IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.4732 of 2018 (O&M)
Date of Decision:10.09.2019

Parveen Kumar and others ......Appellants

Versus

Rajinder Kumar and others ....Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

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Present: Mr.Rohit Sapehiya, Advocate for
Mr.R.S.Chauhan, Advocate for the appellants.

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JAISHREE THAKUR, J.

1. The appellants seek to challenge the judgement and decree of both the Courts below whereby in the suit of the plaintiff for specific performance of an agreement to sell dated 22.01.2008, the alternative relief of recovery of refund of the earnest money has been decreed by the Civil Judge, Pathankot on 20.02.2015 and the appeal against the same has been dismissed.

2. In brief, the facts are that a suit for specific performance of an agreement to sell dated 22.01.2008 was executed by the appellants-defendants, henceforth called the 'appellants', in favour of the plaintiff-respondent, henceforth called the 'respondent', for selling suit land. The respondent claimed that the appellants herein had agreed to sell the property for a consideration of Rs.36,000/- per marla and had received Rs.1,50,000/- as earnest money. The sale deed was to be executed and registered on or before 28.04.2008. The respondent was present in the

office of Sub-Registrar, Pathankot on 28.04.2008 however, the appellants did not put in appearance for getting the sale deed registered and to mark his presence. The respondent also got an affidavit duly attested from the Sub Registrar-cum-Executive Magistrate, Pathankot, regarding his presence.

3. Since there was a breach of the agreement to sell land, the respondent requested the appellants to come and register the sale deed which the appellants avoided to do. Ultimately, a legal notice dated 05.05.2008 was served upon them asking them to execute the sale deed within 15 days from receipt of notice. However, the appellants did not respond to the said notice. It then came to the knowledge of the respondent that the appellants in order to complicate the issue had sold the suit property vide sale deed dated 13.03.2008 for a consideration of Rs.12,25,000/- and had already got the mutation sanctioned in favour of the subsequent vendees. Since the suit property stood sold, the respondent filed a suit seeking specific performance or in the alternative to refund double of the earnest money. The suit was contested by the appellants on the ground that the agreement is sheer forgery and they are not bound by it. It was also argued that the suit for specific performance would not be maintainable since appellant No.5 Daya Rani was not a signatory to the agreement to sell. Issues were framed and thereafter evidence was led.

4. Respondent in order to prove the agreement to sell stepped into the witness box as PW-1 and further examined Sh. Chain Kanwar, Advocate as PW-2, Sh. Dalbir Singh as PW-3, Sh. Sikandar Kumar as PW-4 and Sh. Denial Masih as PW-5 and placed on record agreement to sell

dated 22.01.2008 as Ex.P1, affidavit dated 28.04.2008 as Ex.P2, legal notice dated 05.05.2008 as Ex.P3, postal receipt as Ex.P4. In order to rebut the claim of the respondent, the appellant No.7 Madan Lal and appellant No.2 Parveen Kumar stepped into the witness box and submitted jamabandi for the year 2002-03 as Ex.D1, sale deed dated 3.3.2009 as Ex.DX, electricity bill as Ex.D1, acknowledgment as Ex.D2, certified copy of judgement dated 06.01.2010 as Ex.D3, certified copy of judgment dated 2.5.2012 as Ex.D4, certified copy of statement of Sh. Chain Kanwar Advocate dated 15.10.2009 as Ex.D5, certified copy of statement of Sh. Joginder Pal dated 15.10.2009 as Ex.D6, certified copy of statement of Sh. Rajinder Kumar dated 10.11.2009 as Ex.D7, certified copy of statement of Dalip Singh dated 10.11.2009 as Ex.D8, certified copy of cheque as Mark A and Mark B respectively and thereafter, ld. Counsel for the defendants closed the evidence on behalf of the defendants.

5. On consideration of the evidence, the trial Court held that the appellants have committed breach of contract, but the respondents would not be entitled to the decree for specific performance as the suit property stood sold and the subsequent vendees were bonafide purchasers without notice . However, it was held that the respondents would be entitled to a refund of the earnest money while also holding that execution of the agreement dated 22.01.2008 (Ex.P-1) in favour of the respondents stands proved on the record.

6. Aggrieved against the said judgement and decree, two appeals were preferred one by the respondent Rajinder Kumar seeking to challenge the said judgement and decree on the ground that once the agreement to sell

has been proved, the suit for specific performance ought to have been allowed whereas the appellants challenge the said judgement and decree on the ground that they were not liable to pay a sum of Rs.3.00 lakh being the double the refund of earnest money given. The appeal was dismissed which has led to the filing of the instant appeal before this Court by the appellants/defendants.

7. Learned counsel for the appellants argues that both the Courts below have not taken into consideration that the sale agreement that had been entered into between the parties did not bear the signature of Daya Rani defendant/appellant No.5 in the instant RSA.

8. I have heard counsel for the appellants and find that no ground is made out to interfere in the appeal against concurrent finding of fact. Both the Courts below had appreciated the evidence and held the agreement dated 22.01.2008 bears signatures of appellants No.1 to 4 and the same stood duly proved by the attesting witness PW-3 Dalbir Singh. PW-3 who attested the sale agreement categorically stated that the agreement was executed by defendants No.1 to 4 in favour of Rajinder Kumar even though appellant No.5 was not present. The rest of the appellants had under taken the responsibility to get the same signed from Smt.Daya Rani, their sister. The factum of receiving the earnest money was also proved by the attesting witness. Merely because the scribe of the agreement was not examined, it cannot be said that the agreement was not duly executed.

9. Moreover it cannot be held that the agreement entered into was on account of any forgery or fraud having been played upon the

appellants. The law is well settled as has been held in ***Jarnail Singh and others Versus Sukhdev 2009 (2) CCC 147 (P&H) and Diwan Chand Versus Kuldip Kumar Mehta, (P&H) 2008 (2) RCR (Civil) 284*** that the plea of fraud has to be duly proved and in the absence of other corroborating evidence mere allegations would not be sustainable. Therefore, once the agreement to sell stands along with receipt of the earnest money, the respondent herein would be entitled to recover back the same under the relief clause of alternative relief with stipulated damages of Rs.1,50,000/- with interest @ 6% per annum from the date of filing the suit.

Finding no merits, the appeal is dismissed.

(JAISHREE THAKUR)
JUDGE

10.09.2019
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No