

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

**RSA No.3378 of 2018(O&M)
Date of Decision:12.07.2019**

Amandeep Singh

.....Appellant.

Versus

Tarlochan Singh

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.L.S.Sidhu, Advocate
for the appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated dated 28.11.2017, passed by the learned District Judge, Fatehgarh Sahib, whereby judgement and decree dated 17.03.2017, passed by the learned Civil Judge (Jr. Division), Fatehgarh Sahib, has been set aside to the extent that relief of specific performance has been denied and alternate relief of recovery of the earnest money has been ordered.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 26.05.2006 in respect to the land as described in the plaint and in alternate, it was prayed that sum of ₹ 5,00,000/- (Rupees Five Lakhs) i.e., ₹1,50,000/- (Rupees One Lakh, Fifty Thousand) be ordered, as refund of earnest money paid by the plaintiff to defendant and ₹3,50,000/- as damages, along with penal interest at the rate of 34% per annum from 26.05.2006 til actual and final realization of the said amount. It was further

prayed that the defendant, his agents, servants, mukhtars etc., be restrained from alienating the property or to dispose it of in any manner to anybody else other than the plaintiff. It is pleaded that the defendant-respondent entered in an agreement to sell dated 26.05.2006 with the plaintiff for sale of the property as detailed in the plaint. A sum of ₹1,50,000/- was received by the defendant as earnest money. It was agreed that the sale deed would be executed on or before 30.05.2007. It is further claimed that possession of the property was to be delivered on the said date as well. However, defendant did not come-forward for execution of the sale deed despite the plaintiff being ready and willing for execution of the same. The plaintiff, it is stated remained present in the Tehsil Complex, Fatehgarh Sahib for execution of the sale deed on 30.05.2007. Despite request, defendant, it is stated did not carry out his part of the contract. Hence the suit was filed.

Suit was resisted by the defendant while taking a specific stand that he never entered in an agreement to sell his land with the plaintiff. It is claimed that a sum of ₹1,00,000/- was borrowed from the plaintiff. His signatures were taken on blank papers by the plaintiff which have been misused. It is further claimed that a sum of ₹1,30,000/- was earlier borrowed by the defendant and the plaintiff had taken blank signed stamp papers as security from the defendant and agreement dated 23.07.2003 was drawn up. The amount was returned and the original agreement to sell dated 23.07.2003, was returned to the defendant by the plaintiff. It is stated that the defendant took a loan of ₹1,00,000/- from the plaintiff on 26.05.2006 and he never agreed to sell his land. Blank signed stamp papers taken by the defendant were misused. Dismissal of the suit was prayed for.

Replication was filed admitting the earlier agreement to sell dated 23.07.2003. It is explained that a dispute arose between the parties in regard to the price of the suit property which was subsequently settled and the parties agreed to treat the previous agreement to sell dated 23.07.2003 as invalid and a fresh agreement to sell dated 26.05.2006 was drawn up by the parties.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the defendant executed an agreement to sell dated 26.05.2006 in favour of plaintiff?OPP
2. Whether the plaintiff is/was ready and willing to perform his part of contract?OPP
3. If issue No.1 and 2 are proved in affirmative, whether the plaintiff is entitled to relief of specific performance as prayed for?OPP
4. Whether the plaintiff is entitled to alternative relief of recovery of ₹5 lacs along with interest as prayed for?OPP
5. Whether the suit is not maintainable in the present form? OPD.
6. Whether the plaintiff has no locus-standi to file the present suit?OPD
7. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances as well as the evidence on record, decreed the suit filed by the plaintiff.

Learned District Judge, Fatehgarh Sahib, on an appeal filed by the defendant-respondent, denied the relief of specific performance and ordered recovery of a sum of ₹1,50,000/- along with interest at the rate of 7% per annum vide impugned judgment and decree dated 28.11.2017.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant vehemently argues that the plaintiff has successfully proved the execution of the agreement to sell dated 26.05.2006. Plaintiff, himself testified as PW-1. PW-3-Ajaib Singh, the attesting witness, PW-4-Mangat Ram, stamp vendor, Court complex Fatehgarh Sahib and PW-5-G.S.Balagan, Advocate, Court complex Fatehgarh Sahib, have testified in favour of the plaintiff. Their testimonies proved that the agreement to sell was indeed executed by the defendant and the earnest money received by him. It is further contended that readiness and willingness of the appellant to execute the sale deed is also proved on record, while referring to affidavit dated 30.05.2007, EX.P-3, executed by the plaintiff to show his presence at the office of the Sub-Registrar, Fatehgarh Sahib on 30.05.2007. It is further submitted that as the defendant has taken a specific plea of invalidity of the agreement to sell, the same being forged and fabricated, he cannot raise the question of absence of readiness and willingness of the plaintiff to execute the agreement to sell. The fact that the defendant did not initiate any criminal proceedings against the plaintiff, cements the plaintiff's stand regarding execution of the agreement to sell. Moreover, there is no evidence on record to show that the amount in question was ever returned to the plaintiff. Earlier agreement of 2003, though admitted, cannot detract from the case of the plaintiff, to deny him the relief of specific performance. It is thus prayed that the present appeal be allowed, judgement and decree of the learned trial Court be upheld and the suit filed by the appellant-plaintiff be decreed throughout.

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

It is a matter of record that the appellant has accepted the execution of the previous agreement dated 23.07.2003, Ex.P-1. Defendant has specifically claimed that on an earlier occasion, a sum of ₹1,30,000/- was borrowed from the plaintiff and the blank stamp papers were got signed from him by the plaintiff. Defendant's signatures were also obtained in the register on the pretext that the stamp papers would be retained by the plaintiff for security for repayment of the borrowed amount. Execution of the agreement to sell dated 26.05.2006, is specifically denied by the defendant.

It is pertinent to note, at this stage, that execution of agreement dated 23.07.2003, is admitted by the plaintiff in the replication which has been filed to the written statement on behalf of the defendant. It is sought to be explained that the earlier agreement to sell was entered into between the parties in respect to the same suit land, however a dispute arose regarding the price of the land. The matter was amicably settled and it is thereafter that another agreement to sell dated 26.05.2006, was drawn up in respect to the suit property between the same parties. The said explanation, it is to be noted, was projected at a later stage by the plaintiff in his replication. None of these material facts were ever revealed in the plaint filed by the plaintiff. In case such had been the position, the plaintiff would have revealed the same at the very outset in his plaint. Therefore, I do not find any infirmity in the impugned judgement and decree passed by the learned District Judge, Fatehgarh Sahib, denying the relief of specific performance of agreement to sell dated 26.05.2006 to the plaintiff. Learned District Judge, Fatehgarh Sahib, has rightly ordered recovery of the sum of ₹1,50,000/- to the plaintiff,

as repayment of the amount admittedly accepted to have been taken by the defendant as a loan, is not proved to have been repaid.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Judgement passed by the learned District Judge, is a well reasoned judgement rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgment and decree dated 28.11.2017 passed by the learned District Judge, Fatehgarh Sahib, respectively, is upheld.

There is a delay of 86 days in filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in filing of this appeal is rendered academic. Application is accordingly disposed of.

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

12.07.2019

s.khan

[LISA GILL]
Judge

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