

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3077 of 2014 (O&M)

Date of Decision: 20.05.2019

Ganga Ram

...Appellant

VERSUS

Tara Chand

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajiv Sharma, Advocate
for the appellant.

Mr. Shiv Kumar, Advocate
for the respondent.

SURINDER GUPTA, J.

This is appeal against concurrent judgments of Courts below decreeing the suit of respondent-Tara Chand for specific performance of agreement to sell dated 13.02.2004 with regard to land measuring 6 *kanals* out of total land measuring 73 *kanals* 7 *marlas*, as fully described in para 1 of the plaint, situated in village Panhera Khurd, Tehsil Ballabgarh, District Faridabad on payment of balance sale consideration of ₹32,000/-.

2. In later part of the judgment parties will be referred to as 'plaintiff' and 'defendant' as per civil suit.

3. Case of plaintiff-Tara Chand, in brief, is that defendant-Ganga Ram vide agreement dated 13.02.2004 agreed to sell his 6 *kanals* of land for a sale consideration of ₹3,38,000/- out of which payment of ₹3,06,000/- was made as earnest money. He also executed receipt for the above sale consideration. The date for execution and registration of sale deed was fixed as 15.03.2004, on which date, plaintiff with balance sale consideration remained present in the office of Sub-Registrar, Ballabgarh but the

defendant did not turn up and he got his presence marked. Thereafter, a legal notice dated 24.06.2004 was issued calling upon the defendant to receive the balance sale consideration and execute and register the sale deed within 15 days. Lastly, plaintiff approached the defendant on 28.12.2005 with request to execute the sale deed but of no avail, hence this suit.

4. The defendant admitted execution of agreement dated 13.02.2004 *inter alia* pleading that in fact it was not an agreement to sell but it was a loan transaction. The defendant had taken loan from the plaintiff on interest @ 2% per month. As a security of loan amount, sale agreement was executed. The defendant was in urgent need of money, as such, he executed agreement dated 13.02.2004.

5. Pleadings of parties led to framing of the issues as follows:-

1. Whether the defendant has executed the agreement dated 13.02.2004 in favour of plaintiff to sell the suit property?
OPP.
2. Whether the defendant has received a sum of ₹3,06,000/- from the plaintiff on account of part payment of the sale consideration, vide receipt dated 13.02.2004? OPP
3. Whether the plaintiff is ready and willing to perform his part of the contract? OPP
4. Whether the suit is not maintainable in the present form?
OPD
5. Whether the plaintiff has concealed the material facts?
OPD
6. Relief.

6. Learned trial Court recorded findings on all the issues in favour

of plaintiff and decreed the suit with direction to defendant to execute the sale deed of suit property in favour of the plaintiff on receipt of balance sale consideration. On appeal, learned Additional District Judge affirmed the judgment and decree of the trial Court.

7. Learned counsel for the defendant-appellant has argued that execution of the agreement by defendant is not disputed. He has come up with true facts about execution of agreement and receipt of earnest money which was paid to him two days after execution of the agreement. It is contention of defendant that he had in fact entered into a loan transaction and took loan of earnest money from the plaintiff-respondent. There could not be any witness to the plea of defendant, which could be appreciated only from facts and circumstances of the case. Both the Courts below have failed to look into the plea and attendant circumstances while decreeing the suit. As per plaintiff, the date for execution of the sale deed was fixed as 15.03.2004. He has alleged that on that date he remained present in the office of *Tehsildar*. Notice (Ex. P-3) is alleged to have been issued on 24.06.2004, calling upon the defendant to execute the sale deed within 15 days, failing which, plaintiff threatened to file suit against him. For a period of 21½ months plaintiff did not file suit, which shows that he was insisting on return of loan amount, otherwise there was no reason for him to wait for such a long time even after issuance of notice in June, 2004, calling upon the defendant to execute the sale deed within 15 days. In his cross-examination, plaintiff has admitted that he had entered into similar agreement with Raghunandan and has admitted affidavit (Ex. DX) whereby he entered into a compromise with him. This shows that plaintiff was in the habit of getting the agreement to sell executed for the loan transactions and

then use the same to grab the land of loanee.

8. Learned counsel for the respondent has argued that plea of defendant about loan transaction is not supported by any evidence. Despite notice dated 24.06.2004, he has nowhere come up with plea that transaction is in fact a loan transaction. Execution of the agreement is duly proved and both the Courts have rightly decreed the suit of plaintiff and concurrent judgments of Courts below call for no interference in this appeal.

9. Before proceeding further, it will be relevant to discuss scope of Section 100 CPC and interference in finding of fact recorded by Courts below in second appeal. While defining principles relating to Section 100 CPC in case **Hero Vinoth (minor) vs. Seshammal, 2006 (5) SCC 545**, Hon'ble Supreme Court observed as follows:-

“25. The principles relating to Section 100 CPC, relevant for this case, may be summarized thus:-

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a

material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

- (iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer*

to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

10. Keeping in view the above settled proposition of law in ***Hero Vinoth's case (supra)***, I proceed further to evaluate the findings of Ist Appellate Court on both the points as discussed above, which gives rise to substantial question of law.

11. Execution of agreement is admitted. The substantial questions of law, which arise for consideration in this appeal, are as to whether plea of defendant-appellant that agreement (Ex. P-1) was executed towards a loan transaction, has any substance in facts and circumstances of the case and has been duly looked into and appreciated by Courts below or a wrong inference has been drawn from facts proved on file and whether the plaintiff has been able to prove that he was always ready and willing to perform his part of the agreement to get the sale deed executed?

12. Courts below have gone by the language of agreement and admission of the defendant about execution of agreement and receipt (Ex. P-1 and Ex. P-2). Learned Ist Appellate Court has observed that "once such an admission has been made in the pleadings itself, the appellant cannot wriggle out of the same." It was also observed that had it been a loan transaction the appellant could resist its execution at the time of its registration. His silence and act of not challenging this agreement was taken adverse against him to hold that in fact agreement to sell was executed by him. Courts below have not looked into various important facts, I will

enumerate below, which go a long way to indicate that the transaction between plaintiff and defendant was, in fact, not a sale transaction. Firstly, out of total sale transaction of ₹3,38,000/- more than 90% is alleged to have been paid as earnest money but admittedly possession of the suit land was not taken by plaintiff. No prudent man will depart with such a huge portion of sale consideration without taking possession, as after the agreement, which was also got registered, less than 10% of the sale consideration remained to be paid. Secondly, the date for execution and registration of sale deed was fixed as 15.03.2004 i.e. about a month after execution of the agreement to sell, on which date plaintiff alleged to have appeared before Sub-Registrar to get the sale deed executed and the defendant did not appear. From that day onwards, he took no action to call upon the defendant to execute the sale deed till notice dated 24.06.2004 was allegedly issued. Thirdly, mode of sending notice dated 24.06.2004 is not proved. No postal receipt vide which this notice was allegedly sent has been placed on file. This notice was simply tendered in the statement of plaintiff and the defendant has denied the receipt of this notice. Fourthly, even if for the sake of argument, it be believed that notice was issued calling upon the defendant to execute the sale deed within 15 days of the notice, plaintiff has not come up with any explanation for not filing the suit for a period of about 15 months thereafter. In case plaintiff had issued notice dated 24.06.2004 and the defendant had not come forward for execution of the sale deed within 15 days he would have immediately rushed to file the suit. Fifthly, unexplained delay of about 21 months after the date fixed for execution of the sale deed shows that it was in fact not a sale transaction for which plaintiff was ready and willing to perform his part of the contract. This lend

support to contention of defendant-appellant that in fact it was not a sale transaction and the plaintiff was waiting for return of the loan amount instead of getting the sale deed executed. Plaintiff had admitted in his cross-examination that he entered into similar agreement with Raghunandan and has admitted his signatures on affidavit (Ex. DX), which reads as follows:-

“मनके ताराचंद पुत्र श्री भोलाराम निवासी पनहैडाखुर्द तह0 बल्लभगढ़ जिला ला फरीदाबाद (हरियाणा) का हूँ। तथा निम्नलिखित शपथ पूर्वक बयान करता हूँ। कि :-

1 - यह है की एक केस अदालत फरीदाबाद में इकरारनामा का बाया रघुनन्दन पुत्र श्री खचेडा निवासी पनहैडाखुर्द तह0 बल्लभगढ़ जिला फरीदाबाद के खिलाफ दायर किया था। जिसमे मैं जीत गया और रघुनंदन केस हार गया। अब रघुनन्दन ने आगे अपील की हुई है। ये कि अब दोनो फरीकैन की सहमति अनुसार रघुनंदन ने मेरी पत्नी के नाम अपने रकबा मे से 1 कनाल 12 मरले की रजि0 बयनामा कर दी है। और मैं अदालत में दायर शुदा केस वापिस ले लुंगा। अब मैं आगे इकरारनामा की बाबत कोई कानूनी कार्यवाही नहीं करूंगा। अगर करता हूँ तो यह शपथ पत्र हमारा राजीनामा शामिल दावा समझा जायेगा। आपसी राजीनामा अनुसार एक बीघा जमीन का ही फैसला तय हुआ है।”

13. The aforesaid affidavit indicates that plaintiff after entering into similar transaction with Raghunandan compromised his claim, which appears to be for a land lesser than agreed to be purchased.

14. The question, which arises for consideration, is as to whether facts as discussed above are sufficient to draw inference that it was not a transaction for sale of land but agreement was executed for a loan

transaction.

15. Learned counsel for the appellant has argued that the land measuring 6 *kanals* is situated in Ballabgarh near Delhi and is very expensive land and no person in the year 2004, which was a year of boom in the prices of real estate, would have agreed to sell 6 *kanals* of land for a petty sum of ₹3,38,000/-.

16. The above contention of learned counsel for the appellant cannot be taken as a reason to term the agreement as a loan transaction in the absence of any cogent and convincing evidence on record about prevailing prices of land in the area where the suit land is situated. Argument of learned counsel for the appellant on this score are without merit. However, act and conduct of plaintiff shows that he was not eager to get the sale deed executed, which indicates that he was waiting for return of the amount advanced to the defendant. Both the parties are resident of same village and there was every reason for the plaintiff to insist upon execution of the sale deed immediately after 15.03.2004, or issuance of notice dated 24.06.2004 calling upon the defendant to execute the sale deed. He, however, remained silent till 04.01.2006, when he filed the present suit. There is every possibility and probability that being a co-villager, the defendant agreed to execute the agreement to sell to secure amount of loan he had taken from the plaintiff and facts and circumstances of this case corroborate the version of defendant in this regard.

17. The inference, which can be drawn from above discussion, is that plaintiff was in fact waiting for return of his loan amount instead of getting the sale deed executed. This reflects on his readiness and willingness to perform his part of the contract. Courts below have recorded finding that

he was ready and willing to perform his part of the contract without considering the lapse on the part of plaintiff and delay in filing this suit. Above findings of Court below are against the facts proved on file, perverse and not legally sustainable.

18. As a sequel of my above discussion, it is held that the defendant executed agreement dated 13.02.2004, which was only for the purpose of securing loan of ₹3,06,000/- taken by him and it was not a sale transaction.

19. Keeping in view all facts and circumstances, I find reasons to decline the relief of specific performance of agreement to plaintiff. However, he is allowed alternate relief of recovery of ₹3,06,000/- with interest @ 9% per annum from the date of agreement till the date of actual payment. In the peculiar circumstances of the case and allowing of alternate relief, plaintiff shall also be entitled to court fee and cost of the suit.

20. Instant appeal is partly allowed in above terms.

May 20, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No