IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5822 of 2017 (O&M)
Date of Decision.30.01.2019

Santa ...Appellant

Vs

M/s Malik Construction Company ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Randhir S. Hooda, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the decretal of the counter-claim filed by the respondent-defendant in suit filed by the appellant-plaintiff.

The appellant plaintiff instituted the suit for permanent injunction against the defendant, which was withdrawn vide order dated 25.02.2009. Defendant No.3 preferred a counter-claim claiming to be absolute owner in actual and physical possession of the suit land measuring 6 kanals 9 marlas on the basis of sale deed dated 3.1.2007 for consideration of ₹5,81,000/-, being legal, authentic and binding upon the plaintiff, with further direction of execution and registration of the another fresh sale deed in terms of the conditions of compromise deed dated 3.1.2007 with consequential relief of injunction restraining the appellant-plaintiff from interfering into peaceful possession.

The facts as asserted in the plaint have been extracted by both the Courts below. In nutshell, it was asserted that counter-claimant was a partnership firm under name and style of M/s Malik

Construction Company. A suit titled as "Rajbir Vs. Smt. Santa" was instituted for specific performance of agreement and during the pendency, Santa arrived at compromise with Rajbir for selling the suit land to the counter claimant on 3.1.2007. She undertook to execute and register the sale deed in the office of Sub Registrar on the same day. The parties executed a compromise and in this regard for the purpose of mutation, plaintiff had executed a special power of attorney in favour of one Naresh Kumar Malik. The plaintiff had agreed to accept the total sale consideration of ₹26,40,600/-, which was handed over to her but she ran from the office of Sub Registrar. The details of draft of ₹5 lakhs and another amount of ₹21,40,600/- had been explained in the plaint.

The appellant-plaintiff objected to the counter-claim and stated that assurance given by the counter-claimant was to pay a sum of ₹62,01,550.40 per acre but on refusal, sale deed could not be executed. Receipt of ₹26,40,600/- was also denied but stated of have not received sale consideration.

Since the parties were at variance, the trial Court framed following issues:-

> *"1. Whether the plaintiff had executed a sale deed qua the suit property in favour of the defendant and the defendant no.3 is entitled to get the same registered from Sub Registrar? OPC*
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> *2. Whether the counter claimant is entitled to injunction as prayed for? OPC*
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> *3. Whether the counter claim is not maintainable? OPR*

4. Whether the counter claimant has no locus standi to file this suit? OPR

5. Whether the counter claimant has not been properly valued and proper court fee has not been affixed? OPR

6. Whether counter claimant has no cause of action to file the counter claim? OPR

7. Whether the counter claimant is estopped to file the counter claim on his own act and conduct? OPR

8. Relief."

The counter claimant examined as many as four witnesses whereas plaintiff examined two witnesses.

Mr. Hooda, learned counsel appearing on behalf of the appellant-plaintiff and defendant in the counter claim submitted that Rakesh Kumar Jain Vasika Nawis stated that he prepared the sale deed Ex.CW3/1 for a sum of ₹5,81,000/-, also clarified that ₹5 lakhs was paid to the appellant through draft and ₹81,000/- through cash but there was no transaction of sale consideration in his presence. Similar, Naresh Kumar Malik in cross-examination admitted on the same lines. To a question replied that sum of ₹5,81,000/- was paid to the appellant-Santa and ₹34,800/- for execution of the sale deed was spent on purchase of stamp papers and entry of ₹6,22,860/- was mentioned only in the income tax returns. The lower Appellate Court has also committed illegality, as no such direction or decree could have been passed in the counter-claim. The trial Court committed grave error in not adhering to the established law and the lower Appellate Court failed to apply its judicious mind.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. During the course of hearing, this Court requested Mr. Hooda to pass on copy of cross-examination of the appellant, as finding of the lower Appellate Court was seriously disputed the with regard to admission of having received sum of ₹21,40,600/-. On going through the cross-examination, it revealed that the appellant admitted to have thumb marked receipt of ₹21,40,600/-, Ex.CW2/1. She also admitted that talk of sale of 6 kanal 9 marla was effected between her and the company and admitted receipt of ₹5 lakh through draft. The onus with regard to receipt being a result of fraud, thus, had not been discharged. It is matter of record that both parties set their hands together and executed the sale deed Ex.CW3/1 but the plaintiff ran away from the office of Sub Registrar, despite the fact that the claimant had been put in possession of the suit land. It is a classic case where vendor has left the vendee in lurch, compelling him to file the counter-claim in suit for injunction, which was withdrawn.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 30, 2019
Pankaj*

Whether Reasoned/Speaking Yes
Whether Reportable No