IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3696-2018
Date of Decision: October 03, 2019

Jasmer Singh

...Appellant

Versus

Rachhpal Singh and another

...Respondents

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

Present: Mr. Gurminder Singh Phull, Advocate,
for Mr. Brijeshwar Singh Bhalla, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

Suit filed by the plaintiff-appellant was dismissed by the Trial Court, vide judgment and decree, dated 19.09.2016, as even the appeal preferred against the said decree failed, and was dismissed on 15.11.2017, 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 possession by way of specific performance of the agreement to sell, dated 05.06.2006. In brief, the case set out by him was that defendant-Rachhpal Singh was owner of a shop, and a land measuring 3 Marlas 4½ Sarsahi. And, an agreement to sell, dated 05.06.2006, was entered into between the parties qua the said property, for total consideration of Rs.2,50,000/-, Rs.1,09,000/- were received by the defendant as earnest money at the time of execution of the agreement to sell. The date fixed for execution and registration of the sale deed was 05.06.2007, which was extended to 12.06.2009. Plaintiff was

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always ready and willing to perform his part of the contract. However, as the defendant-Rachhpal Singh failed to execute the sale deed, thus, the suit.

In the written statement filed by defendant-Rachhpal Singh, execution of the agreement to sell, dated 05.06.2006, was denied. The agreement, dated 05.06.2006, was alleged to be a forged and fabricated document.

In a separate written statement filed by defendant No. 2, he set up the plea of *bona fide* purchaser for consideration.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that categoric case set up by defendant No. 1 was that the alleged agreement was a forged and fabricated document. In fact, the agreement (Ex. P-1) bears two signatures of defendant No. 1, but both the signatures do not tally with each other. The agreement also bears two signatures of Gurdev Singh, an attesting witness, but even these two did not tally. Concededly, plaintiff himself did not sign the agreement (Ex. P-1). He even failed to examine any Expert to prove that agreement, dated 05.06.2006, indeed bears signatures of defendant No.1. Further, none other than the plaintiff himself (PW-3) conceded in his cross-examination that Resham Singh, the other attesting witness to the agreement (Ex. P-1) was his close relative. He also admitted that the first line of the agreement (Ex. P-1) was covered by notary tickets, which showed that these tickets were affixed subsequently. In fact, the agreement in question was scribed on an un-stamped document, on which the stamps were affixed later. Boundaries of the suit property were not depicted or

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mentioned in the agreement either. In the plaint, plaintiff had earlier mentioned the name of the attesting witness, Hira Singh, which was subsequently amended/alterted to Resham Singh. However, in his affidavit (Ex. PW-3/A), which was tendered in examine-in-chief, he again mentioned the name of Hira Singh, which made his claim highly doubtful. He even conceded in his cross-examination the over-writing at Mark-A in the agreement (Ex. P-2). The said over-writing clearly revealed that numeric '7' was converted into numeric '9'. Further, the suit property belonged to defendant-Rachhpal Singh and his brother Gulab Singh, and was, thus, still joint, and, therefore, defendant No. 1 in any case was not the exclusive and absolute owner thereof. Likewise, the jamabandi (Ex. P-8) showed that the suit property was owned by defendant No. 1 as a co-owner, and, thus, was not yet partitioned between the co-sharers. Undoubtedly, plaintiff in support of his claim had examined Resham Singh, the alleged attesting witness, as PW-1, but he conceded in his cross-examination that he did not even know the date and month when agreement (Ex. P-1) was executed. Further, no consideration was paid in his presence. As regards defendant No. 2, it was duly proved on record that he had purchased a share of defendant No. 1, pursuant to a registered sale deed dated 07.11.2007, for a valuable consideration, and was put in possession thereof. Thus, he was held to be a *bona fide* purchaser. *Ex facie*, plaintiff failed to prove the agreement to sell (Ex. P-1) and also that defendant No. 1 had received a sum of Rs.1,09,000/- pursuant thereto.

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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

October 03, 2019
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Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO

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