IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1906 of 2017 (O&M)
DATE OF DECISION : 17th JANUARY, 2020

Arun Kumar Sharma

…. Appellant

Versus

Kamal Sharma & others

…. Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Gaurav Tyagi, Advocate for the appellant.

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RAJBIR SEHRAWAT, J. (Oral)

1. This regular second appeal is filed by the plaintiff challenging the concurrent finding recorded by the courts below, whereby the suit for specific performance of an agreement, filed by the plaintiff, was dismissed. For the convenience, the parties are being referred to herein as plaintiff and the defendant; as they were described in the original suit.

2. The fact in brief, as mentioned in the judgment of the lower appellate court are; that the plaintiff/appellant herein had filed a suit for specific performance claiming that the vendor Mukesh Chand son of Roop Chand had executed an agreement to sell dated 07.05.2007 in favour of the plaintiff qua the sale of portion of his share in house

No.475/1, Ward No.3, Mahavirpura, New Railway Road, Gurugram, for an amount of ₹4,00,000/- and the possession of the same was also handed over to him. The entire amount of consideration was paid to the vendor. But, the vendor expired. Thereafter, the legal notice was served upon the legal heirs of the vendor Mukesh Chand. But, they refused to execute the sale deed. Accordingly the suit was filed.

3. The parties led their respective evidence. After considering the evidence on file the trial court dismissed the suit filed by the plaintiff. Feeling aggrieved against the judgment and decree passed by the trial court, the appellant/plaintiff preferred the appeal before the District Judge, Gurugram. However, the same was also dismissed by the lower appellate court. Hence the present appeal has been filed by the plaintiff.

4. While arguing the case, learned counsel for the appellant has submitted that there is a written agreement, in which the vendor had agreed to sell the suit property for the total consideration of ₹4,00,000/-. The possession of the same was also handed over to the plaintiff. A separate receipt was also signed by the vendor; as a token of having received the entire sale consideration. The agreement, as well as the receipt, both were signed by witness Mukesh Kumar Saini. However, since no date for execution of the sale deed, as such, was fixed, therefore, since the sale deed could not be executed during life time of vendor, hence, after the vendor had expired, the plaintiff had served a legal notice upon the legal representatives of the vendor. They did not agree to that and therefore the suit was rightly filed. In the evidence, the attesting witness of the sale deed has duly been examined. Even the stamp vendor

has been examined by the plaintiff in his evidence. Accordingly, the agreement as well as the receipt, both have been duly proved on record.

5. The counsel for the appellant/plaintiff has further submitted that he intended to examine the handwriting expert to prove the signatures of the deceased, and for that purpose he even applied for inspection of the record. Although the said application was allowed by the court below, however, the plaintiff could not produce the handwriting expert because the said witnesses was not available on the date fixed before the trial court. Hence, the plaintiff could not have been penalized on that account.

6. Having heard learned counsel for the appellant and having perused the case file, this court does not find any substance in the argument of the learned counsel for the appellant. Although the plaintiff has examined the attesting witness as well as the stamp vendor, however, both the courts below have found the execution of the sale deed itself to be suspicious in the circumstances of the case. It is not the case of the plaintiff even, that the agreement in question was admitted by the defendants. The vendor is no more in the world to dispute the claim of the plaintiff qua the execution of the sale deed or qua the alleged signatures on the agreement and the receipt. In such situation, the courts below have not committed any illegality in looking into the attending circumstance; to find out whether there could have been the circumstances justifying the contents and the very execution of the alleged agreement and the receipt.

7. Both the courts below have found that despite being the real nephew of the executant, the plaintiff has admitted that he was not even

aware of the exact share of the vendor in the house. The share of the vendor comes to be about 34½ square yards. Whereas, the plaintiff claimed in the suit and the alleged agreement mentions 65 square yards as share of the deceased vendor. Secondly, the plaintiff has admitted that he had no money to make the payment of ₹4,00,000/- to the vendor at the said time. Although, he claimed that he had borrowed the money from some other persons to make this payment, however, he had not produced anyone as witness out of those persons, to justify the availability of the funds with the plaintiff at the relevant time.

8. There is another aspect in the matter. Although, the plaintiff claimed an agreement to sell by the vendor in his favour, however, despite that the plaintiff did not prefer the civil suit during the lifetime of the deceased vendor. But, immediately after the death of the alleged vendor, the process was started by the plaintiff. This also reflects upon the inherent doubts of the plaintiff qua his claim. In any case, since the vendor was no more alive when the suit was filed, therefore, merely because the attesting witnesses have been examined, would not tantamount to proof of the agreement having been executed by the alleged vendor. The signatures of the vendor were required to be proved, as required by Section 67 in accordance with the procedure prescribed either under Sections 47 or 73 of the Indian Evidence Act, 1872. However, neither the plaintiff examined any handwriting expert nor the plaintiff has examined any person who might have been acquainted with the signatures of the deceased, and so, would have proved the signatures of the deceased as required by the Evidence Act. Hence, the signatures of the vendor itself has gone as unproved as per the record. Although,

the counsel for the appellant has submitted that process for examining the handwriting expert was initiated, but, that could not be completed because of the non-availability of the handwriting expert on the given date, however, this argument does not hold water. Even if the plaintiff had missed the opportunity on one date, there was nothing to stop the plaintiff from seeking permission from the trial court again for the same purpose. However, no such attempt is even stated to have been made by the plaintiff. Although before the lower appellate court the application was filed for additional evidence, however, the same has rightly been dismissed by the court below by giving appropriate reasons.

9. Although learned counsel for the plaintiff has asserted that even the possession of the suit property was delivered to the plaintiff along with the execution of the agreement, however, no evidence has been led on file to show that it was the plaintiff who was in possession of the suit property. This also belies the possibility of the agreement having been executed by the deceased/alleged vendor.

10. Hence, this court does not find any illegality or irregularity in the concurrent findings recorded by the courts below.

11. No other argument was raised. No substantial question of law has been pointed out by the counsel for the appellant before this court.

12. In view of the above, finding no merit in the present appeal, the same is dismissed.

17th JANUARY, 2020 **(RAJBIR SEHRAWAT)**
'raj' **JUDGE**

Whether speaking/reasoned: *Yes* *No*

Whether Reportable: *Yes* *No*