

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

**RSA-1653-2018 (O&M)
Date of Decision: September 30, 2019**

Raghvir Singh

...Appellant

Versus

Balwinder Singh

...Respondent

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

Present: Mr. Dhirinder Chopra, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

Suit qua an alternate relief of recovery, filed by the respondent-plaintiff, was decreed by the Trial Court, vide judgment and decree, dated 23.07.2015. For, the appellate Court in an appeal decreed the suit as prayed for, and granted the decree for specific performance of the agreement to sell, vide judgment and decree, dated 13.07.2017, the defendant is before this Court in Regular Second Appeal. The parties to the *lis*, hereinafter shall be referred to by their original position in the suit.

Plaintiff prayed for a decree for joint possession as owner (alongwith a right in motor connection etc.) of a land measuring 29 Kanals 9 Marlas, comprised in specific numbers as depicted in cause title of the plaint, on the basis of an agreement to sell, dated 24.08.2008.

In brief, the case of the plaintiff was that he entered into an agreement to sell with defendant Raghvir Singh qua the suit property for a total sale consideration of Rs. 14,72,500/- @ Rs. 4,00,000/- per acre. A

sum of Rs. 4,36,000/- were received by the defendant as earnest money. The balance sale consideration was to be paid on 26.08.2009, i.e. the date for execution and registration of the sale deed. However, as defendant failed to perform his part of the contract, thus, the suit.

In defence, defendant denied the execution of the agreement and the alleged agreement to sell (Ex. P-1) was alleged to be a forged and fabricated document.

Upon consideration of the matter in issue and the evidence on record, the Trial Court concluded that execution of the agreement to sell, dated 24.08.2008 (Ex. P-1) was duly proved. However, despite that decree for specific performance of the agreement was denied as the suit property was mortgaged with Indian Bank, vide Vasika No. 353, dated 02.03.2007. Accordingly, a decree for alternate relief for recovery of Rs. 4,36,000/- was awarded in favour of the plaintiff.

However, the appellate Court, in an appeal preferred by the plaintiff, reached a conclusion that execution of the agreement was duly proved. Even otherwise the findings recorded by the Trial Court qua the due execution of the agreement were never questioned by the defendant, for, he did not chose to file any appeal. Not just that, respondent-Raghvir Singh admitted the receipt of Rs. 4,36,000/- as earnest money at the time of execution of the agreement. The Trial Court had denied the principal relief just because the suit property was mortgaged with the bank, but as the plaintiff was ready to clear the loan obtained by the defendant out of the remaining sale consideration, the reason for declining the specific

performance of the contract paled into insignificance. Even otherwise, the fact that the defendant had obtained a loan prior to the execution of the agreement, was not even pleaded by the defendant. Rather, his case was that he was settled abroad and there was hardly any necessity to alienate the suit land and, thus, the agreement was a forged document. Not just that, the defendant did not even chose to appear in the witness box as his own witness. Therefore, simply because he had obtained a loan from the bank, the relief of specific performance of agreement ought not to have been denied. At any rate, the plaintiff during arguments before the appellate Court suffered a statement that he would deposit the entire loan amount obtained by the defendant, out of the remaining sale consideration. That being so, the only and the inevitable conclusion the appellate Court could reach was that plaintiff was entitled to the decree prayed for.

Upon being pointedly asked, learned counsel for the defendant-appellant could not refer to anything on record to show if the conclusions recorded by the appellate Court were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the findings recorded by the appellate Court. The appeal being devoid of merit is accordingly dismissed.

(ARUN PALLI)
JUDGE

September 30, 2019

Pk Kapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO