IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.3823 of 2018 (O&M)
Date of Decision : 24.10.2019

Seo Rani and another

......Appellants

Versus

Raghbir Singh and others

...... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.H.S.Sodhi, Advocate for
Mr. R.S.Dhaliwal, Advocate for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 5.3.2012 and as even two separate appeals preferred by defendant No.1 and defendants No.3 and 4 respectively, against the said decree failed and were dismissed on 24.11.2015. Defendants No.3 and 4 are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit. Plaintiff prayed for possession by way of specific performance of the agreement to sell and for injunction.

In brief, the case set out by him was that defendant No.1 happened to be the owner in possession of the suit property and the parties had entered into an agreement to sell dated 15.12.2006, for a total consideration of Rs.3,25,000/-. Rs.3,00,000/- were received as earnest money and the date fixed for execution of the sale deed was 15.04.2007.

Plaintiff has always been ready and willing to perform his part of the contract. And, as 14.04.2007 and 15.04.2007, were holidays, plaintiff approached defendant No.1 on 12.04.2007, to execute the sale deed on receipt of balance sale consideration and he remained present in the Office of Sub Registrar, Sunam, on 13.04.2007. But defendant No.1 failed to turn up and perform his part of the contract. Subsequently, defendant No.1 sold the suit property to defendants No.3 and 4, vide sale deed dated 05.11.2007, therefore, the same was also liable to be set aside being illegal, null and void.

In the written statement filed by defendant No.1, she admitted to be the owner of the suit property. But denied to have entered into an agreement to sell with the plaintiff or received any amount as earnest money. The agreement dated 15.12.2006, was alleged to be a forged and fabricated document. In fact, plaintiff had connived with Gurmail Singh, Rakesh Kumar Sharma and Narinder Sharma and had obtained Rs.5,00,000/- from son of the answering defendant on the pretext of sending him abroad. They failed to send him but assured to return the amount of Rs.5,00,000/-. Accordingly, to settle the matter plaintiff, Gurmail Singh, Rakesh Kumar Sharma and Narinder Sharma came to the Court complex to scribe a writing in this regard. However, on the pretext of executing a compromise deed they obtained the thumb impressions of the defendant on blank papers and fabricated the agreement in question. Thus, the suit was liable to be dismissed.

In a separate written statement filed by defendants No.3 and 4 they set up a plea of being *bona fide* purchaser.

Upon consideration of the matter in issue and the evidence on record both the Court concurrently concluded that it was not required in law that agreement to sell must compulsorily be attested by any witness. Plaintiff had appeared as his own witness and testified the execution of the agreement dated 15.12.2006, in his deposition. Further, statement of the scribe of the agreement dated 15.12.2006, statement of Notary Public and the Handwriting and Fingerprints Expert Dr. Inderjit Singh execution of the agreement (Ex.P1), by defendant No.1, in favour of the plaintiff, was duly proved. Likewise, the evidence on record proved the receipt of Rs.3,00,000/- as earnest money by defendant No.1. The plea set out by defendant No.1 that agreement (Ex.P1) was a forged and fabricated document, remained unsubstantiated for lack of evidence. On the contrary, plaintiff duly proved that he has been ready and willing to perform his part of the contract at all material stages of the contract.

Defendants No.3 and 4, in whose favour sale deed dated 5.11.2007 (Ex.D2) was executed by defendant No.1 and had set up a plea of being *bona fide* purchaser. However, it was concluded that they had purchased the suit property, vide sale deed dated 05.11.2007, during the pendency of the suit, and thus, the transaction between the parties was hit by the principle of *lis pendence*. Even if, it was assumed that they had made the necessary inquiries from the revenue officials as regards ownership/title of defendant No.1 that could hardly enure to their benefits for, the sale deed in their favour had been executed during the pendency of the *lis.* Thus, they could not even set up a plea of being *bona fide* purchaser. Therefore, the sale deed dated 05.11.2007, was invalid and liable to be set aside. That being so, the only and the inevitable conclusion that could be reached: the plaintiff was entitled to the decree prayed for.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions recorded 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 below. The appeal being devoid of merit is accordingly dismissed.

24.10.2019 **(ARUN PALLI)**
Manoj Bhutani **JUDGE**

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