IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1389 of 2018 (O&M)
Date of decision : March 01, 2019

Bhupinder Singh and another .....Appellants

Versus

Dilbag Singh and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. D.S. Gurna, Advocate
for the appellants.

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LISA GILL, J.

Appellant - defendants are aggrieved of judgment and decree dated 05.07.2014 passed by the learned Civil Judge (Senior Division), Patiala as well as judgment and decree dated 08.11.2017 passed by the learned Additional District Judge, Patiala.

Brief facts necessary for adjudication of the case are that respondents – plaintiffs No. 1 and 2 namely Dilbag Singh and Dalvir Singh filed a suit for specific performance of the agreement to sell dated 29.12.2005 besides seeking permanent injunction restraining the present appellants, their attorneys etc. from alienating the suit property and a further declaration to the effect that respondent – defendant No. 3 Sarabjit Kaur had no right, title or interest in the suit property and that the suit filed by the defendant No. 3 – Sarabjit Kaur against her brothers i.e. the present appellants is collusive and fraudulent. It is pleaded that the present appellants i.e. defendants No. 1 and 2 agreed to sell the suit property as detailed in the plaint in favour of the plaintiffs at the rate of ₹12 lakhs per acre vide agreement to sell dated 29.12.2005. ₹50 lakhs was received as earnest money from the plaintiffs by the said defendants at the time of execution of the agreement to sell in the presence of witnesses namely Ram Pal son of Hari Kishan, Didar Singh son of Karnail Singh, Ajaib Singh and Narinderpal Singh sons of Puran Singh. It was agreed that the sale deed would be executed on 15.06.2006. Towards the end of May, 2006 plaintiffs contacted defendants No. 1 and 2 for execution for sale deed but they avoided execution of the sale deed. Plaintiffs then came to know that a collusive suit titled 'Sarabjit Kaur versus Bhupinder Singh and Amarjit Singh' was pending. Application under Order 1 Rule 10 CPC for impleadment as parties to the said suit was moved, however, this application was dismissed on 15.06.2006. Ultimately suit by Sarajbit Kaur was also dismissed. Plaintiffs claimed that on the stipulated date i.e. 15.06.2006, plaintiffs went to the office of Joint Sub Registrar, Dudhan Sadhan alongwith two bank drafts of ₹35 lakhs each for payment of sale consideration. However, defendants No. 1 and 2 (appellants) did not turn up. Presence of the plaintiffs was sought to be reflected by way of affidavit. Despite request by the plaintiffs, the defendants did not come forward for execution of the sale deed. Hence, the suit was filed.

Present appellants/defendants No. 1 and 2 contested the suit. Written statement was filed taking various preliminary objections. Averments on merits were controverted. It was alleged that only a sum of ₹5 lakhs was paid to the appellants by the plaintiffs as earnest money and not ₹50 lakhs as averred. Defendant – appellants signed the agreement to sell in good faith though it was never read over to them. Fraud had been committed by the plaintiffs and due to this reason, sale deed was not executed in favour of the plaintiffs.

Defendant No. 3 filed a separate written statement alleging that the land in question was ancestral Joint Hindu family property of the father of defendant No. 3 and the present appellants had no right to enter in the agreement to sell in question. It was stated that suit for declaration filed by her was still pending. Application under Order 1 Rule 10 CPC filed by the plaintiffs was dismissed. Dismissal of the suit was prayed for.

Replication was filed. Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether defendants No. 1 and 2 executed the agreement in question dated 29.12.2005 in favour of plaintiffs?OPP
2. Whether defendants No. 1 and 2 received a sum of Rs. 50 lacs as earnest money from plaintiffs at the time of execution of agreement?OPP.
3. Whether plaintiffs have been ready and willing to perform their part of agreement?OPP
4. Whether plaintiffs are entitled to decree of specific performance of agreement to sell by way of specific performance of agreement?OPP
5. Whether suit is not maintainable? OPD
6. Whether plaintiffs have no locus standi to file the present suit? OPD.
7. Whether suit is bad for mis-joinder of parties?OPD
8. Whether suit property is joint Hindu family ancestral coparcenary property? OPD
9. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the facts and circumstances concluded that there was no evidence on record to indicate that instead of a sum of ₹50 lakhs, only ₹5 lakhs had been received by the present appellants. Execution of the agreement was duly proved on record as was the readiness and willingness of the plaintiffs to execute the sale deed in pursuance thereto. Suit filed by the plaintiffs – respondents was, accordingly, decreed. Appeal filed by defendants No. 1 and 2 was dismissed by the learned Additional District Judge, Patiala vide judgment dated 08.11.2017. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants submits that evidence on record proves that a sum of ₹50 lakhs was not received by the appellants. They received merely a sum of ₹5 lakhs. The agreement in question, which was not scribed by a regular deed writer, was not read out to them by the typist and they signed the agreement in good faith. The appellants, it is contended, came to know about the recital of receipt of ₹50 lakhs only when their sister filed the suit against them. Moreover, learned courts below have not considered the fact that the defendants were not ready and willing to carry out their part of the agreement. There is nothing on record to show that they had the rest of the amount available with them. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 05.07.2014 passed by the learned Civil Judge (Senior Division), Patiala as well as judgment and decree dated 08.11.2017 passed by the learned Additional District Judge, Patiala. be set aside and suit filed by the plaintiffs be dismissed throughout.

Heard learned counsel for the appellants and have gone through the file with his assistance.

It is relevant to note at this stage that execution of agreement to sell dated 29.12.2005 for sale of the suit property is not in dispute as such. Stand taken by the appellant – defendants is that they did not receive a sum of ₹50 lakhs as earnest money as per the recital in the agreement to sell.

They received merely a sum of ₹5 lakhs. Perusal of the file reveals that plaintiffs have duly proved the agreement to sell dated 29.12.2005. PW3 Ram Pal testified that he knew the plaintiffs as well as the defendants. Agreement to sell dated 29.12.2005 was typed through a computer at the Tehsil premises Dudhan Sadhan at the instance of defendants No. 1 and 2 in favour of the plaintiffs in his presence as well as presence of Didar Singh, Ajaib Singh and Narinder Pal i.e. the other marginal witnesses. Contents of the agreement were read over by the typist, which were admitted to be correct by the appellants. Photographs of defendants were affixed on the first page of the agreement. Thereafter, a sum of ₹50 lakhs was paid in cash by the defendants after which they appended their signatures on each page of the agreement to sell. It was then signed by both the plaintiffs. It was attested by PW3 Ram Pal as well as the other marginal witnesses. PW5 Dilbag Singh also proved the plaintiff's case. PW4 Navdeep Gupta, Hand Writing and Finger Print Expert, Patiala testified that signatures of the defendants on the agreement to sell, tallied with the standard signatures. PW4 further deposed that typed portion of agreement to sell dated 29.12.2005 (Ex.P12) was typed and exhibited in a normal routine manner and there is no sign of any abnormality. Learned trial Court has specifically observed that the typed portion of the stamp paper is uniform and coherent. Signatures of the defendants are not disputed. Photographs of both the defendants are admitted by them.

Learned counsel for the appellants is indeed unable to point out any evidence on record to indicate that it was a sum of ₹5 lakhs and not ₹50 lakhs which was received as earnest money by the defendants. It is noticed at this stage, that DW21 and DW3 have gone to the extent of saying that an additional zero was inserted in the agreement against the figure of ₹5 lakhs to make it ₹50 lakhs. It is rightly observed by the learned trial Court that the said evidence smacks of falsehood inasmuch as the sum of earnest money is mentioned not only in figures but also in words. It is not understandable as to how the defendants would have signed on receipt of ₹50 lakhs if they had received only a sum of ₹5 lakhs. There is no evidence of the appellants having signed such papers in good faith. The rate at which the land was to be sold is not in dispute. In such a transaction, in normal probability, the parties would be alert and alive to all the details. It is not the case of the defendants that the plaintiffs were their relatives or friends due to which they signed the papers with closed eyes.

Moreover, the conduct of the defendants does not appear to be aboveboard. The suit for declaration was filed by defendant No. 3 i.e. sister of the present appellants claiming the suit property to be ancestral Joint Hindu family property. Plaintiffs have relied upon certified copies of jamabandies (Ex.P13) for the year 2002-03 reflecting the present appellants to be owners in possession of the disputed land as well as Ex.P20 i.e. the mutation on the basis of which Will executed by father of the defendants. The said mutation was recorded in the presence of defendant No. 3. Ex. P21, the jamabandi also indicates the nature of the suit property to be self acquired property of the father of the appellants and defendant No. 3. It is not denied that the suit filed by defendant No. 3 has been dismissed. At this juncture, it is to be noticed that Sarabjit Kaur filed a written statement in the present suit but was later proceeded against exparte. She did not even step in the witness box to substantiate her allegation. It is further a matter of record that appellant – Bhupinder Singh remained a Sarpanch of the village for the period of ten years and appellant - Amarjit Singh is a Numberdar of the village. Therefore, the version set forth by the defendants is inherently improbable and clearly unsubstantiated by any evidence on record.

In respect to the question of readiness and willingness on the part of the plaintiffs, learned counsel for the appellants is unable to deny that it is proved on record that drafts/bankers cheque to the tune of ₹70 lakhs i.e. the balance sale consideration were proved on record. Exs. P1 to P11 reveal that the plaintiffs also bore penal charges for encashing the bank drafts after the failure of defendants No. 1 and 2 to execute and register the sale deed in their favour. Exs. P22 and P23 are the application and affidavit dated 15.06.2006 for marking their presence before the concerned Sub Registrar. Though it is stated on behalf of the appellants that they too were present before the Sub Registrar and had marked their presence being ready and willing for execution of the sale deed, it is undeniable that the appellants have alleged fraud being committed upon them. There is no evidence on record to show that the appellants at any point of time raised an objection regarding the amount received by them to be deficient. Agreement to sell dated 29.12.2005 is otherwise admitted. It is also a matter of record that no criminal complaint or any action was taken by the appellants against the plaintiffs for the alleged fraud committed by the plaintiffs.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 05.07.2014 passed by the learned Civil Judge (Senior Division), Patiala as well as judgment and decree dated 08.11.2017 passed by the learned Additional District Judge, Patiala which calls for any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

(Lisa Gill)
March 01, 2019 **Judge**
rts

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