IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4503-2018
Date of Decision: November 07, 2019

Amrik Singh

...Appellant

Versus

Jatinder Singh and another

...Respondents

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

Present: Mr. Zorawar Singh Chauhan, Advocate, for the appellant.

ARUN PALLI, J. (ORAL)

Suit filed by respondent No. 1-plaintiff was decreed by the Trial Court, vide judgment and decree, dated 27.01.2016, and as the appeal preferred against the said decree failed, and was dismissed on 27.02.2018, appellant-defendant No. 1 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 filed a suit for recovery of Rs.4,00,000/- on the basis of an agreement to sell and receipt, dated 19.08.2009, i.e. Rs.3,00,000/- on account of earnest money, and Rs.1,00,000/-as damages. In brief, the case set out by him was that defendants represented themselves to be owners in possession of three plots, bearing Nos. 12, 13 and 14, situated in Chandigarh Road, Village Barnala Kalan. And upon showing the said sites to the plaintiff, parties entered into an agreement to sell, dated 19.08.2009, @ Rs. 1,30,000/- per marla. Rs. 3,00,000/- were received by the defendants as earnest money against a separate receipt executed in favour of plaintiff. The sale deed was to be executed on or before 24.03.2010. Thereafter, plaintiff repeatedly approached defendants to furnish the copy of Fard Jamabandi so that as agreed between the parties, the specific khasra numbers, the suit property was comprised in, could be mentioned in the agreement, but to no avail. Subsequently, on enquiries and examining the revenue record with the assistance of Halqua Patwari, it transpired that defendants were not even owners of the suit property. Resultantly, they were requested to refund the earnest money. But as they declined to do so, thus, the suit.

In the written statement filed by defendant No. 1, execution of the agreement to sell was denied. Rather, it was pleaded that a close associate of plaintiff, namely, Mohan Lal, in connivance with Pritpal Singh and Sarabjit Singh of Village Karimpur, cheated the defendants to the tune of Rs.50,00,000/-, and during course of documentations qua sale of another land to him (defendant No. 1), his signatures and thumb impressions were obtained on certain blank papers, which were misused to fabricate the agreement in question.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that plaintiff as also the marginal witnesses to the agreement to sell, testified in their deposition that agreement, dated 19.08.2009 (Ex.P-1), was executed by defendant No. 1-Amrik Singh, for sale of suit property. Further, he received the earnest money, i.e. Rs.3,00,000/- in cash from the plaintiff. The receipt (Ex.P-2) that was separately executed in acknowledgement of receipt of Rs.3,00,000/- was duly proved on record. Both these documents were attested by the witnesses, one of whom Ramji (PW-3) testified in his deposition not only the execution of these documents, but also the conditions set out in the agreement to sell and receipt of earnest money. The plea that as the specific khasra numbers in which the suit property was comprised in, were not mentioned in the agreement, the Court could not grant any effective relief, was also rejected as the suit property was duly described in the agreement as Plot No. 12, 13, situated in village Barnala Kallan, Tehsil Nawanshahr. Thus, the agreement could not be termed as vague and uncertain. Even defendant No. 1-Amrik Singh admitted his signatures upon the agreement to sell (Ex. P-1) as also the receipt (Ex. P-2). For, the plea set out by the defendant was: his signatures were obtained by fraud, thus, the onus to prove that he was defrauded was upon him, which he failed to discharge for lack of evidence. Although the case set out by defendant No. 1 was that plaintiff had filed the present suit in connivance with Mohal Lal, and before the police plaintiff had conceded that no such agreement was ever executed, however, no evidence was led in this regard. Meaning thereby, defendant No. 1 withheld the best evidence for the reasons best known to him. Not just that, defendant No. 1 himself was facing trial, under Section 420 IPC, alongwith Mohan Lal. As regards certain discrepancies and contradictions in the statements of the witnesses examined by plaintiff, it was concluded that minor discrepancies post execution of the agreement were bound to occur if the statements of the witnesses were recorded after a substantially long period of time. However, the fact remains that defendant No. 1 failed to prove if he was owner of the suit property, but he yet entered into an agreement to sell and received Rs.3,00,000/- as earnest money. Thus, in terms of the provisions of Section 70 of the Contract Act, 1972, he was obliged to return the said amount. Once execution of the agreement in question as also receipt of Rs.3,00,000/- as earnest money was proved, the only and the inevitable conclusion that could be reached: plaintiff was entitled to the decree for Rs.3,00,000/- alongwith interest.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at, 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 07, 2019
Pkapoor Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO