

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2237 of 2013 (O&M)

Date of decision : 24.7.2019

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Mohan Lal

.....Appellant

vs.

Vijay Kumar

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. J.S. Cooner, Advocate for the appellant

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H. S. Madaan, J.

Briefly stated, facts of the case are that plaintiff -Vijay Kumar, had filed a suit against Mohan Lal, seeking possession by way of specific performance of agreement to sell dated 9.7.2005, by directing the defendant to execute and get registered the sale deed in respect of land measuring 15 marlas i.e. 1/4th share of land comprised in Khewat/Khatauni No. 335/444, Khasra No. 46//19/1 (3-0), situated at village Garhi, Hadd Bast No. 245, Tehsil and District Panchkula, as per jamabandi for the years 2001-2002 alongwith all rights appurtenant thereto, on the basis of agreement dated 9.7.2005, on payment of balance sale consideration of Rs.1,67,500/-, besides craving for grant of decree for permanent injunction

restraining the defendant from alienating the suit land in any manner, whatsoever or creating any charge or encumbrance over it.

As per version of the plaintiff, the defendant represented to him that he alongwith one Lekh Raj son of Bali Ram resident of village Marar, Tehsil Morni, District Panchkula, happened to be joint owners in possession of suit land to the extent of 1/4th share each and for selling that he had taken consent from Lekh Raj. Accordingly an agreement to sell was entered into between the parties on 9.7.2005, for a total consideration calculated at the rate of Rs.13,500/- per marla and defendant received an earnest money of Rs.5,000/- from the plaintiff, in the presence of the witnesses. The last date for execution and registration of the sale deed was fixed as 1.1.2006. However, on 8.8.2005, the defendant contacted the plaintiff and requested him to pay Rs.30,000/- to the defendant for the reason that he was in dire need of money. The plaintiff accordingly paid that amount to the defendant as part payment of sale consideration. However, on 26.9.2005, the plaintiff visited the office of Joint Sub-Registrar, Raipur Rani, in connection with his personal work. He observed that defendant was in the process of selling that very land to some other person. The plaintiff asked him not to do so, but the defendant became aggressive and rather started threatening the plaintiff that he would alienate the suit land to some other person at a higher price. The plaintiff submitted a complaint in that regard to Joint Sub Registrar, Raipur Rani and SHO, Police Station, Raipur Rani and ultimately defendant was not successful in executing the sale deed in favour of some other person.

The plaintiff had filed a civil suit for permanent injunction against the defendant and Lekh Raj, before the the last date fixed for execution of sale deed. However, the suit was withdrawn by the plaintiff on 20.3.2006, since the last date for execution of the sale deed had expired and a fresh cause of action had arisen in favour of the plaintiff. The plaintiff contended that he has been always ready and willing to perform his part of agreement to sell and is still ready and willing to do so. He had requested the defendant to appear before the Joint Sub Registrar, Raipur Rani on 2.1.2006 since 1.1.2.006 being Sunday was a holiday. On 2.1.2006 the plaintiff went to the office of Joint Sub Registrar, Raipur Rani alongwith balance sale consideration and necessary expenses for the purchase of stamp duty etc. and remained present there from 9.00 A.M. to 5.00 P.M. However, the defendant did not turn up to execute the sale deed in favour of the plaintiff. Accordingly, the plaintiff got his presence marked in the office of Joint Sub Registrar, Raipur Rani by way of furnishing an affidavit dated 2.1.2006. He had requested the defendant several times to execute the sale deed in his favour but to no effect, as such the plaintiff was compelled to file a suit for possession by way of specific performance of the agreement to sell, as well as for permanent injunction.

On getting notice, the defendant appeared and filed written statement contesting the suit, taking up various preliminary objections with regard to maintainability of the suit, locus standi of the plaintiff to bring the suit, etc., further contending that no cause of action had arisen in favour of the plaintiff, against the defendant.

The defendant denied having entered into any agreement to sell in respect of the suit land with the plaintiff or receiving Rs.5,000/- from him as earnest money or for that matter the last date for execution of the sale deed having been fixed as 1.1.2006. According to the defendant, the alleged agreement to sell is a result of fraud and is a forged and fabricated document, created to grab the property of the defendant; that as a matter of fact, plaintiff was known to the defendant as he was serving in the same office, the defendant had taken a sum of Rs.20,000/- from the plaintiff as a friendly loan in the month of May 2005 and the plaintiff had obtained signatures of the defendant on some blank papers with an intention to execute receipt regarding the loan. The defendant has already sold his entire share to one Smt. Jogindro wife of Ronki Ram resident of village Ganoli, Tehsil and District Panchkula, for a valuable sale consideration vide sale deed dated 22.3.2006. However, the sale deed is yet to be registered. Nevertheless the actual and physical possession of the land in question has been delivered to the purchaser and defendant has no concern with it now. Refuting the remaining allegations in the plaint, the defendant prayed for dismissal of the suit.

No replication to the written statement was filed by the plaintiff.

From the pleadings of the parties, following issues were framed by Additional Civil Judge (Senior Division) Panchkula, vide order dated 4.12.2006 :-

1. Whether the defendant executed an agreement to sell in favour of the plaintiff on 9.7.2005 for a total consideration

of Rs.13,500/- per marla and received earnest money of Rs.5,000/- as alleged? OPP.

2. Whether the plaintiff is always ready and willing to perform his part of agreement, as alleged? OPP
3. Whether the plaintiff is entitled for relief of permanent injunction, as prayed for? OPD
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff has no cause of action to file the present suit.
6. Whether the plaintiff has no locus standi to file the present suit? OPD
7. Relief.

Parties were afforded opportunity to lead their respective evidence.

During the course of his evidence, plaintiff stepped into the witness box as PW-1 besides examining Surinder Pal as PW-2 and Rameshwar Dass as PW-3. He has tendered the following documents :-

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| 1. Certified copy of jamabandi for 2001-02 | Exhibit P1 |
| 2. Certified copy of mutation No.2626 | Exhibit P2 |
| 3. Agreement to sell dated 9.7.2005 | Exhibit P3 |
| 4. Receipt of Rs.30,000/- | Exhibit P4 |
| 5. Affidavit dated 2.1.2006 | Exhibit P5 |

In rebuttal, the defendant got his own statement recorded as

DW-1, in addition to that he examined Nathi Ram as DW-2. In his evidence, he tendered the following documents :-

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| 1. Copy of sale deed 22.3.2006 | Exhibit D1 |
| 2. Copy of plaint in civil suit titled
Vijay Kumar vs. Mohan Lal and Lekh Raj | Mark-A |
| 3. Copy of written statement of defendant
No.2 in civil suit titled Vijay Kumar vs.
Mohan Lal and another. | Mark-A2 |

After hearing the arguments, the trial Court decided issues Nos. 1 to 3 against the plaintiff and in favour of the defendant. Issues Nos. 4 to 6 were decided in favour of the defendant and against the plaintiff. As a result of findings on the issues, vide judgment and decree dated 24.12.2010 the suit of the plaintiff was dismissed with costs.

The plaintiff felt aggrieved by such judgment and decree passed by the trial Court and had filed an appeal to the learned District Judge, Panchkula, which was assigned to the Additional District Judge, Panchkula, who vide judgment and decree dated 15.1.2013, accepted the appeal and set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff, directing the respondent-defendant to execute the sale deed in favour of the appellant within two months from the date of passing of decree by the Ist Appellate Court, observing that in case respondent – defendant failed to execute the sale deed in favour of the appellant within two months after receiving the balance sale consideration, the appellant would deposit the balance sale consideration within a

period of two months after expiry of initial two months time given to the respondent, failing which the appeal would be deemed to be dismissed and after expiry of period of two months, the appellant was at liberty to seek assistance of the Court for execution of the sale deed in terms of agreement Exhibit P-3. In the concluding para learned Additional District Judge, Panchkula, observed that it has come on record that both appellant as well as the respondent are government officials, as driver and peon in the office of BDPO, Raipur Rani and they had entered into agreement to purchase and sell the immovable property without taking permission from the department, which amounts to misconduct on part of the government officials. Therefore, a copy of judgment was ordered to be sent to Deputy Commissioner, Panchkula with a direction to take departmental action against both the officials, in accordance with law.

Now it was the turn of the defendant to feel aggrieved and he has filed the present Regular Second Appeal before this Court, notice of which was given to the respondent, who was duly served, but did not appear as such was proceeded against ex parte.

I have heard learned counsel for the appellant, besides going through the record.

Learned trial Court had dismissed the suit filed by the plaintiff mainly on following grounds :-

1. that agreement to sell dated 9.7.2005 Exhibit P-3 contains name of Lekh Raj in the beginning but it does not bear signature of Lekh Raj who was co-sharer to the extent of

1/4th share alongwith defendant Mohan Lal, as is evident from jamabandi for the year 2001-2002 Exhibit P-1 and no explanation has been rendered by the plaintiff in that respect;

2. that receipt Exhibit P-4 on the back of the agreement to sell Exhibit P-3, is not signed by any of the attesting witnesses;

3. that the total amount has been calculated to be Rs.4,20,000/- showing balance of Rs.3,85,000/- but if calculation is made @ Rs.13,500/- per marla, then the total price of land of Mohan Lal comes to Rs.2,02,500/-. However, nothing has been explained by the plaintiff how this figure has been mentioned especially in the circumstances when agreement to sell Exhibit P-3 does not bear signatures of Lekh Raj whose land has been mentioned as subject matter of agreement to sell Exhibit P-3;

4. that PW-3 Rameshwar Dass stated that he did not know Mohan Lal and Lekh Raj earlier and he had typed the agreement to sell on identification of Surinder Pal. This agreement does not bear signatures of PW-3 Rameshwar Dass, as a person who had drafted the agreement;

5. that PW-2 Surinder Pal is the real brother of plaintiff which creates suspicion with regard to execution of document Exhibit P-3. In document Exhibit P-3 it is specifically mentioned that possession had been handed by

the defendant to the plaintiff but a perusal of the sale deed dated 22.3.2006 Exhibit D-1 clearly goes to show that possession has been handed over to one Smt. Jogindro who had purchased the property from defendant Mohan Lal vide sale deed dated 22.3.2006 Exhibit D-1;

6. that the plaintiff had only proved document affidavit dated 2.1.2006 Exhibit P-5 to the effect that he went to the office of Sub Registrar alongwith the required money for making payment of balance sale consideration to the defendant but he had not placed on record any document to the effect that he had ever withdrawn any such amount from any of the bank;

7. that the plaintiff had failed to prove due execution of agreement to sell dated 9.7.2005 Exhibit P-3 and that he had always been ready and willing to perform his part of agreement;

8. that he has failed to establish that he is entitled to permanent injunction restraining the defendant from alienating the suit property since the defendant had already alienated the suit property to one Smt. Jogindro Devi by way of sale deed dated 22.3.2006 Exhibit D-1.

Whereas learned Additional District Judge, Panchkula had reached somewhat different conclusion on the following grounds:-

1. that the respondent when appeared as DW-1, admitted his signatures on agreement to sell Exhibit P-3 and that he had taken Rs.30,000/- on 3.8.2005 as part payment. The

respondent also admitted his signatures on receipt Exhibit P-4. It being so, it was duty of the defendant to explain as to under what circumstances he had signed these documents;

2. that theory set up by the defendant that his signatures were obtained on blank papers was not believable since Exhibit P-3 is on stamp paper;
3. that as per his version, the defendant had re-paid the amount in the month of June 2005 and then he did not ask for return of blank papers;
4. that the plaintiff had examined his brother Surinder Pal as PW-2, who is attesting witness besides examining PW-3 Rameshwar Dass, Stamp vendor, who had scribed the agreement to sell and it appears that signatures of Lekh Raj were yet to be obtained and because of that reason, no mark was put up by PW-3. Moreover PW-3 is having no enmity with respondent nor any relation with the appellant;
5. that finding of the trial Court that it had not been explained that how amount of Rs.4,20,000/- was calculated, was wrong since earlier amount was calculated @ Rs.13,500/- per marla, whereas Lekh Raj brother of respondent was claiming rate of Rs.14,000/- per marla;
6. that in the civil suit for permanent injunction filed by the appellant, the respondent neither filed any written statement nor claimed that no such agreement to sell was ever arrived at between him and the appellant, though

- written statement was filed by Lekh Raj, who was not signatory to Exhibit P-3 and it was not binding upon him;
7. that the story of the respondent that appellant had raised a loan of Rs.20,000/- from him in the month of May 2005, which he had repaid is an after thought story because if the respondent had repaid the money then no such agreement would have been arrived at;
8. that the respondent had not filed any complaint to the police authority or the Court about alleged cheating or fraud being played upon him by the appellant-plaintiff, more particularly when he came to know about agreement to sell;
9. that respondent-defendant himself admitted his signatures on Exhibits P-3 and P-4, thus it would be presumed that he was aware of the contents of Exhibits P-3 and P-4 and he is a literate person;
- 10.that record shows that the appellant has been ready and willing to perform his part of the agreement to sell. The alleged sale deed executed by defendant in favour of Smt. Jogindro is not valid for want of registration. Furthermore, this deed was executed after filing of the present suit as such is hit by the principle of lis pendence, and ineffective qua rights of the plaintiff;
- 11.That respondent is real brother of Lekh Raj and name and share of Lekh Raj was included at the instance of the respondent. However, later on the respondent could not get

the signatures of his brother for the reasons best known to him. On this ground the entire agreement to sell cannot be said to be illegal or surrounded by suspicious circumstances. That finding of the trial court that agreement to sell is surrounded by suspicious circumstances, is not sustainable;

12.that the suit was maintainable and plaintiff had a cause of action and locus standi to bring the suit.

As such the suit was decreed.

After hearing learned counsel for the appellant and going through the record I find that the trial Court completely mis-read the facts and circumstances, mis-appraised the evidence available on the record and by wrong interpretation of law, dismissed the suit of the plaintiff. Whereas the judgment and decree passed by learned Additional District Judge, Panchkula, is well reasoned one based upon proper appraisal and appreciation of evidence and correct interpretation of law. There does not seem to be any illegality or infirmity therein. The learned Additional District Judge, Panchkula has rightly come to the conclusion that the plaintiff had successfully proved that the defendant had entered into an agreement to sell dated 9.7.2005, receiving Rs.5,000/- as earnest money and on 3.8.2005 had received another amount of Rs.30,000/-, issuing receipt on the back of Exhibit P-3 and further merely due to the fact that there is mention of Lekh Raj in agreement to sell, however, it is not signed by him, the agreement to sell cannot be treated as to be surrounded by suspicious circumstances.

Learned Additional District Judge, has rejected that stand taken by the defendant that agreement to sell is not a genuine document rather it is result of fraud and misrepresentation and that plaintiff had obtained his signatures on blank papers to prepare receipt for loan amount of Rs.20,000/- which was converted into agreement to sell.

The plaintiff had successfully proved that he had been ready and willing to perform his part of contract throughout, which was evident from his filing the suit for permanent injunction earlier and when date for execution of sale deed arrived, he had withdrawn the suit and filed a suit for specific performance. He had gone to the office of Joint Sub Registrar, Raipur Rani and in token of his presence got an affidavit attested therefrom. He had filed a suit for specific performance affixed ad valorem court fee therefore, learned Additional District Judge, has rightly observed that he has always been ready and willing to perform his part of contract. Learned Additional District Judge has granted specific performance to the plaintiff to the extent of 1/4th share of defendant only and not with regard to share of Lekh Raj. Section 12 of the Specific Relief Act 1963 empowers the Court to grant specific performance of part of the contract. The plaintiff deserved to be granted discretionary relief of specific performance and learned Additional District Judge acting as Ist Appellate Court has rightly done so reversing the judgment and decree passed by the trial Court, which as a matter of fact were not sustainable.

Learned counsel for the appellant has placed on file copy of

the sale deed executed by Mohan Lal in favour of the plaintiff, which is dated 19.11.2014. With regard to the sale deed stated to have been executed by defendant in favour of Smt. Jogindro, the same is hit by the principle of lis pendence and even otherwise inadmissible for want of registration.

No substantial question of law arises in the present appeal.

Finding no merit in the appeal the same stands dismissed.

24.7.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No