

In the High Court of Punjab and Haryana at Chandigarh

RSA- 4026 of 2013(O&M)

Date of Decision: 2.4.2019

Om Kumar and other

---Appellants

versus

Kamla Devi

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vikas Singh, Advocate
for the appellants
Mr. R.S.Tacoria, Advocate,
for the respondent

Rekha Mittal, J.

CM No. 10892-C of 2013

Prayer in this application is for condoning delay of 75 days in refiling the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicants, application is allowed and delay of 75 days in refiling the appeal stands condoned.

Disposed of accordingly.

Main case

Challenge in the present appeal has been directed against the judgment and decree dated 29.1.2013 passed by the District Judge, Kaithal whereby appeal against the judgment and decree dated 1.10.2010 passed by the trial court was allowed, judgment and decree passed by the trial court was modified and the respondent-plaintiff was granted principal relief of specific performance of agreement to sell, in place of alternative relief of recovery allowed by the trial court.

The respondent-plaintiff filed suit for specific performance of

agreement to sell dated 31.5.2005 executed by defendant No. 1 (proforma respondent) in respect of land measuring 17 kanal 13 marlas, detailed in para 1 of the judgment of trial court. It is averred that defendant No. 1 agreed to sell suit land for consideration of Rs. 3,20,000/- per acre and received Rs. 5,00,000/- as earnest money on the date of agreement. The target date for execution and registration of sale deed was 31.8.2005. The possession of suit land i.e. killa No. 1(8-0), 2(8-0), 3 min(0-13) of Rect. No. 131 was delivered in favour of the plaintiff. The plaintiff always remained ready and willing to perform her part of the agreement but defendant No. 1 failed to do so. On 31.8.2005, the plaintiff remained present in the office of Sub Registrar but defendant No. 1 did not turn up. Defendant No. 1 executed registered sale deed No. 113/1 dated 18.4.2006 in favour of defendants No. 2 and 3 which is collusive, illegal, sham, nonest and hit by the principles of lis pendence and the same is not binding on rights of the plaintiff.

Defendant No. 1 contested the suit and raised preliminary objection that the agreement to sell dated 31.5.2005 is bogus and fraudulent which was never executed by him. He used to take money from plaintiff for agricultural purpose and the plaintiff might have got thumb impression on blank paper and misused the same. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

Defendant No. 3 (appellant No. 1 herein) filed a separate written statement and raised preliminary objections regarding non-maintainability, cause of action, locus standi and his rights being protected under Section 41 of the Transfer of Property Act. He has also denied the allegations with regard to agreement to sell having been executed by

defendant No. 1 with the plea that the agreement in question is outcome of fraud played by Ram Kumar son of the plaintiff who is playing fraud with many persons by procuring fake agreements to sell and also used to get blank cheques as security of money.

Defendant No. 2 adopted the written statement filed by defendant No. 3.

The trial court accepted claim of the respondent-plaintiff with regard to execution of agreement in question but has held that it represents a money transaction between the plaintiff and defendant No. 1 executed as security towards repayment of loan amount and consequently allowed alternative relief of recovery of Rs. 5,00,000/- with interest @ 12% per annum from the date of filing of the suit till realization. The suit filed against defendants No. 2 and 3 was dismissed.

As has been noticed hereinbefore, appeal preferred by the respondent-plaintiff was allowed by the first Appellate Court and the respondent has been allowed specific performance of agreement to sell with direction to defendant No. 1 to get the sale deed executed and registered in favour of the plaintiff on receipt of balance sale consideration and defendants No. 2 and 3 (appellants herein) who are subsequent purchasers (pendente lite) are directed to join the proceedings of the sale deed to be executed in favour of the plaintiff in terms of agreement Ex. P1.

Counsel for the appellants, in response to order dated 7.3.2019, passed by this court as to what are the rights of transferee pendente lite to challenge the agreement of sale, held to be executed by his vendor would submit that transferee pendente lite can raise the same defence as is available to his vendor. For this purpose, reference has been made to

judgments of Hon'ble the Supreme Court **Thomson Press (India) Limited**
vs. Nanak Builders & Investors Private Limited and others 2013(2)
RCR (Civil) 875 and Vijaya Bharathi vs. P.Savitri and others AIR 2017
(SC) 3934.

Counsel for the appellants would argue that defendant No. 1 raised a specific plea in the written statement that there were money transactions between the parties because of his being an agriculturist and his thumb impression might have been obtained on blank paper and misused for the purpose of preparing agreement of sale. It is further argued that the appellants produced on record the documents Ex. D1 to D9, D13 and D14 on the basis whereof the trial court had rightly arrived at a conclusion that the plaintiff and her son are involved in business of money lending and the agreement to sell Ex. P1 is a security document towards repayment of loan amount advanced by the respondent-plaintiff. It is vehemently argued that the Appellate Court has not correctly appreciated documents Ex. D1 to D9, D13 and D14 while setting aside findings of the trial court on the question of agreement to sell and allowing specific performance thereof by way of execution of sale deed by defendant No. 1 and the appellants being purchasers pendente lite.

Counsel representing the respondent-plaintiff has supported the judgment passed by the Court in Appeal with the submission that there is not even an iota of evidence on record that there were money dealings between the plaintiff and defendant No. 1 or the agreement has been prepared on blank thumb impression of defendant No. 1 procured by the plaintiff or her son. It is further argued that defendant No. 1 was not examined in the case, therefore, any such plea raised by defendant No. 1 in

the written statement has not been proved when otherwise plea of fraud/forgery is required to be established akin to a criminal charge beyond shadow of reasonable doubt. According to counsel, one of the appellants appeared in the witness box to counter case of the plaintiff and has admitted in his cross examination that he is not aware of any money transaction between the plaintiff and defendant No. 1.

Indisputably, the appellants are purchasers of land during pendency of the suit, therefore, plea of bona fide purchaser sought to be put forth by them is not available. The plaintiff has set up an agreement of sale dated 31.5.2005 purported to be executed by defendant No. 1. Defendant No. 1 filed the written statement and contested the agreement of sale on the premise, noticed hereinbefore. As per the settled position in law, if a litigant admits his thumb impression or signatures on a disputed document, it is his obligation to prove as to the circumstances under which he thumb marked or signed the document. In the case at hand, defendant No. 1 did not appear in the witness box nor was called upon by the appellants to be examined in the case for the purpose of proving defence plea raised in the written statement by the said defendant. Counsel for the appellants, in response to a pointed query, has failed to point out any materials on record that there were money transactions between the plaintiff or her family members and defendant No. 1 which could provide an opportunity to them to obtain thumb impression of defendant No. 1 on blank paper. Since the appellants and their co-defendant failed to establish any money transaction between the parties, the trial court committed a grave error rather illegality by coining a story that the document in question was executed as security for repayment of loan obtained by defendant No. 1. The matter would have

been different had there been evidence on record that there were money dealings between the plaintiff and defendant No. 1 because in that eventuality documents Ex. D1 to D9, D13 and D14 could have been of relevance for consideration of the court as these pertain to litigation between the plaintiff or her family members and some third party with regard to recovery of money etc. In this view of the matter, I find myself unable to accept contention of the appellants that findings of the trial court with regard to agreement of sale being a security document are based upon correct appreciation of the materials on record or the same have been wrongly set aside by the Appellate Court. As a matter of fact, there is not even an iota of evidence on record to substantiate contention of defendant No. 1 raised in the written statement much less to prove that the agreement has been prepared on blank thumb impression of defendant No. 1, available with the plaintiff or her family members.

The agreement to sell was executed on 31.5.2005 and the target date for execution of sale deed was 31.8.2005. The plaintiff has proved on record that she always remained ready and willing to perform her part of the agreement. The suit seeking specific performance of agreement was filed just after five days of the stipulated date. This apart, counsel for the appellants has not made any submission to assail findings of the Appellate court with regard to the respondent's readiness and willingness to perform her part of the agreement i.e. payment of balance sale consideration and expenses of registration etc. In this view of the matter, I do not find an error much less perversity in the judgment and decree passed by the Appellate Court.

For the foregoing reasons, finding no merit, the appeal fails and
is accordingly dismissed with costs.

(Rekha Mittal)
Judge

2.4.2019
PARAMJIT

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