it also creates a doubt in regard to validity and genuineness of the agreement of sale when examined in the light of aforesaid observations.

The appellant has raised a plea that entire amount of Rs.12,60,000/- was paid to the vendor on 12.06.1998. No payment has been made by way of negotiable instrument or through a bank transaction. Dev Raj Aneja had stated that an entry was made in the accounts maintained by the firm with regard to payment of Rs.12,60,000/-. Since in the present case, there was a serious dispute with regard to execution of agreement of sale, non production of books of accounts as an evidence of payment of Rs.12,60,000/- would also compel the Court to draw an adverse inference against the firm and its partners for their failure to produce best documentary evidence which could throw light on the issue in controversy.

Taking a cumulative view of the facts and circumstances discussed hereinbefore, I do not find an error much less perversity in the reasoning adopted by the Appellate Court on the aforesaid aspects for rejecting the agreement of sale and entitlement of the appellant to any relief whatever on the basis thereof. However, findings of the Appellate Court with regard to addition/alteration in the agreement by writing/adding 6 in place of 1 with regard to the period of execution of sale deed to bring the suit within the limitation is patently erroneous as even if the limitation is reckoned w.e.f 12.06.1998, the date of agreement, suit filed on 27.03.1999 just after 9 months is otherwise clearly within limitation of three years prescribed under the Limitation Act. Similarly, findings of the Appellate Court that the agreement to sell required registration as it contained the factum of delivery of possession cannot stand the test of judicial scrutiny as there is no evidence on record that possession has actually been delivered in favour of the proposed vendee or even otherwise.

To be fair to the appellant, counsel is right in his submission that respondent No.1 failed to lead even an iota of evidence to prove its defence plea that agreement has been prepared on blank signatures of Ramesh Kumar allegedly obtained by the arbitrators due to some dispute between the appellant firm and Organic Chemical Oil Ltd., Malerkotla. Respondent No.1 rather examined an expert witness to prove that agreement was typed by using two type writers. However, there cannot be any denial about the settled position in law that plaintiff has to stand on his own legs to be successful in a litigation and he cannot derive advantage from weakness of defence. On a detailed consideration of the matter, this Court has arrived at a conclusion that agreement of sale is clouded by suspicious circumstances and the appellant has failed to dispel the same to satisfaction of the Court. In this view of the matter, I do not find any reason to interfere in the well founded findings recorded by the Appellate Court except on two aspects discussed hereinbefore, therefore, the judgment and decree passed by the Appellate Court can neither be termed as illegal nor perverse, warranting intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs. As the appeal has been decided on merits, applications for condonation of delay are of academic relevance.

05.03.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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