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

RSA No.5892 of 2018 (O&M)
Date of Decision: January 10, 2019

Vinod Kumar Chopra

...Appellant

Versus

Narain Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Shiv Kumar Sharma, Advocate
for the appellant-plaintiff.

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JAISHREE THAKUR, J. (Oral)

1. The instant Regular Second Appeal has been filed by the appellant-plaintiff (hereinafter referred to as 'the appellant') assailing the judgment and decree dated 21.03.2015 passed by the learned Civil Judge (Senior Division) Gurgaon (now Gurugram), which was affirmed in appeal by the lower Appellate Court.

2. In short, the facts of the case as alleged are that, the respondent-defendant (hereinafter referred to as 'the respondent') agreed to sell the suit property to the appellant for a total consideration of ₹ 14,85,000/- per acre on 18.08.2003, out of which a sum of ₹ 2,00,000/- was paid through cheque and a sum of ₹ 50,000/- was paid in cash as

earnest money and the sale deed was to be executed on 30.09.2003 on receiving the balance sale consideration. The respondent was to obtain No Objection Certificate under Section 7-A of the Haryana Urban Development & Regulation of Urban Area Act, 1975 in favour of the appellant prior to the execution and registration of the sale deed, but the respondent did not obtain the NOC. It is averred that the appellant has always been ready and willing to perform his part of the contract on payment of balance sale consideration amount, but the respondent did not care to obtain the NOC from the concerned authorities. It is submitted that the appellant appeared before the Sub Registrar on 30.09.2003 fully prepared with remaining sale consideration along with other expenses for stamp papers, but the respondent did not turn up. Hence, the suit.

3. Earlier, an ex parte judgment and decree was passed in favour of the appellant on 26.03.2007, but the same was set aside on the application moved by the respondent under Order 9 Rule 13 of CPC, by an order dated 30.01.2014 and thereafter, the respondent filed his written statement.

4. In his written statement, the respondent took preliminary objections as to maintainability, court fee and jurisdiction, estoppel, locus standi, barred by the limitation etc. while submitting that the market value of the land in question is more than ₹ 4 crore per acre and even the collector rate of the land of village Nagli Umarpur has been fixed as ₹ 2.25 crore per acre. On merits, the respondent admitted that he is owner in possession of land measuring 13 kanal, 6 marla as detailed in

the headnote of the plaint, but categorically denied entering into the agreement to sell dated 18.08.2003 with the appellant or that the respondent duly signed or executed the agreement to sell dated 18.08.2003. It is submitted that one Satish Nagar of village Ullawas along with his associate Prem Singh, who stated themselves to be property brokers, contacted the respondent and obtained his signatures on blank stamp paper and unfilled papers on 01.08.2003, promising that they could get the land sold to some buyer for a handsome price, which would be settled before the prospective purchaser and in front of the respondent. They promised that the agreement will be got effected between seller and purchaser after mutual settlement within a weeks time. They obtained the signatures of the respondent on 01.08.2003 after handing over a cheque of ₹ 1,25,000/- without disclosing the name of the account holder. They represented that it could be got encashed by the respondent and if no agreement of the choice of the respondent would be got effected, the amount so encashed would be forfeited and the respondent will not be liable to refund the same. It is submitted that when no mutual sale agreement was effected between the respondent and the prospective buyer within a week from 01.08.2003, the cheque of ₹ 1,25,000/- already encashed on 05.08.2003 stood forfeited and the blank signed papers became ineffective and infructuous. The rate of the land fixed at ₹ 14,85,000/- per acre, agreement effected between the parties and giving ₹ 2,50,000/- as earnest money or payment payment on 18.08.2003 by the appellant, were also denied by the respondent. All the remaining allegations of the plaint were also denied.

5. From the pleadings of the parties, the following issues were framed by the lower court on 13.05.2004:-

1. Whether defendant entered into agreement to sell dated 18.08.2003 with plaintiff to sell the suit land for sale consideration of ₹ 14,85,000/- per acre and received ₹ 2,50,000/- as earnest money?OPP.

2. Whether the plaintiff had always been ready and willing to perform his part of the contract and is still ready and willing to do so?OPP.

3. Whether the plaintiff is entitled for a decree of possession by way of specific performance and mandatory injunction on the grounds mentioned in the plaint?OPP.

4. Whether the suit is not maintainable in the present form?OPD.

5. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD.

6. Whether the suit of the plaintiff is barred by limitation?OPD.

7. Whether the plaintiff has not come to the court with clean hands?OPD.

8. Relief.

6. In order to prove his case, the appellant himself stepped into the witness box as PW1 and tendered into evidence various documents. On the other hand, the respondent also himself appeared as DW1 and tendered documents in evidence.

7. After hearing the arguments of both the sides, the lower court vide its judgment and decree dated 21.03.2015 dismissed the suit of the appellant. Feeling aggrieved, the appellant challenged the said judgment and decree before the lower Appellate Court, which appeal stood dismissed by the Additional District Judge, Gurugram on 31.07.2018. Both these judgments and decrees are under challenge in this regular second appeal.

8. Dr. Anmol Rattan Sidhu, learned Senior Counsel, assisted by Mr. Shiv Kumar Sharma, Advocate argues that once the signature upon the agreement to sell was proved and admitted by the respondent, then the onus of proving the case stood shifted to the respondent only, especially when he received the cheque recited in the body of the agreement and also encashed the same on 05.08.2003. It is contended that the courts below failed to appreciate the fact that there is no explanation to the effect that how the original agreement (Ex.P1) came into the custody of the appellant, when the blank and stamped unfilled papers signed by the respondent were given to the attesting witnesses namely Satish Nagar and Prem Singh. It is also argued that the story put forth by the respondent regarding signing the blank and unfilled stamped papers is highly improbable, because a normal person would not sign on blank papers and will hand it over to any person. It is also contended that presence of both the parties is not mandatory for the execution of an agreement, if the intentions and the willingness of the parties with proper understanding of the agreement is there.

9. I have heard learned Senior counsel for the appellant and

have also gone through the pleadings of the case.

10. All these arguments, which are raised before this court, were also raised before the courts below. The trial court, in its judgment, has observed as under;-

> *"14. Thus, the onus was upon the plaintiff to prove the due execution of the agreement to sell dated 18.8.2003 (Ex.P1) and that he had paid a sum of Rs.2,50,000/- to the defendant by way of a cheque. But for the solitary & self serving statement of the plaintiff there is no evidence on record to prove the due execution of the impugned agreement to sell dated 18.8.2003. The agreement Ex.P1 reveals that two attesting witnesses to the impugned agreement were Satish Nagar and Prem Singh but both these witnesses were never examined by the plaintiff for the reasons best known to him. There is no evidence on file in the form of cheque of Rs.2,50,000/- to establish the payment of Rs.2,50,000/- to the defendant. Rather, the plaintiff tried to take an altogether different plea at the fag-end of the trial by moving an application under Order 6 Rule 17 of the CPC alleging that he had no paid an amount of Rs.2,50,000/- to the defendant by way of cheque as averred by him in his written statement rather a cheque of Rs.1,25,000/- was given to the defendant and Rs.1,25,000/- was given in cash. This application was disallowed by the court because the plaintiff has succeeded in obtaining an ex parte judgment and decree against the defendant on the basis of the averment that he had handed over a cheque of Rs.2,50,000/- and now when the defendant joined the proceedings after his application under Order 9 Rule 13 of CPC was allowed, the plaintiff was not allowed to*

wriggle out of his earlier stand. This very fact speaks volumes about the act and conduct of the plaintiff. Not only this, it is the plea of the defendant that the blanks in the document Ex.P1 have been filled with different inks and this agreement was never executed between him and the plaintiff. All these facts have been admitted by plaintiff Vinod Kumar Chopra (PW1) in most unambiguous terms during the course of his cross-examination. He had admitted that Ex.P1 was never written in his presence. He has admitted that Narain Singh and the witnesses never signed the agreement in his presence. He has admitted that he has never seen Narain Singh. He has admitted that the agreement was taken to him by one Prem Singh and no sale agreement was ever executed between him and Narain Singh. He has admitted that the signatures of Satish Nagar were obtained on the impugned agreement on 1.8.2003 whereas the agreement was executed on 18.8.2003. He has admitted that the stamp charges shown to have purchased on 18.8.2003. All these admissions lend credence to the stand taken by the defendant that in fact, two property brokers, namely Satish Nagar and Prem Singh obtained his signatures on blank agreement promising to get a prospective vendee at a reasonable price within a week after paying a cheque of Rs.1,25,000/- to the defendant. It was also agreed between defendant and the brokers that the money would be forfeited in case no prospective buyer could be obtained within a week but when the defendant actually forfeited Rs.1,25,000/- the plaintiff came up with the forged agreement."

11. The lower Appellate Court, while dismissing the appeal of

the appellant, has *inter alia* observed as under;-

> *" (para 14.) xxx No explanation has been put forth by the appellant-plaintiff that under what circumstances the respondent-defendant and attesting witness Satish Nagar signed Ex.P1 on 01.08.2003 whereas as per pleadings of the appellant-plaintiff the agreement to sell was entered into on 18.08.2003. The learned counsel for the appellant-plaintiff submits that the stamp papers of agreement to sell Ex.P1 were purchased on 18.08.2003, so the date mentioned by respondent-defendant and attesting witness Satish Nagar on 01.08.2003 is irrelevant finds no force. The date of endorsement of stamp paper is although showing that the stamp papers were purchased on 18.08.2003 in the name of respondent-defendant Narain Singh but he has not signed the same nor the appellant-plaintiff has examined the stamp vendor to show that it was actually purchased by Narain Singh on 18.08.2003 by producing the relevant register to be maintained by stamp vendor. So, the date of purchasing the stamp papers does not appear to be genuine, particularly, when the attesting witness has also signed Ex.P1 on 01.08.2003 xxx."*

12. In para 15 of its judgment, the lower Appellate Court, has also observed that;

> *"xxx The contention of learned counsel for the appellant-plaintiff that as signatures on the agreement to sell Ex.P1 are admitted, so it shall be presumed that it is a legal and valid document, finds no force. Merely, the admitted signatures on document does not mean that the contents of the same are admitted. The respondent-defendant has categorically denied the*

contents of the agreement to sell Ex.P1 and under these circumstances, it was legal duty on the part of the appellant-plaintiff to prove that the contents of the agreement to sell Ex.P1 have been proved on the file. The attesting witnesses have not been examined. The appellant-plaintiff in his evidence has nowhere stated that the contents of the agreement Ex.P1 were read over and explained to the respondent-defendant and he put his signatures in token of its correctness, so when the contents have been denied by the respondent-defendant and there is no evidence that he signed Ex.P1 after understanding the contents of the same to be correct, then it cannot be said that the agreement to sell Ex.P1 has been duly proved."

13. This court has thoroughly considered the arguments, so advanced by learned Senior counsel for the plaintiff, but do not find any force behind the same. First of all, the agreement to sell (Ex.P1) in question has not been proved by the appellant to warrant the relief as prayed for. Further, both the courts below have noted down the admissions made by the appellant during his cross-examination to hold that there was no consensus of the parties for the legal agreement and that there was no free consent and valid contract/agreement between the parties. Further, the arguments regarding admission of signatures by the respondent on the agreement to sell; encashment of cheque by the respondent; failure of respondent to prove that any fraud has been committed upon him etc. have been dealt with in detail by the lower Appellate Court and have been rightly rejected.

14. There are concurrent findings of the courts below against

the appellant-plaintiff. This court finds no legal or factual infirmity in the judgments of the courts below. No substantial question of law requiring determination arises in this appeal, which has no merit.

15. Dismissed.

(JAISHREE THAKUR)
JUDGE

January 10, 2019
vijay saini

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