IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

Regular Second Appeal No. 5865 of 2014(O&M)

Date of Decision: October 15 , 2019.

Sarvan Kumar ...... APPELLANT (s)

Versus

Krishan Kumar and another ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sajjan Singh Malik, Advocate
for the appellant.

Mr. Ashwani Bakshi, Advocate for
for respondent No.1.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

Appellant, who was arrayed as defendant No.2 before the learned trial court, has filed this appeal being aggrieved of judgments and decrees dated 25.01.2013 and 11.07.2014 passed by the learned Additional Civil Judge (Senior Division), Rohtak and the learned Additional District Judge, Rohtak, respectively, whereby suit for possession by way of specific performance of the agreement to sell, filed by respondent No.1/plaintiff, has been decreed.

Brief facts of the case necessary for the adjudication of the matter are that, respondent No.1 (plaintiff) -Krishan Kumar filed a suit for possession by way of specific performance of agreement to sell dated 04.07.2008 as well as consequential relief of declaration to the effect that sale deed dated 06.04.2009 executed by defendant No.1 (respondent No.2 in the present appeal) in favour of defendant No.2 (appellant in this appeal) to be illegal, null and void qua the rights of the plaintiff. It is pleaded that defendant No.1 being owner of the shop as detailed in the plaint, entered into an agreement to sell dated 04.07.2008 (Ex.P2) with the plaintiff for a sale consideration of ₹6,00,000/-. A sum of ₹5,00,000/- was received by defendant No.1 from the plaintiff as earnest money against a duly signed receipt, in the presence of the witnesses, namely, Rajender Singh and and Shyamo Devi, wife of defendant No.1. It was agreed that the sale-deed would be executed and registered on 03.07.2009. It is pleaded that when the plaintiff met defendant No.1 on 01.07.2009 alongwith the balance consideration amount and asked him to execute and get registered the sale-deed in his favour, defendant No.1 assured him of the same. However, the plaintiff alongwith Rajender Singh waited at the office of Sub-Registrar for the whole day on 03.07.2009, but defendant No.1 did not come present to perform his part of the contract. An affidavit of the plaintiff, to mark his presence, is stated to be drawn up. Plaintiff again requested defendant No.1 to execute and get registered the sale-deed on the next day, but defendant No.1 refused to do the same and informed the plaintiff, that he has already sold the shop in question to defendant No.2 i.e., the present appellant. The plaintiff, on enquiry, came to know that a sale-deed dated 06.04.2009 (Ex.P1) had been executed by defendant No.1 in favour of the appellant/defendant No.2 in an illegal and malafide manner in order to defeat plaintiff's rights. The plaintiff was still ready and willing to perform his part of the contract at all times, but defendant No.1 failed to perform his part of the contract. It is also pleaded that sale-deed dated 06.04.2009 in favour of the present appellant is a sham transaction. Even the consideration amount is ₹2,90,000/- whereas, defendant No.1 had agreed to sell the shop in question to the plaintiff for a sum of ₹6,00,000/-. The present appellant/defendant No.2, it is stated, was not a bonafide purchaser for consideration. Suit was accordingly filed.

Defendants, including the present appellant, contested the suit. While taking various preliminary objections, averments on merits were controverted in the separate written statements filed by them. Defendant No.1 admitted himself to be the owner in possession of the shop in question. However, it is denied that any agreement to sell of the shop in question was entered into between the plaintiff and defendant No.1 or that defendant No.1 had received any amount as earnest money. The said agreement to sell dated 04.07.2008 (Ex.P2) is claimed to be a false, forged and fraudulent document, prepared by the plaintiff in collusion with the witness, Rajender Singh and the scribe, Kashmiri Lal. Smt. Shyamo Devi, it is pleaded, never signed or thumb marked the said agreement to sell. Defendant No.1 is pleaded to have sold the property in question to defendant No.2 vide sale deed dated 06.04.2009 (Ex.P1). The present appellant/Defendant No.2, in his separate written statement, denied execution of agreement to sell dated 04.07.2008 (Ex.P2) for want of knowledge. Defendant No.2 claimed to be a bonafide purchaser of the property in question, for consideration. He claimed to have been given possession of the shop as well.

Following issues were framed by the learned trial court, on the basis of pleadings of the parties:-

1. Whether the plaintiff is entitled for specific performance of agreement to sell dated 4.7.2008? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled to receive the possession of the suit property? OPP
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether the plaintiff has got no cause of action to file the present suit? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Relief.

Evidence was led by both the parties in order to substantiate their claims.

Learned trial court on considering the evidence on record, facts and circumstances of the case concluded that the plaintiff has successfully proved his case on the basis of evidence on record. The agreement to sell dated 04.07.2008 (Ex.P2) is held to have been duly proved by the evidence on record, whereas sale-deed dated 06.04.2009 (Ex.P1) in favour of the present appellant is held to be a suspicious document inasmuch as the sale-consideration was for a sum of ₹2,90,000/- whereas, the plaintiff and defendant No.1 had agreed upon the sale-consideration of ₹6,00,000/-. Suit filed by the plaintiff was accordingly decreed with costs. Present appellant i.e., defendant No.2 filed appeal against the said verdict, but learned Additional District Judge, Rohtak vide impugned judgment dated 11.07.2014 dismissed the said appeal.

Aggrieved therefrom, the present appeal has been filed by defendant No.2.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in facts and law in decreeing the suit filed by the respondent No.1/plaintiff. It is submitted that merely because the sale-consideration of ₹2,90,000/- was agreed upon between the parties, cannot be a ground to discredit the transaction between the present appellant and defendant No.1. As per the Collector's rate in the area at the relevant time, the value of the property would only be ₹2,50,000/-. Therefore, the learned Additional District Judge, Rohtak has grossly erred in this respect. Moreover, the shop in question was transferred in favour of the appellant by defendant No.1 through a valid registered sale-deed, hence, the same could not be set aside. Agreement to sell dated 04.07.2008, it is submitted, is not proved on the basis of the evidence led by the plaintiff. Learned counsel for the appellant seeks to raise the following questions of law, as detailed in para 17 of the grounds of appeal:-

> "i) Whether the impugned judgment and decree of courts below are result of mis-reading and mis-appreciation of law and evidence?
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> ii) Whether the lower appellate court being final court of fact out to have dealt with each and every aspect/pleadings of the appellant while setting aside the findings of trial court, which has not been done in this case?
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> iii) Whether the judgment and decree of courts below are erroneous, perverse and not sustainable in the eyes of law?
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> iv) Whether the plaintiff/respondent has not proved the execution of agreement to sell Ex.P2?
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> v) Whether the plaintiff/respondent has failed to prove his willingness and readiness to perform his part of contract?
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> vi) Whether the agreement Ex.P2 is inadmissible in evidence being unregistered document?
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> vii) Whether the appellant is bonafide purchaser of shop in question for valuable consideration?

viii) Whether the suit against the appellant is not maintainable?

ix) Whether agreement Ex.P2 in question recites and shows transfer of possession also and hence it was compulsorily registration as per provisions of Section 17 (1A) and Section 49 of Indian Registration Act and Section 53A of the Transfer of Property Act and therefore, the agreement in question is not admissible and no relief can be granted on the basis of this void and unregistered agreement of sale?

x) Whether the agreement to sell dated 04.07.2008 is forged and fabricated document?"

It is thus prayed that this appeal be allowed, impugned judgments and decrees passed by both the learned courts below be set aside. Consequently, suit filed by the plaintiff be dismissed.

I have heard Learned counsel for the appellant and have gone through the record with his assistance.

Plaintiff/respondent No.1 in this case has successfully proved execution of agreement to sell dated 04.07.2008 (Ex.P2). There is no dispute regarding defendant No.1 being owner of the suit property. PW3 Rajender Singh, is one of the attesting witnesses of the agreement to sell (Ex.P2). PW2 Krishan Kumar (plaintiff) deposed that a sum of ₹5,00,000/- was received by defendant No.1 out of his own free will and without any pressure or undue influence from any quarter. PW4 Balwan Singh, the stamp vendor, has proved the purchase of stamp paper by defendant No.1 on 04.07.2008 on which the agreement to sell was executed. He has also proved the entries regarding the same in his register. PW5 Kashmiri Lal, Deed Writer, has testified that the said agreement to sell (Ex.P2) was drawn up by on instructions from Ramesh Chander (defendant No.1). The contents were read over to Ramesh Chander and Krishan Kumar (the plaintiff), who appended their signatures after admitting the same as correct. The witnesses thereafter put their signatures and thumb impressions on the agreement in the presence of the parties. Earnest money of ₹5,00,000/- was received by defendant No.1-Ramesh Kumar from the plaintiff-Krishan Kumar. As a token of the same, the receipt (Ex.P3) was got scribed by PW5 Kashmiri Lal below the agreement. An entry in respect to the agreement was also carried out in the register of PW5. Copy of the register is on record as Ex.P9.

It is relevant to note, at this stage, that defendant No.1 denied the very execution of agreement to sell (Ex.P2) as well as receipt of earnest money of ₹5,00,000/-. It is claimed that the said agreement to sell is a forged and fabricated document, prepared fraudulently by the plaintiff. It is a matter of record that defendant No.1 failed to prove any element of fraud in the execution of the said agreement to sell. It is claimed by defendant No.1 (DW2) in his affidavit (Ex.DW2/A) tendered in evidence that, PW3 Rajender Singh, brother-in-law of the plaintiff had taken his signatures on some blank papers for the purpose of creating a bank limit and it is on these papers that the plaintiff, in collusion with PW3 Rajender Singh, prepared the agreement to sell in question. However, in his cross-examination DW2 Ramesh Chander i.e., defendant No.1 denied his signatures on agreement to sell (Ex.P2) as well as sale-deed (Ex.P1) in favour of defendant No.2, the present appellant. DW2 Ramesh Chander has also denied his signatures on the written statement filed in the present suit. Learned trial court has rightly observed that DW2 Ramesh Chander is not a trustworthy and credible witness. DW1 Shyamo Devi, who is the second attesting witness of the agreement to sell (Ex.P2) stated in her affidavit (Ex.PEW1/A) that no agreement to sell was executed in her presence. She denied her thumb impressions on the said agreement to sell. She claimed ignorance of the contents of her affidavit (Ex.DW1/A) which is stated to have been prepared at Safidon whereas, it is a matter of record that Ex.DW1/A was attested by the Oath Commissioner at Rohtak. Credit worthiness of this witness, Shyamo Devi, who is admittedly the wife of Ramesh Chander, defendant No.1, is also clearly suspect. Thus the defendants indeed failed to prove any element of fraud or forgery in the agreement to sell (Ex.P2).

The plaintiff successfully proved the readiness and willingness to perform his part of the agreement. It is clear from the evidence on record that the plaintiff remain present in the office of Sub Registrar on the stipulated dated i.e., 03.07.2009 for the whole day. Ex.P4 is the affidavit in this regard, besides, the testimony of the plaintiff himself. Legal notice was duly issued and the suit filed. Most of the consideration amount had already been paid to defendant No.1. It is only a sum of ₹1,00,000/- which remained to be paid.

It is a matter of record that defendant No.1, on the other hand, had already executed a sale-deed dated 06.04.2009 in favour of defendant No.2 i.e., the present appellant, even prior to the date stipulated for execution of the sale-deed with the plaintiff. The present appellant has claimed himself to be a bonafide purchaser of the suit property for a consideration of ₹2,90,000/-. Learned trial court has rightly observed that mere denial by defendant No.2 that he had no notice of the previous agreement to sell, is not sufficient to discharge the onus cast upon him. Defendant No.2 has deposed that he made enquiries regarding title of defendant No.1 from one Banti Tailor and Raj, who were having shops in the neighbourhood. But none of these persons have been examined by defendant No.2 to substantiate his plea. It is evident from the evidence on record that one attesting witness to the sale-deed, namely, Anil Kumar is admittedly the real nephew of the present appellant.

Another extremely relevant factor in this case is that the shop in question is claimed to have been sold for a sum of ₹2,90,000/- which is way lesser than the amount agreed upon between the plaintiff and defendant No.1. There is indeed no explanation for the same. Moreover, as per the sale-deed (Ex.P1), no amount had been paid before the Sub-Registrar at the time of execution of sale-deed. There is indeed no evidence on record to show passing of the consideration amount, so mentioned in the sale-deed (Ex.P1).

Both the learned courts below have rightly decreed the suit filed by the plaintiff and have correctly concluded that the evidence on record does not point to the present appellant being a bonafide purchaser of the suit property for consideration. Learned courts below have rendered well-reasoned and logical judgments on a proper appreciation of the evidence on record, which does not call for any interference by this Court.

The questions of law law urged to be involved for adjudication, by learned counsel for the appellant, are in substance, not substantial questions of law and in any case, have perforce to be answered against the appellant and in favour of the plaintiff/respondent No.1.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 25.01.2013 and 11.07.2014 passed by the learned Additional Civil Judge (Senior Division), Rohtak and the learned Additional District Judge, Rohtak, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to costs.

(LISA GILL)
JUDGE

October 15 , 2019.
'om'

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