IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2966-2018 (O&M)
Date of Decision: November 05, 2019

Kewal Singh ...**Appellant**

Versus

Meena Rani ...**Respondent**

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

Present: Mr. Amit Dhawan, Advocate, for the appellant.

ARUN PALLI, J. (ORAL)

Suit filed by appellant-plaintiff was dismissed by the Trial Court, vide judgment and decree, dated 20.08.2016, and as even the appeal preferred against the said decree failed, and was dismissed on 07.12.2017, he is before this Court in Regular Second Appeal. Parties to the *lis,* hereinafter shall be referred to by their original position in the suit.

Plaintiff prayed for a decree for specific performance of the agreement, dated 06.09.2010, and in the alternative for recovery. In brief, the case set out by him was that the suit property was owned and possessed by the defendant, who agreed to sell the same to the plaintiff alongwith all the rights therein, for a sale consideration of Rs. 7,00,000/-. Rs. 3,50,000/- were received by defendant as earnest money. The date fixed for execution of the sale deed was 01.11.2011. Plaintiff remained present in the office of Sub Registrar, Shahkot, alongwith balance sale consideration, but the defendant failed to appear for execution of the sale deed. Thus, the suit.

In the written statement filed by the defendant, she denied execution of the agreement to sell, as also receipt of the earnest money. The agreement in question was alleged to be forged and fabricated document. In fact, plaintiff had very cordial relations with the husband of the defendant, and they used to lend and borrow money from each other, and they even purchased a few properties jointly. In 2008, husband of the defendant was in acute financial crises, owing to losses he had suffered in business, and as a result on 01.05.2008 he borrowed a sum of Rs.5,00,000/- from plaintiff, on interest @ 2% per month. While lending money, plaintiff got a writing on letter pad alongwith a blank cheque of the borrowed amount. For, Naresh Kumar, husband of the defendant could not return the borrowed amount by the agreed date, on 19.08.2008, defendant and her husband settled past accounts including interest, and the total amount due worked out to be Rs.6,00,000/-. And, defendant agreed to repay the loan amount within one year, with interest as settled. However, to secure the repayment of loan, plaintiff obtained signatures of the defendant and her husband on blank stamp papers. But, as defendant and her husband were not in a position to pay the borrowed amount, the date for repayment was extended to 06.09.2010. But, on 07.09.2011, as defendant was still not in a position to repay the borrowed amount, she obtained gold loan of Rs. 10,00,000/-against deposit of gold ornaments with ICICI Bank, Nakodar Branch. And on 08.09.2011 the entire borrowed amount, including interest, was settled, and accordingly husband of the defendant, as instructed by the plaintiff, deposited Rs.7,00,000/- in his savings bank account, and Rs.3,00,000/- in one of the business accounts, under the name ‘M/s Major Cloth House’, in State Bank of Patiala, Shahkot Branch. Despite that plaintiff misused the blank signed stamp papers given by the defendant and fabricated the agreement to sell. 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 agreement to sell, dated 06.09.2010 was specifically denied by the defendant and was alleged to be a result of fraud. Undoubtedly, the defendant admitted her signatures on the agreement, however, the specific plea set out by her was that plaintiff had obtained her signatures on blank stamp papers to secure the amount, the defendant had borrowed, which, however, was returned on 08.09.2011. That being so, the burden of proof was upon plaintiff to prove the execution of the agreement to sell, and passing of the earnest money. Whereas a bare analysis of the said agreement (Ex. P-3) revealed that it suffered from material ambiguities and doubts, for, on the second page of the said agreement interline space between the last line and the second last line was considerably reduced while typing the contents, to adjust the blank space above the signatures of defendant-Meena Rani, which already existed on the blank stamp paper. Further, signatures of the defendant were above the line drawn for signatures of vendor, whereas signatures of her husband, Naresh Kumar, as consenting party, were below the line drawn for her signatures. That being so, the plea of the defendant that agreement to sell was fabricated by the plaintiff by misusing the blank signed stamp papers, made its execution doubtful. Undoubtedly, plaintiff-Kewal Singh appeared as his own witness as PW-1, but conceded in his cross-examination that he did not know even the name of the scribe, who scribed the said agreement.

He even conceded the previous money transactions between himself and the husband of the defendant. He also conceded that cloth business was run by his son Major Singh and they were residing together. He feigned ignorance as regards money transaction by husband of the defendant in the bank account of M/s Major Cloth House on 08.09.2011. Not just that, plaintiff examined Tarsem Lal (PW-2), one of the attesting witnesses of the agreement, but he too failed to disclose the name of the scribe. *Ex facie*, the plaintiff failed to prove execution of the agreement in question whereas, it was duly established that defendant being in acute financial crises had obtained loan from the plaintiff, which was duly returned. That being so, the only and the inevitable conclusion that could be reached: the suit was liable to be dismissed.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions concurrently arrived at by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(ARUN PALLI)
JUDGE

November 05, 2019
Pkapoor Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO