

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 4631 of 2019 (O&M)

Date of decision : December 12, 2020

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Karnail Singh

.....Appellant

Versus

Hapninder Kaur

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. N.K Vadhera, Advocate for the appellant.

Mr. Sarju Puri, Advocate for the respondent.

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RITU BAHRI, J.

C.M No. 16075-C of 2019

Prayer made in the application is allowed.

Document (Annexure A-4) is taken on record.

RSA No. 4631 of 2019 (O&M)

The appellant-defendant (hereinafter referred to as 'the defendant') has come up in appeal against the judgment dated 19.8.2019 passed by the Additional District Judge, Shaheed Bhagat Singh Nagar vide which the appeal against the judgment and decree dated 22.9.2016 passed by the Civil Judge (Junior Division) at Shaheed Bhagat Singh Nagar was dismissed. Vide the trial Court judgment, the suit filed by Hapninder Kaur, respondent-plaintiff (hereinafter referred to as 'the plaintiff') for possession

of the suit property by specific performance was decreed.

The present suit was filed by the plaintiff for possession of the suit property by specific performance of agreement to sell dated 18.8.2009 directing the defendant to execute sale deed with regard to suit property, in favour of the plaintiff or in the alternative suit for recovery of Rs.14 lacs as refund of earnest money and damages. The case set up by the plaintiff was that defendant was owner of the suit property and he agreed to sell the suit property vide agreement to sell dated 18.8.2009 for a total sales consideration of Rs.8 lacs. A sum of Rs.5 lacs as earnest money was paid to the defendant on the date of execution of agreement to sell, itself and it was stipulated therein that defendant will execute sale deed of the suit property in favour of the plaintiff on 18.8.2010, on the payment of balance sale consideration. However on 13.8.2010, at the request of the defendant, the date of execution of the sale deed was extended by endorsement on the back of agreement to sell and extended date for the execution of sale deed was decided to be 18.8.2011. On 13.8.2010, when the date of execution of the sale deed was extended to 18.8.2011, an additional sum of Rs.2 lac was paid by the plaintiff to defendant and a separate receipt in this regard was also executed by the defendant. The date of execution was extended but the defendant did not execute the sale deed and hence the suit was filed.

After notice, the defendant put in appearance and contested the suit by filing written statement. It was submitted therein that the plaintiff had no locus standi to file the present suit and suit was barred by Order 2 Rule 2 CPC. Execution of any agreement to sell in favour of the plaintiff with regard to the suit property was also denied. The defendant pleaded that he used to borrow money from Balbir Kaur, mother of the plaintiff by

executing various pronotes and consequently used to return the loan amount on different occasions. On 18.8.2009, mother of the plaintiff in order to secure loan granted to the defendant, kept sale deed dated 14.9.2005 of the suit property with her as security, and on the same date under the pretext of preparing a security document for the loan advanced to the defendant, she got signatures and thumb impressions of the defendant on many blank papers in connivance with deed writer Darshan Singh. On 13.8.2010, father and mother of the plaintiff asked the defendant to execute receipt for return of sale deed dated 14.9.2005 in advance on which the defendant again went to deed writer Darshan Kumar and again Darshan Kumar deed writer obtained his signatures and thumb impressions on some blank papers. After calculation of the outstanding dues on 15.8.2010, the defendant cleared all the outstanding dues on 18.8.2010. Thereafter, the defendant asked mother and father of the plaintiff to return the sale deed which was kept with them as security in lieu of loans, but they refused to return the same on one pretext or the other. It was further submitted by the defendant in the written statement that the agreement to sell is a forged document. Following issues were framed by the trial Court:

1. Whether the defendant entered into an agreement to sell dated 18.8.2009 to sell the suit land to plaintiff? OPP
2. Whether the plaintiff has been ready and willing to execute his part of contract? OPP
3. Whether the plaintiff is entitled to the specific performance of the agreement to sell? OPP
4. Whether in the alternative, the plaintiff is entitled to recovery of Rs.7 lacs? OPP

5. Whether the suit is not maintainable? OPD

6. Whether the plaintiff has got no locus standi to file the present suit? OPD

7. Whether the suit is barred by Order 2 Rule 2 CPC?

In order to prove her case, the plaintiff herself stepped into the witness box as PW-1 and she has also examined Devinder Singh as PW-2. Plaintiff also examined Kewal Singh as PW-3 and Bahadur Singh as PW-4. Thereafter, counsel for the plaintiff tendered into evidence statement of account dated 24.2.2016 as Ex.P-6, certified copies of judgment and decree dated 25.10.2013 in case titled, 'Harjit Singh vs. Hapninder Kaur' as Ex.P-7 and Ex.P-7/A respectively and closed evidence on behalf of plaintiff.

To prove his version before the trial Court, defendant himself stepped into the witness box as DW-1 and also examined Amrik Singh as DW-2.

After hearing counsel for the parties and appreciating the evidence produced on record, both the Courts have given a concurrent finding of fact that execution of agreement to sell dated 18.8.2009 and receipt of Rs.5 lacs paid by plaintiff to defendant on 18.8.2009 as earnest money have been proved on record by plaintiff herself and PW-2 Davinder Singh as Ex.P-2 and Ex.P-3 respectively. Plaintiff has also proved on record endorsement Ex.P-4 on the back of Ex.P-3 vide which time for execution of sale deed was extended on the request of defendant to 18.8.2011. Plaintiff has also proved on record receipt of Rs.2 lacs paid to defendant on 13.8.2010 as Ex.P-5. To prove that these documents were result of fraud, the defendant was required to prove the fraud. He may have led evidence to show that the impugned agreement to sell, receipt and

endorsement had actually not been executed or had been got executed by playing fraud. Moreover, he has not given any plausible explanation for not taking back sale deed dated 14.9.2005 if he had returned all the outstanding dues to mother of the plaintiff. Further despite taking the plea by the defendant that he used to raise loan from mother of the plaintiff by executing pronotes, no such pronote has been produced on record. In the written statement the defendant submitted that entries regarding pronotes were made in the register of the Scribe. However no such register of the scribe had been produced on record by the defendant to elaborate his version. In order to prove the case, the defendant was required to place on record the certified copy of the sale deed dated 14.9.2005 which as per him was taken as surety by the mother of the plaintiff, but, no such sale deed was placed on record by the defendant. After clearing all the outstanding dues, if sale deed had not been returned by the mother of the plaintiff, then why no complaint was made. Hence, in this backdrop, the plea of fraud was rejected. Keeping in view that the plaintiff had proved execution of documents Ex. P-2 to Ex.P-5, the suit was decreed for specific performance. Both the Courts have also examined the issue that defendant had taken the plea that the plaintiff had no capacity to make the payment of Rs.8 lacs to the defendant. The plaintiff led evidence in the form of Ex P-6 which clearly shows that plaintiff was given Rs.4,50,000/- by her husband as maintenance for her and her child in a petition for divorce on mutual consent. This amount as per Ex.P-7 was received by the plaintiff in the year 2006 and the earnest money in the present case was paid in the year 2009. Hence the plaintiff had paid this amount i.e Rs.4,50,000/- to secure the interest of her minor child. In cross-examination, plaintiff stated that she

had borrowed money from her parents and relatives. Therefore, the capacity of the plaintiff to pay Rs.7 lacs as earnest money to the defendant was proved by the plaintiff by leading cogent evidence. Finally, plea taken by the defendant was that the suit property was the only house of the defendant where he and his family resides. In order to prove this fact, the defendant had relied upon the statements of DW-2, who deposed to the effect that the suit property is only house of the defendant where he also runs his Karyana shop. In order to rebut these evidences of the defendant, plaintiff examined PW-3 Kewal Singh, who is Lambardar of Village Lakhpur and has deposed to the effect that in addition to the property in dispute the plaintiff is also having another house in the village Lakhpur, the site plan of which is dated 07.09.2016. The site plan of this house is also proved on record by PW-4 Draftsman who has prepared this site plan Ex.P-8. Statement given by DW-2 in his examination in chief that he spent huge money on the construction of the suit property was discarded as he was residing in this house with the defendant in suit property and is interested witness. With regard to the construction of the suit property during the pendency of the suit, the trial Court has further observed that during the pendency of this suit, when the defendant tried to raise new construction over the suit property, the application had been made by the plaintiff for restraining the defendant to raise construction, however, the same was dismissed and the plaintiff cannot be taken as a consenting party for raising new construction over the suit property. At the same time, it was also observed by the trial Court that by raising construction over the suit property, defendant has himself taken risk so now even if loss is being caused to the defendant it is due to his own fault.

Both the Courts have considered the conduct of the parties and decreed the suit of the plaintiff for specific performance. Keeping in view the status of the plaintiff who had received alimony of Rs.4,50,000/- and keeping in view that the defendant has another property in the same village, no interference is required in the findings of fact recorded by both the Courts below.

In view of all that has been discussed above, there is no infirmity or irregularity in the judgments passed by the Courts below that warrant interference of this Court. Hence, the present regular second appeal is hereby dismissed.

December 12, 2020

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(RITU BAHRI)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No