

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

RSA No.1794 of 2014

Date of Decision: July 25, 2019

Bhabhuti Singh Tyagi

.....Appellant

Versus

Satya Prakash

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Inder Pal Singh Parmar, Advocate for the Appellant.

Mr. Mukesh Rao, Advocate for the Respondent.

SUDIP AHLUWALIA, J.

This Appeal has been preferred against the Judgment and Decree passed by the Ld. Addl. District Judge, Faridabad in Civil Appeal No.69 of 2012 dated 13.01.2014, vide which, the original Judgment & Decree passed by the Ld. Civil Judge (Junior Division) Faridabad in Civil Suit No.RBT 179 of 2007 dated 20.04.2012 in favour of the present Respondent/Defendant were upheld.

2. This Court has considered the entire available material on record and heard the submissions of Ld. counsel for both sides.

3. The case of the Appellant in his original Plaint was that he is the owner without possession of House No.2610, Sector 16, Urban Estate, Faridabad, and that the Sale Deed bearing No.21723 dated 19.3.2007 allegedly executed by him in respect of the aforesaid property, is illegal, unlawful, null & void, ab initio and not binding upon his Rights, Title and Interest, on account of which, the said Sale

Deed is liable to be cancelled. His aforesaid claim was dismissed by the Ld. Trial Court and thereafter the Ld. Lower Appellate Court had also found no merit in the same. It may be mentioned that the Appellant had claimed that he entered into a verbal Agreement with the Respondent for selling the aforesaid House for a total sale consideration of Rs.32 Lacs through Shri Jitender Singh Nagar, Advocate on 19.3.2007, and he also entered into Written Agreement to that effect on the same date. The Respondent is alleged to have paid the sale consideration price by way of two Cash Orders Nos.037289 dated 16.3.2007 and 037299 dated 19.3.2007 for Rs.5 Lacs and Rs.27 Lacs respectively, which were drawn on the Faridabad Central Cooperative Bank Limited, D.C. Office, Sector 12 Branch. His further claim was that the house in question was in possession of his own son Dinesh Tyagi, who was residing there with his family members and the Defendant/Respondent had to secure possession of the same by his own efforts, and that the impugned Sale Deed would be valid subject to encashment of both the Pay Orders, and if any of those orders was dishonoured, the same would be automatically cancelled.

4. The aforesaid contentions were denied on behalf of the Respondent, whose case has been that the House in question was actually sold vide the said Sale Deed dated 19.3.2007 itself for a total sale consideration of Rs.11,27,000/-. According to the Respondent, the original Agreement was verbally entered into by the parties on 7.12.2006, on which date, an amount of Rs.6 Lacs was paid to the Appellant, while the balance was delivered by way of Cash Order

No.037298 dated 16.3.2007 for an amount of Rs. 5 Lacs, apart from the balance of Rs.27,000/- through Pay Order No.037299, after which, the Appellant correctly executed the registered Sale Deed.

5. Perusal of the Sale Deed in question (Ex.P-3) goes to show that the same was actually executed by the Appellant in favour of the Respondent for an amount of Rs.11,27,000/- only and it was also acknowledged therein that the aforesaid consideration price had been realized by the Vendor by way of Cash Pay Order No.037298 dated 16.3.2007 for an amount of Rs. 5 Lacs, and also the balance of Rs.27,000/- through Pay Order No.037299 dated 19.3.2007, apart from an amount of Rs.6 Lacs, which had already been received earlier by the vendor. The aforesaid Sale Deed therefore, itself falsifies the allegation of the Appellant to the effect that an amount of Rs. 27 Lacs was to be paid by way of Pay Order No.037299 dated 19.3.2007, which was allegedly dishonoured, since the total sale price itself mentioned in the Sale Deed was limited to Rs.11,27,000/- only.

6. The Appellant sought to explain this contradiction by arguing before the Ld. Lower Appellate Court that the actual consideration price was not meant to be shown in the Sale Deed. This argument was rightly rejected since the Ld. Appellate Court was of the opinion that the only tangible reason behind such concealment could have been to avoid payment of Tax on the actual consideration price but if that were so, then the same would have been paid directly in cash and not through a Bank's Pay Order. Even the Agreement in question (Ex.P-2) was not produced in original before the Trial Court. Photo copy of the same as available on record goes to show that it does not

bear the signature of any witness even though columns for such signature are typed out on its last page. Interestingly, the Appellant filed an Application for amendment of the original Plaint seeking recovery of possession of the disputed House from the Respondent, although his original case was that possession of the same had been with his own son namely Dinesh Tyagi. The dishonoured Pay Order for an amount of Rs.27 Lacs was marked Ex.P-12 on being identified by PW-2 namely Harish Tara, Junior Accountant in the concerned Bank, but the said witness did not mention anything against the Respondent apart from saying that the instrument in question was forged. There is no material on record except the Appellant's own statement to show that the said Pay Order was issued by the Respondent at any stage.

7. Clearly in view of the aforesaid circumstances, the Ld. Courts below were justified in rejecting the Appellant's Claim, which *ex facie* was unconvincing, since there could not have been any logic to execution of a valid registered Sale Deed for an amount of Rs.11,27,000/- as well as the alleged Agreement of the same date mentioning the sale consideration price was to be Rs.32 Lacs, the original of which in any case, was not produced in Court. The Appellant's Suit as well as Appeal were therefore, rightly dismissed by the Ld. Courts below and reference to the case of **'S.P.Chengalvaraya Naidu Versus Jagannath'** AIR 1994 Supreme Court 853 by the Ld. Trial Court was perfectly in order, in which, it had been held -

“One who comes to court must come with clean hands. It can be said without hesitation that a person whose case

is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of the litigation. A litigant who approaches Court is bound to produce all the documents executed by him which are relevant to the litigation and if he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the court as well as on the opposite party.”

8. No merits. Dismissed.

(SUDIP AHLUWALIA)
JUDGE

July 25, 2019
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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |