

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.384 of 2013 (O&M)

Date of Decision:12.12.2019

Vinod Kumar Gupta

.....Appellant

Versus

Madan Lal Chawla

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Harsh Aggarwal, Advocate
for the appellant.

Mr. G.S.Nagra, Advocate
for the respondent.

LISA GILL, J.

Appellant-plaintiff, has filed this appeal being aggrieved of judgment and decree dated 23.11.2010, passed by the learned Additional Civil Judge (Sr. Division), Rajpura, as well as judgment and decree dated 04.10.2012, passed by the learned Additional District Judge, Patiala, whereby suit filed by the appellant-plaintiff, has been dismissed.

Present appeal has been filed challenging both the said judgements and decrees.

Brief facts necessary for the adjudication of the case are that the appellant-plaintiff filed a suit for specific performance of the agreement to sell dated 24.05.2005 in respect to the suit property as described in the plaint and in the alternate for recovery of ₹6,37,200/-. It is further prayed that in case the Court reaches a conclusion that ₹4,12,200/- was not received by the defendant at the time of execution of the sale deed dated 24.05.2005, the

plaintiff was ready to pay a sum of ₹6,37,200/-. It is pleaded that the defendant being the owner of the suit property agreed to sell the same for a total consideration of ₹6,37,200/-. Defendant purchased the non judicial stamp papers worth ₹38,500/-, which was paid by the plaintiff. Sale deed dated 24.05.2005, was executed in the plaintiff's favour after receiving a sum of ₹4,12,200/- in cash and a draft dated 23.05.2005 for a sum of ₹2,25,000/-. Sale deed was claimed to be attested by Amrinder Singh, Sadhu Singh and Balwinder Singh, the defendant and Vijay Kumar Goyal on behalf of the plaintiff. The sale deed was presented before the Sub Registrar on 24.05.2005, in the presence of witnesses, but an objection was raised by the Sub-Registrar, Rajpura that the Phrase 'HUF' has been mentioned in the sale deed, but the same was not mentioned in the jamabandi attached with the sale deed, where the ownership of the land was reflected. The phrase 'HUF' was to be removed from the sale deed. The defendant is claimed to have returned the draft of ₹2,25,000/- to the plaintiff's agent namely Vijay Kumar Goyal. However, the defendant developed a *mala fide* intention and did not come forward for execution of the sale deed, though a sum of ₹4,12,200/- already stood paid to him. Registered notice dated 23.08.2005 was issued to the defendant. Reply was given by the defendant but he did not come forward for execution of the sale deed. Hence, the suit was filed.

Suit was contested by the defendant. Various preliminary objections were raised. It is pleaded that the land in question was purchased by the defendant from 'HUF' funds, therefore, the word 'HUF' was mentioned in the sale deed. It is stated that the document dated 24.05.2005, was indeed drawn up and it was agreed that the amount of ₹.4,12,200/-

would be paid in cash and draft of ₹2,25,000/- would be paid at the time of registration of the sale deed before the Sub Registrar, Rajpura. It is mentioned in the said document that the total amount in question would be received before the Sub Registrar, Rajpura. Once, the objection regarding mention of phrase 'HUF' was raised, sale deed was not registered. Therefore, the amount in question was never handed over to the defendant. No consideration had passed between the parties. Furthermore, the plaintiff, did not come forward to deposit the entire payment and it is he who developed a *mala fide* intention inasmuch as he did not want to pay a sum of ₹4,12,200/- and wanted the execution and registration of the sale deed only on the payment of ₹2,25,000/-. Dismissal of the suit was prayed.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether defendant executed agreement to sell dated 24.05.2005 in favour of the plaintiff and received the earnest money, as claimed?OPP
2. Whether plaintiff always remained ready and willing and is still ready and willing to perform his part of the agreement?OPP
3. Whether the plaintiff is entitled to specific performance of the agreement in question?OPP
4. Whether in the alternative, plaintiff is entitled to recover the suit amount?OPP
5. Whether plaintiff is entitled for permanent injunction, as prayed for?OPP
6. Whether suit is not maintainable?OPD
7. Whether sale deed dated 24.05.2005, is without consideration?OPD
8. Whether defendant is entitled to SPL costs?OPD
9. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances

of the case and evidence on record, dismissed the suit filed by the plaintiff while holding that writing dated 24.05.2005, can be considered to be an agreement without consideration, but was unenforceable.

Appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Patiala, vide impugned judgement and decree dated 04.10.2012.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant vehemently argues that Ex.PW1/B, is in-fact a sale deed and that there is a recital of the consideration being passed between the parties. The amount of ₹4,12,200/- is clearly proved to have been handed over to the defendant. It is further submitted that even if no consideration had passed, the plaintiff-appellant is entitled to the relief claimed as per Section 54 of the Transfer of Property Act, 1882. It is further contended that the plaintiff had duly purchased the stamp papers and had changed his position to his detriment on an assurance/promise held out by the defendant. Furthermore, merely because the appellant had, in the alternate, offered to pay the entire consideration amount once again, it does not render the sale deed to be without consideration, but only a sale deed without payment of consideration. The document having been admitted by the defendant, it is not open to him to back out of the agreement in this manner. Learned counsel for the appellant seeks to raise the following questions of law for adjudication by this Court:-

1. Whether the findings given by the learned Courts below

are perverse and opposed to the evidence led on record by the parties?

2. Whether the learned Courts made out a new case which is beyond the pleadings of both the parties?
3. Whether the oral evidence is admissible contrary to documentary evidence?
4. Whether the payment of sale consideration *in presenti* is a condition precedent for execution of the void sale deed?
5. Whether the onus to prove non receipt of sale consideration shifts upon the defendant when execution and recitals of documents are admitted?
6. Whether the admission of execution and recitals of a document and other supportive documents in individual capacity but wrongly typed in HUF capacity would disentitle the plaintiff from specific performance?

It is thus prayed that the present appeal be allowed and the judgements and decrees passed by the learned Courts below be set aside and consequently, suit filed by the appellant-plaintiff be decreed throughout.

Per contra, learned counsel for the respondents refutes the arguments as raised by learned counsel for the appellants and submits that both the learned Courts below have rendered concurrent findings of fact on the basis of evidence on record, which calls for no interference whatsoever in this regular second appeal. It is submitted that the plaintiff has miserably failed to prove the passing of the consideration. Moreover, the defendant has proved his readiness to perform his part of the contract, even in the reply to the legal notice, but the plaintiff did not come forward at that stage. The legal notice was issued after three months and the appellant-plaintiff with a *mala fide* intention wanted the sale deed to be executed and registered only for a sum of ₹2,25,000/- at that stage. Therefore, his subsequent stand that he

is ready to pay the entire consideration amount is a clear reflection of his conduct and he cannot avail of any benefit on this count, at this stage. It is thus prayed that the present appeal be dismissed and the judgements and decrees passed by the learned Courts below be upheld.

I have heard learned counsel for the parties and have gone through the record with their assistance.

Execution of the document dated 24.05.2005, is not in dispute. It is mentioned therein that the sum of ₹4,12,200/- in cash and ₹2,25,000/- by way of draft, would be handed over to the defendant before the Sub Registrar, Rajpura, at the time of registration of the sale deed. Learned counsel for the appellant is unable to deny that all the witnesses examined by him have denied the passing of the consideration amount in their presence. A perusal of the document dated 24.05.2005, reveals that there is no recital in respect to the amount of Rs. 4,12,200/- purportedly to be given in cash, being actually handed over to the defendant. It is not believable that an amount of over ₹4,00,000/- would be handed over by any person without even a receipt. It is a matter of record that, in reply to the legal notice dated 23.08.2005, sent by the plaintiff after three months, the defendant specifically stated that the sale deed can be got executed within 15 days on receipt of the consideration amount of ₹6,37,200/- with interest. It is correctly observed by the learned Additional District Judge, Patiala, that it is nowhere mentioned by the plaintiff even in his plaint, that pursuant to receipt of the reply to the legal notice, the plaintiff was ready and willing to get the sale deed executed by paying the entire amount. The consistent stand of the plaintiff is that he had already paid a sum of ₹4,12,200/- and the draft

of ₹2,25,000/- had been returned.

The Hon'ble Supreme Court in **Kaliaperumal Vs. Rajagopal and another 2009(4) SCC 193**, specifically observed that the intent of the parties has to be taken into account. In **Kaliaperumal's** case (**Supra**), sale deed was duly signed by the vendor. The sale deed was presented before the Registrar, where the vendor refused to sign the endorsement on the sale deed on the ground that vendee had not paid the balance amount of consideration. Sale deed was nevertheless registered. It is held by the Hon'ble Supreme Court in the said case, that the registered sale deed will not vest the vendee with any title as the intent of the vendee was that the title would not vest without receipt of the entire consideration. In the present case, document dated 24.05.2005, admittedly, was not registered. The allegation of the defendant being in collusion with the scribe has not been proved on record. However, in the given facts and circumstances of the case, the entire factual matrix does not point to any ground whatsoever which justifies the setting aside of the ultimate conclusion and concurrent finding returned by both the learned Courts.

It has been observed by the Hon'ble Supreme Court in **Gurnam Singh (D) By Lrs and others Vs. Lehna Singh (D) By LRs 2019 (7) SCC 641** has observed as under:-

“Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not

permissible for the High Court to reappreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal.”

In my considered opinion, no question of law much less a substantial question of law arises for consideration in this appeal, challenging the concurrent finding of facts by the learned Courts below.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 23.11.2010 and 04.10.2012 passed by the learned Additional Civil Judge (Sr. Division) Rajpura, and learned Additional District Judge, Patiala, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

12.12.2019

s.khan

[LISA GILL]
Judge

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