

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-1833-2018 (O&M)

Date of decision: 09.09.2019

Tej Partap

..... Appellant

Versus

Tarsem

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. RS Kundu, Advocate for the appellant.

RAMENDRA JAIN, (ORAL)

Through this regular second appeal, appellant-defendant has laid challenge to judgment and decree of lower Appellate Court dated 23.02.2018, affirming judgment and decree of the trial Court dated 24.12.2013, whereby suit of respondent-plaintiff for declaration and possession by way of specific performance of contract and permanent injunction, as consequential relief was decreed.

According to respondent plaintiff, the appellant-defendant vide written agreement dated 16.05.2006, agreed to sell his 1/10th share i.e. 14 kanal 15 marlas, out of total land measuring 147 kanals 5 marlas, fully detailed in para 2 of judgment of trial Court, for a consideration of ₹9,22,000/-, out of which a sum of ₹6,50,000/- was paid as earnest money to him. The sale deed was agreed to be executed and registered on or before 15.05.2007, on which date he went to the office of Sub Registrar, Ismailabad along with balance sale consideration and expenses for stamp

duty and registration etc., but appellant-defendant did not turn up, forcing the respondent-plaintiff to get marked his presence. Thereafter, respondent-plaintiff requested many a times to appellant-defendant to perform part of his contract, but when he did not budge to his legitimate requests, he got served a legal notice on 11.07.2008, upon appellant-defendant, but to of no effect. Respondent-plaintiff was still ready and willing to perform his part of contract. With these broad submissions, respondent-plaintiff filed the suit as aforesaid.

Learned trial Court, after holding trial decreed the suit of respondent-plaintiff vide judgment and decree dated 24.12.2013.

Being aggrieved, appellant-defendant approached the lower Appellate Court, but remained un-successful as his appeal too was dismissed vide judgment and decree impugned herein.

Learned counsel for appellant-defendant *inter alia* contends that both the Courts below failed to appreciate that respondent-plaintiff was never ready and willing to perform his part of contract, because had it been so, he must have filed suit for possession by way of specific performance, much earlier and not just few months before expiry of period of limitation. Both the Courts below also did not appreciate that value of the suit land in the relevant year 2006 was around ₹50,00,000/- per acre. Thus, it was apparent that appellant-defendant would not have sold his a little less than 2 acres (approximately) of land, in such a meager amount of ₹9,22,000/-. Both the Courts below ought to have dismissed suit of the respondent-plaintiff, considering the fact that appellant-defendant did not own any other property, except the suit land for his livelihood. Claim of respondent-

plaintiff for payment of double the amount as mentioned in the agreement, in the interest of justice, ought to have been accepted by both the Courts below. In support of his contentions, learned counsel has relied upon judgments in (i) **Wasim Ahmad Vs. Hajit Shamsuddin**, 2011(26) RCR (Civil) 835; (ii) **Manohar Lal @ Manohar Singh Vs. Maya**, AIR 2003 Supreme Court 2362; (iii) **Dalbir Singh @ Vir Singh Vs. Dalbir Singh**, 2001(2) RCR (Civil) 307; (iv) RSA-1986-2012, **Jit Kaur and others Vs. Naranjan Singh**, decided on 23.05.2017; (v) **Vinayagamoorthy and another Vs. Devki**, 2014(7) RCR (Civil) 3157 and (vi) **Shiv Charan Das Vs. Charan Lal**, 2013(31) RCR (Civil) 468.

Having given thoughtful consideration to the submissions of learned counsel for appellant-defendant, this Court finds the instant regular second appeal merits dismissal for the reasons to follow:

Act and conduct of respondent-plaintiff clearly establishes on record that he was always ready and willing to perform his part of contract, whereas appellant-defendant, becoming dishonest and with *mala fide* intention did not perform his part of contract, inasmuch as, on the date of execution and registration of sale deed i.e. 15.05.2007, he did not come present before the concerned Sub Registrar. Contrary to it, respondent-plaintiff got marked his presence before the Sub Registrar, Ismailabad. Respondent-plaintiff specifically pleaded that on the agreed date of execution and registration of sale deed, he had gone to the office of Sub Registrar, with balance sale consideration and miscellaneous expenses for purchase of stamp duty and registration etc. He even got served a legal notice upon appellant-defendant on 11.07.2008. Appellant-defendant did

not rebut the said evidence during trial by leading any evidence, what to talk of cogent and convincing. Contrary to it, appellant-defendant as DW-2 took the plea that there was a routine business transaction in between him and respondent-plaintiff, a commission agent, who illegally got executed the alleged agreement to sell Ex. P-1 from him fraudulently. However, disbelieving the said plea of appellant-defendant both the Courts below, recording concurrent findings held that agreement to sell Ex. P-1 was a genuine document. Deposition of the appellant-defendant, beyond pleadings to the above-stated effect has rightly been rejected by both the Courts below.

It is well settled proposition of law that in civil cases also allegations of fraud and misrepresentation are to be proved like a criminal charge. In the instant case, appellant-defendant did not lead any evidence, that the agreement to sell in question was the result of fraud, in support of his assertion. Thus, this Court is not inclined to differ with the concurrent findings of both the Court below that agreement to sell dated 16.05.2006, was a genuine document.

As far as, alleged prevalent value of the suit land at the relevant time at ₹50,00,000/- per acre is concerned, appellant-defendant did not lead any evidence, therefore, the same can only be termed as a gospel truth.

No question of law, much less substantial, has been raised in this appeal. Therefore, the same is held not maintainable.

The facts and circumstances of judgments relied upon by learned counsel for the appellant are quite distinguishable from the facts of instant case, therefore, no benefit whatsoever of the same can be given to

the appellant-defendant.

I have carefully gone through the judgments of both the Courts below and find no illegality or perversity in the same.

Dismissed.

September 09, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No