

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.879 of 2020
Decided on : 13.10.2020

Shavinder Singh

..... Appellant

Versus

Nirmaljit Kaur

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

Present : Mr. Kamaljeet S. Mamrat, Advocate
for the appellant.

Mr. Rajesh Bhateja, Advocate, for the respondent-caveator.

Manjari Nehru Kaul, J.

Civil suit filed by the respondent-plaintiff was decreed by the trial court vide judgment and decree dated 08.08.2018. Since the appeal preferred against the said judgment and decree failed and was dismissed on 26.11.2019 by the First Appellate Court, Moga, the appellant-defendant is now before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to, by their original positions in the suit.

Plaintiff filed a suit for possession by way of specific performance and in the alternative prayed for recovery along with consequential relief of permanent injunction against the defendant with respect to an agreement to sell dated 12.04.2010 executed by defendant in favour of the plaintiff qua land measuring 4 kanals 1 marla i.e. 81/1305 share of land measuring 65 kanals 5 marlas bearing khasra No.89//5/2 (5-18), 90//1 (8-0), 2/1 (0-18) m 2/2 (7-2), 9/1 (3-7), 11/2 (4-16), 10 (8-0), 11/1 (3-4), 20 (8-0), 35//14 (8-0), 15 (8-0) khewat No.616-612-301, khatauni No.937, 931, 932, 465, 466, 471 as depicted in the jamabandi for the year

2004-2005, situated in the area of Dala Tehsil and District Moga. The alternate relief sought for, was for the recovery of Rs.8,00,000/- paid by the plaintiff to the defendant as earnest money along with interest @ 12% per annum from the date of agreement till its realization.

In brief, the case as set out by the plaintiff was that the defendant was recorded as owner of the suit land. On 12.04.2010 the defendant entered into an agreement to sell with the plaintiff for sale of the suit land for a consideration of Rs.8,50,000/-. Out of the said amount, Rs.8,00,000/- were paid by her as earnest money to the defendant, who then executed an agreement to sell in favour of the plaintiff with the promise that the sale deed would be executed by him in favour of plaintiff by 10.04.2011 on receipt of the balance sale consideration. With prior notice to the defendant, on 11.04.2011(since 10.04.2011 was a Sunday) the plaintiff along with the balance sale consideration, other expenses and accompanied by witnesses appeared before the office of Sub Registrar, Moga, for registration of the sale deed in her favour. After waiting for the whole day, when the defendant did not turn up, for execution of sale deed, she moved an application before the Sub Registrar, Moga to get her presence marked, which was duly endorsed by the latter. It was also pleaded by the plaintiff that even though she had repeatedly approached the defendant with a request to carry out his part of the contract, he failed to do so even though the plaintiff was still ready and willing to perform her part of the contract. Thus, the suit.

In the written statement filed by the defendant, the execution of the agreement of sale with the plaintiff was denied and refuted by him besides raising preliminary objections qua the maintainability of the suit. He

rather alleged that the agreement to sell was in fact forged, fabricated and antedated document. He denied receiving any earnest amount much less Rs.8,00,000/- from the plaintiff and submitted that it could not be believed that despite paying a huge amount of Rs.8,00,000/ out of total consideration of Rs.8,50,000/-, the plaintiff would not have been given the possession of the suit land. He thus prayed for the dismissal of the suit of the plaintiff.

Upon consideration of the matter in issue and evidence on record, both the Courts below, concurrently concluded that the agreement to sell Exhibit P-1 executed by the defendant in favour of the plaintiff on 12.04.2010 stood duly proved on record as the marginal witness to the agreement to sell, PW-1 Chamkaur Singh, PW-4 Rakesh Kumar, stamp vendor, PW-3 Vishal Sharma, Assistant to the document writer, and PW-5 Himmat Singh, Registry Clerk fully corroborated the case of the plaintiff. The courts also concluded that since the plaintiff had performed substantial acts as per the provisions of Section 20(3) of the Specific Relief Act, by way of payment of more than 50% of the consideration to the defendant in pursuance of the agreement to sell, the plaintiff was entitled to the relief prayed for.

I have heard learned counsel for the appellant and perused the material on record as well as the impugned judgments passed by the Courts below.

Ld. Counsel for the appellant has reiterated the submissions made before the courts below which were rejected after being comprehensively and duly considered.

On a thoughtful consideration of the matter in issue, I do not find any merit in the appeal which is thus liable to be dismissed for the

reasons recorded hereinafter.

All the witnesses including the plaintiff were subjected to a lengthy cross examination by the defendant. However, he miserably failed to bring on record any material or contradiction which would cast a doubt on the execution of the agreement to sell (Ex.P1) and the payment of earnest money to the defendant. Both the courts below rightly rejected the submissions of the defendant qua agreement to sell (Ex.P1) being a forged, fabricated and antedated document as he failed to lead any evidence in support thereof. On a pointed query put to the learned counsel for the appellant, he conceded that no complaint was ever made by the defendant to the police with respect to the aforementioned allegations of forgery etc. It does not appeal to reason as to why a reasonably prudent person would not report such a matter to the police, when as a result of an allegedly forged document he was likely to suffer substantial loss. Still, further, learned counsel for the appellant failed to refer to anything on record to show that the conclusions arrived at by the Courts below were either contrary to the record or suffered from any material illegality or infirmity.

In the circumstances, no ground is made out to interfere with the well reasoned concurrent findings recorded by both the Courts below. The appeal being devoid of merit is dismissed accordingly and the judgments and decrees of the courts below, decreeing the suit of the plaintiff are affirmed.

13.10.2020
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No