IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.128 of 2016 (O&M)
Date of Decision: February 25, 2019

Nirmal Singh and others

...Appellants

Versus

Tarwinder Kaur

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Dinesh Nagar, Advocate
for the appellants.

Mr. Kawaljyot Singh, Advocate
for the respondent.

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JAISHREE THAKUR, J. (Oral)

1. The instant regular second appeal has been directed against the judgment and decree dated 29.07.2015 passed by the lower Appellate Court dismissing the appeal filed by the appellants-defendants against the judgment and decree dated 20.02.2014 passed by the lower court, decreeing the suit of the respondent-plaintiff for alternative relief of recovery of ₹ 8,80,000/- with 6% interest pendente lite and future interest till recover.

2. In brief, the facts of the case are that the respondent-plaintiff filed a suit for specific performance of the agreement to sell dated 04.08.2004 executed by the appellants-defendants in favour of the respondent-plaintiff of the land, as detailed in the headnote of the plaint and in the alternative, the suit for recovery of the suit amount. It was averred

that the suit land is owned by the appellants-defendants and appellants No.2 and 3/defendants No.2 and 3 appointed appellant no.1/defendant No.1 as their attorney with the power to sell the suit property on their behalf as well. Vide agreement to sell dated 04.08.2004, appellant no.1/defendant No.1 for himself and as attorney of appellants no.2 and 3/defendants No.2 and 3 agreed to sell the suit land to the respondent-plaintiff for a total consideration of ₹ 10,00,000/- and received ₹ 5,20,000/- as earnest money at the time of execution of the agreement to sell dated 04.08.2004 and agreed to execute the sale deed on or before 03.08.2005 on receipt of the balance sale consideration. It was agreed between the parties that all the necessary expenses for the execution and registration of the sale deed would be borne by the respondent-plaintiff and the remaining sale consideration would be paid at the time of execution of the sale deed and in case of the failure of the respondent-plaintiff to perform his part of the agreement, the earnest money was to be forfeited and in case of failure of the appellants-defendants to execute the sale deed, the respondent-plaintiff could get the sale deed executed through the process of court of law.

3. It was further averred that on 18.07.2005 on the request of appellant no.1/defendant No.1, the respondent-plaintiff further paid a sum of ₹ 1,60,000/- to appellant no.1/defendant No.1 towards payment of the sale consideration and date for execution of the sale deed was extended up to 03.08.2006 and endorsement to this effect was made on the back of the original agreement to sell. Similarly, again on 02.08.2006 a sum of ₹ 2,00,000/- was paid to the appellant No.1/defendant No.1 towards part payment and the date for execution of the sale deed was extended up to

02.08.2007 and in this regard, endorsement was made on the back side of the agreement to sell. In the similar fashion on 01.08.2007, the date for execution of the sale deed was extended up to 01.12.2008, vide endorsement made on the back of the agreement to sell. It was submitted that only a sum of ₹ 1,20,000/- remains to be paid out of the total sale consideration amount and the respondent-plaintiff has always been ready and willing to perform her part of the agreement. The respondent-plaintiff remained present in the office of the Sub Registrar, Bhunga on 01.12.2008 i.e. the extended date fixed for execution of the sale deed with the balance sale consideration and expenses, but the appellants-defendants did not turn up. Thereafter, the respondent-plaintiff served a notice upon appellant no.1/defendant No.1 on 12.12.2008 calling upon the appellants-defendants to execute the sale deed, but the appellants-defendants failed to perform their part of the agreement to sell. Hence, the present suit.

4. Upon notice, the appellants-defendants appeared and filed their written statement, while taking preliminary objections as to the suit being barred by limitation and that the respondent-plaintiff has suppressed the material facts from the court. On merits, the appellants-defendants admitted that they are owner of the suit land, while submitting that appellant no.1/defendant No.1 was never authorized by appellants No.2 and 3/defendants No.2 and 3 to enter into any agreement to sell and the said power of attorney does not authorize appellant No.1/defendant No.1 to sell the property of appellants No.2 and 3/defendants No.2 and 3. It was further submitted that appellant No.1/defendant No.1 for himself or as attorney of appellants No.2 and 3/defendants No.2 and 3 never executed any agreement

to sell in favour of the respondent-plaintiff for alleged sale consideration of ₹ 10,00,000/- nor received the amount of ₹ 5,20,000/- from the respondent-plaintiff. The averments to the effect of making further part payments towards the sale consideration by the respondent-respondent to appellant No.1/defendant No.1 were also denied, while alleging the agreement to sell and all such writings are forged and fabricated. It was averred that appellant No.1/defendant No.1 is an agriculturist, whereas the husband of the respondent-plaintiff is doing the business of commission agent at Focal Point Village Kang Mai and at New Grain Market, Hoshiarpur. Appellant No.1/defendant No.1 used to sell his crops at the market through husband of the respondent-plaintiff and the respondent-plaintiff and her husband used to lend money to the farmers as agricultural loan on interest basis and for that purpose respondent-plaintiff and her husband used to get signatures of the persons on blank stamp papers to keep the same with them as security for the money. It was further submitted that appellant No.1/defendant No.1 once took loan from the respondent-plaintiff and her husband of the amount of ₹ 50,000/- in the year 2004. It was submitted that the signatures of appellant No.1/defendant No.1, if any, proved on the alleged agreement to sell, were obtained in the aforesaid process. It was further averred that appellant No.1/defendant No.1 has already returned the said amount to the respondent-plaintiff and her husband and there was a dispute that occurred between appellant No.1/defendant No.1 regarding the rate of interest accrued upon the said loan, and therefore, an altercation took place between appellant No.1/defendant No.1 and the respondent-plaintiff along with her husband and thereafter, appellant No.1/defendant No.1 stopped selling his crops through the respondent-plaintiff and her husband since 2005. Thus, respondent-plaintiff and her husband developed malice in their mind on that account and forged the alleged agreement to sell, endorsement and writings at its back. Remaining averments of the plaintiff were categorically denied.

5. Replication was filed to the written statement denying the averments of the written statement, while further submitting that there has not been any dispute between the husband of the respondent-plaintiff and appellant No.1/defendant No.1. The dealing between the husband of the respondent-plaintiff and the appellants-defendants, if any, have nothing to do with the present suit, which is based upon independent agreement.

6. Thereafter, from the pleadings of the parties, the following issues were framed:-

> I. Whether the plaintiff is entitled for possession by way of specific performance of the agreement to sell dated 04.08.2004 vide which defendant No.1 for himself and as attorney of defendants No.2 and 3 agreed to sell the suit land for total consideration of ₹ 10,00,000/- and received an amount of ₹ 5,20,000/- as earnest money?OPP
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> II. Whether the plaintiff is entitled in alternative for recovery of ₹ 10,00,000/- along with interest as prayed for?OPP
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> II-A Whether the plaintiff has been ready and willing to perform her part of agreement to sell?OPP
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> III Whether the suit is within limitation?OPD.
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> IV Whether the plaintiff is guilty of suppressing the material facts from the court?OPD.
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> V. Relief.

7. In order to prove her case, the respondent-plaintiff got

examined Avtar Singh as PW1, Mohinder Singh as PW2, Gurmeet Singh as PW3 and herself examined as PW4. On the other hand, appellant No.1/defendant No.1 himself examined as DW1 and Gurdial Singh was examined as DW2.

8. After hearing learned counsel for both the sides, the lower court decreed the suit of the respondent-plaintiff in alternate for recovery of ₹ 8,80,000/- from the appellants-defendants along with interest @ 6% per annum. Aggrieved, the appellants-defendants filed an appeal before the lower Appellate Court, which came to be dismissed by the Additional District judge, Hoshiapur. Both the judgments and decrees passed by the courts below are under challenge in this regular second appeal.

9. Learned counsel for the appellants-defendants argues that both the courts below have ignored the material evidence and the findings recorded by them are contrary to the evidence available on the record. It is contended that judgments and decrees passed by the courts below suffer from legal infirmities and are bad in law, and therefore, are liable to be set aside.

10. On the other hand, learned counsel for the respondent-plaintiff argues that there is no infirmity in the well reasoned judgments and decrees passed by the courts below and as such, no ground is made out to interfere with the same.

11. I have heard learned counsel for the parties and have gone through the material available on the record.

12. The lower court, while allowing the alternative relief of recovery of the earnest money to the respondent-plaintiff, has observed as

under:-

> *"xxx xxx xxx*
> *35. So the DW1 and DW2 have nothing supportive to the defendant version regarding alleged loan transaction between defendant and the husband of the plaintiff nor about the alleged payment of said loan amount, nor the defendant could prove that the Ex.P1 and its corresponding endorsements are the result of fraud and fabrication. No receipt regarding obtaining or return payment of said loan amount. So the defendant version in this regard falls flat.*
> *xxx xxx xxx*
> *40. No expert examined by the defendant to prove the alleged forgery or fabrication on the part of the plaintiff nor till date any complaint moved by the defendant either to get back the signed papers from the plaintiff or regarding the alleged misuse of those papers by the plaintiff to forge the Ex.P1 and the endorsement. Where as the plaintiff has successfully proved the execution of Ex.P1, the passing of part sale consideration and the extension of executing sale deed vide endorsements, so proving the plaintiff version.*
> *41. In the light of the provisions of Section 41(h) of the Specific Relief Act, when the appropriate remedy is available, unless and until any hardship is caused to the opposite party, the alternate remedy should be granted.*
> *42 From the perusal of Ex.P5, it enshrines names of defendants as co owners of the suit property and further transpires that suit property was mortgaged with the Bank as per mutation No.205 of 17.01.2001, whereas Ex.P1 is dated 04.08.2004. So, in order to avoid any kind of detriment to the prior existing interest in the suit property, because the revenue entries being the public documents are deemed to be in the knowledge of every one. So in the light of prevailing circumstances and the statutory provisions, the court is of the considered opinion that the plaintiff is not entitled to the relief of specific performance. Therefore, in these circumstances, the issue No.1 stands decided in favour of the defendants and against the plaintiff.*
> *43. Further, in the light of the afore discussion on Issue No.1, the court is of the considered opinion that the plaintiff has successfully proved the passing of sale consideration to the defendants in total to the tune of ₹ 8,80,000/-. The Ex.P1 remained unexecuted, the specific performance relief not granted to the plaintiff, therefore, in these circumstances, the court is of the considered opinion that the plaintiff is also entitled to the alternative relief of recovery, however, to the tune of ₹ 8,80,000/- along with*

> *interest. Therefore, in these circumstances, this issue No.II stands decided in favour of the plaintiff to this extent and against the defendants.*
> *44. Further, execution of Ex.P1, Ex.P3, Ex.P4 and Ex.P5, institution of present suit, in the light of the afore discussion on issue No.1 and issue No.II, absence of any sustainable rival contentions, in the opinion of this court the plaintiff has successfully proved that she is ready and willing to perform her part of agreement to sell Ex.P1. Therefore, in these circumstances, this additional issue No.II-A stands decided in favour of the plaintiff and against the defendants"*

13. The lower Appellate Court also affirmed the findings recorded by the lower court.

14. In this instant case, the agreement to sell has been duly proved by the attesting witness PW1 and the respondent-plaintiff PW4, apart from scribe PW3. The witnesses examined by the respondent-plaintiff have duly supported the case as set up by the respondent-plaintiff. DW1 (appellant No.1/defendant No.1) failed to disclose about the particulars of the loan obtained by him from the husband of the respondent-plaintiff or whether entry or receipt was issued by the husband of the respondent-plaintiff regarding the alleged loan. In the absence of any documentary evidence, the version of appellant No.1/defendant No.1 regarding the alleged loan transaction is unbelievable. Under these circumstances, the bald statement made by the appellant No.1/defendant No.2 regarding the alleged loan, cannot be accepted as gospel truth. Appellant No.1/defendant No.1 has admitted his signatures on the agreement to sell as well as on the endorsements made regarding receipt of part payment of balance sale consideration and extension of time for execution of the sale deed. Moreover, Ex.P2 shows that appellant No.1/defendant No.2 was duly

authorized by appellants No.2 and 3/defendants No.2 and 3 enter into any kind of agreement, inclusive of transferring the suit property. On the other hand, the appellants-defendants miserably failed to prove their plea of forgery and fabrication by leading any cogent and convincing evidence to this effect.

15. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellants-defendants, which has no merit.

16. Dismissed.

(JAISHREE THAKUR)
February 25, 2019 **JUDGE**
vijay saini

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