IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1261 of 2018(O&M)
Date of decision: 20.11.2019

Kulwinder Singh

… Appellant

Versus

Madan Lal

… Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. K.B.S. Mann, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was decreed by the trial Court vide judgment and decree dated 10.11.2015 qua an alternative relief for recovery of Rs.75,000/- along with interest, and as even the appeal preferred against the said decree failed and was dismissed on 15.04.2017, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for possession by way of specific performance of the agreement to sell dated 25.01.2011 qua a house measuring 28'X25'= 700 sq. feet i.e. 2.5 marlas, comprised in specific khasra numbers as depicted in the cause title of the plaint. In brief, the case set out by him was that defendant had executed agreement to sell dated 25.01.2011 in favour of the plaintiff qua the suit property for a total sale consideration of Rs.90,000/-.

Rs.75,000/- were paid as earnest money on 25.01.2011 itself, whereas the balance consideration was to be paid at the time of execution of the sale deed on 25.12.2011. As 25.12.2011 was a holiday, plaintiff visited the office of Sub Registrar, Abohar on the following day i.e. 26.12.2011, to perform his part of the contract. But as the defendant failed to appear and execute the sale deed, thus, the suit.

In the written statement filed by the defendant, it was denied if any agreement to sell the suit property was executed by the defendant. Rather, it was pleaded that said agreement was executed only to secure the repayment of loan obtained by the defendant from the plaintiff. Further, value of the house in question was nearly Rs.7,00,000/- and, therefore, there was no occasion for the defendant to have agreed to sell the same for Rs.90,000/- only. In fact, defendant had mortgaged the house in question with possession with one Saroj Rani wife of Surinder Kumar on 26.06.2009 for Rs.45,000/-. As the time stipulated to redeem the mortgage was about to mature, owing to his weak financial condition, he approached the plaintiff and obtained loan of Rs.50,000/-. Subsequently, plaintiff in order to grab the suit property refused to accept the loan amount i.e. Rs.50,000/- and, thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that onus to prove that agreement to sell dated 25.01.2011 was indeed entered into between the parties was upon the plaintiff himself. And, to prove his claim, he examined both the attesting witnesses of the agreement, namely, Balram (PW1) and Dalip Kumar (PW3), who in their deposition testified the execution of the agreement. Thus, the question to be determined was: whether the alleged agreement dated 25.01.2011 was executed by the defendant to sell the suit property or was procured by the plaintiff to secure the amount of loan obtained by the defendant? Significantly, Balram (PW1), one of the attesting witnesses, conceded in his cross-examination that he did not know if defendant Madan Lal had borrowed any amount from plaintiff Kulwinder Singh or not. Further, he could only read and write Hindi, and he did not know in which language the agreement in question was written. Rather, he admitted in his cross-examination that alleged agreement was already typed by the typist by the time he reached. Further, the Deed Writer had read over and explained the contents of the agreement to him. However, plaintiff failed to examine any Deed Writer or Scribe to prove his claim. Dalip Kumar (PW3), the other attesting witness, also admitted in his cross-examination that negotiations between Kulwinder Singh and Madan Lal had already concluded before he even arrived. Further, the terms and conditions of the agreement (Ex.P1/A) were never discussed or finalized in his presence. Therefore, he could not confirm if the agreement (Ex.P1/A) was executed to secure the debt or a loan transaction between the parties. Not just that, he conceded that agreement in question was brought to him and he was asked to sign the same as an attesting witness. Further, plaintiff Kulwinder Singh was known to him and he signed the agreement on his instructions. Therefore, even testimony of the said witness would not enure to the benefit of the plaintiff. Not just that, plaintiff himself while appearing as PW2 conceded in his cross-examination that both the attesting witnesses to the agreement were not privy to the negotiations in relation to the terms of the agreement. Thus, it could not be concluded that alleged agreement was executed between the parties to sell the suit property. Not just that, plaintiff even failed to prove that necessary entries as regards execution of the agreement were incorporated in the register of the stamp vendor. Had the defendant purchased the stamp papers with intent to sell the suit property, his signatures would have appeared not only on the stamp papers but also in the register of the stamp vendor. Thus, the alleged agreement was surrounded with suspicious circumstance and was not enforceable in law. On the contrary, defendant proved the mortgage dated 26.06.2009 (Ex.DX) and perusal thereof showed that he had mortgaged the house in question with possession to Saroj Rani for Rs.45,000/-. On the back page of the mortgage deed, writing was recorded that on 26.01.2011, after receiving of the mortgage amount from defendant Madan Lal, Saroj Rani had surrendered possession of the house in question to him. The defendant had even examined Saroj Rani as DW2, who duly substantiated the version of the defendant. In the given situation, it was incredible that defendant would have agreed to sell the suit property valuing Rs.3 to5 lacs just for a consideration of Rs.90,000/-. It defies logic that out of total sale consideration of Rs.90,000/-, plaintiff had paid Rs.75,000/- on the date of execution of the agreement itself, i.e. 25.01.2011, still he deferred the date for execution of the sale deed by almost a year for Rs.15,000/-. Hence, plaintiff was not entitled to a decree for part performance of the agreement to sell. However, he was entitled for an alternative relief of recovery of Rs.75,000/- from the defendant along with interest.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality.

No ground is made out to interfere with the findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

20.11.2019
Rajan

Whether speaking / reasoned: YES
Whether Reportable: NO