

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 15.10.2019
RSA No.4526 of 2018 (O&M)

Kulwinder Kaur

.....Appellant

Versus

Pakhar Ram

..... Respondent

RSA No.4628 of 2018

Kulwinder Kaur

.....Appellant

Versus

Pakhar Ram

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Rohit Ahuja, Advocate for the appellant(s).

ARUN PALLI, J. (Oral)

Vide this judgment and order I shall decide two appeals, for, these arise out of the same suit and the judgment and decree, being assailed is common.

The plaintiff-appellant filed a suit for possession by way of specific performance of the agreement to sell dated 08.01.2010.

In brief, the case set out by the plaintiff was that parties had entered into an agreement to sell dated 08.01.2010, qua a house comprised

in land measuring 9 marlas, situated within the *abadi* of village Kot Krar Khan Tehsil and District Kapurthala, for a total sale consideration of Rs.4,00,000/-. A sum of Rs. 3,30,000/- were paid by way of earnest money at the time of execution of the agreement itself. The balance sale consideration was to be paid on 15.01.2012, that is the date fixed for execution and registration of the sale deed. The plaintiff-appellant has always been ready and willing to perform her part of the contract. For, 15.01.2012, happened to be Sunday, plaintiff remained present in the office of Sub Registrar on 16.01.2012, with the balance sale consideration but the defendant failed to turn up and perform his part of the contract. Thus the suit.

In defence, the defendant denied the execution of the agreement dated 08.01.2010 and clarified that in fact defendant had obtained loan from the plaintiff and appended his signatures/thumb impressions over certain blank papers and stamp papers as instructed by him. The loan amount i.e. Rs.1,50,000/- was eventually returned by the defendant to the plaintiff but she did not return the blank papers upon which she had obtained his signatures/thumb impressions. Thus, the suit was liable to be dismissed.

Vide judgment and decree dated 01.10.2015, the trial Court decreed the suit qua an alternate relief for recovery of principal amount i.e. Rs.3,30,000/- paid by way of earnest money along with interest @ 9% per annum from the date of execution of the agreement dated 08.01.2010, till its realization.

Both the parties, being aggrieved, assailed the judgment and decree dated 01.10.2015, vide two separate appeals. For, the Appellate Court vide impugned judgment and decree dated 31.07.2017, dismissed the appeal preferred by the plaintiff-appellant claiming the primary relief for specific performance of agreement and on the contrary accepted the appeal filed by the defendant-respondent and dismissed the suit, the plaintiff-appellant is before this Court in Regular Second Appeal.

Heard learned counsel for the appellant and examined the records.

Needless to assert, for, the plaintiff to claim a decree for specific performance of the contract, firstly, she was required to prove due execution of the agreement to sell dated 08.01.2010 (Ex.P4). However, upon a due and comprehensive analysis of the matter in issue and the evidence on record, the Appellate Court concluded that plaintiff failed to examine the scribe of the agreement Ex.P4. Not just that even the name of the scribe was neither disclosed in the plaint nor even in the affidavit Ex.PA, tendered by the plaintiff in her examination-in-chief. Further, in her cross-examination she conceded that she did not know as to who scribed the agreement and if the scribe had even entered the agreement in his deed register. She also deposed that prior to the institution of the suit she did not go to the Office of the Sub Registrar for execution of the sale deed but her husband and Sarpanch Tirlok Singh had gone to the Office of Sub Registrar. No evidence was led to show if the defendant was served with any notice to execute the sale deed, prior to the institution of the suit. Further, the

agreement Ex.P4 was scribed on an under stamped paper of Rs.25 whereas it ought to have been executed on a stamp paper of Rs.300. The said agreement consist of two pages and the first page upon which the agreement is scribed is a stamp paper of Rs.5 and a revenue ticket of Rs.20 was appended thereon. Whereas, the second page of the alleged agreement was a simple plain paper, which substantiated the version of the defendant Pakhar Ram that plaintiff had obtained his signatures/thumb marks on a blank stamp and plain papers. Not just that she even conceded in her cross-examination that agreement Ex.P4 was executed two years after she made payment to the defendant and four years had lapsed since she paid the said amount. The specific case set out by the defendant Pakhar Ram was that in fact he had only obtained loan of Rs.1,50,000/- from the plaintiff for the marriage of his daughter. None other than the plaintiff herself admitted in her cross-examination that marriage of the daughter of the defendant was to take place 4/5 days after the alleged agreement was executed. In fact, in her cross-examination, recorded on 25.08.2014, she admitted that defendant Pakhar Ram had borrowed money from her at the time of marriage of his daughter. She also deposed that she lends money to people. Even Harwinder Singh PW2, the attesting witness of the alleged agreement admitted in his cross-examination that plaintiff Kulwinder Kaur was engaged in money lending. Albeit, he pleaded ignorance if defendant had borrowed Rs.1,50,000/- from the plaintiff for the marriage of his daughter but eventually conceded in his cross-examination, for, the plaintiff lend money to defendant she obtained his signatures/thumb impressions as also

of the attesting witnesses to the agreement on a blank papers. It did not end there, as the other attesting witness of the agreement, Mohinder Kaur DW3, testified in her deposition that defendant never agreed to sell/hand over the possession of his house to the plaintiff and he never executed the agreement to sell dated 08.01.2010. Further, he never received Rs.3,30,000/- as earnest money. The defendant (DW1) appeared as his own witness and testified in his deposition that he re-paid the loan amount of Rs.1,50,000/-, borrowed from the plaintiff. Likewise, Kishan Ram DW2 and Surinder Kaur DW4 testified in their statement that defendant Pakhar Ram repaid the loan to the plaintiff in their presence on 13.03.2010. Further, when the plaintiff was asked to return the blank signed/thumb marked papers she did not return those on the pretext that she had misplaced them somewhere. The plaintiff could not elicit anything to the contrary from their cross-examination. Therefore, it was held that as defendant never executed the agreement dated 08.01.2010, in favour of plaintiff and the transaction between the parties was merely a loan transaction and to secure the loan amount, the plaintiff had obtained his signatures/thumb impressions on stamp/blank papers.

Thus, the plaintiff was not even entitled to an alternate relief for recovery of Rs.3,30,000/- as awarded by the trial Court. Surprisingly, the trial Court in paragraph 20 of its judgment observed that even though out of the total sale consideration of Rs.4,00,000/- Rs.3,30,000/- were allegedly paid to the defendant as earnest money on 08.01.2010, it was highly improbable that still plaintiff deferred the execution of the sale deed

for a period of over two years i.e. 15.01.2012. Hence, in the opinion of the Court, the said agreement was executed only to secure the loan obtained by the defendant.

Despite having reached this conclusion, one wonders as to how the trial Court could still decree the suit qua an alternate relief for recovery of earnest money of Rs.3,30,000/-. Thus, the only and the inevitable conclusion that could be reached: the suit filed by the plaintiff-appellant deserved dismissal.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusion recorded by the Appellate Court was either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the findings recorded by the Appellate Court. The appeals being devoid of merit are accordingly dismissed.

15.10.2019

Manoj Bhutani

(ARUN PALLI)
JUDGE

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