

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 50 of 2020

Date of Decision: 14.01.2020

Nipun Diwan

.....Appellant

Vs.

Rampal

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rose Gupta, Advocate,
for the appellant.

AMOL RATTAN SINGH, J. (ORAL)

By this 2nd appeal, the appellant impugns the judgments passed by the learned Civil Judge (Junior Division), Safidon, dated 20.08.2016, and the first appellate Court dated 07.11.2019, by the first of which the suit of the respondent-plaintiff seeking specific performance of an agreement of sale dated 27.05.2012 was decreed in his favour with that judgment and decree having been upheld and the first appeal having been dismissed by the learned Additional District Judge, Jind.

A perusal of those judgments shows that as regards the agreement dated 27.05.2012 (erroneously shown to be dated 27.05.2011 in paragraph 19 of the judgment of the trial Court), the respondent-plaintiff had examined the attesting witnesses thereto, who also testified to receipt of the entire amount of consideration by the appellant-defendant, as was also stated to have been admitted in the agreement of sale itself.

The plaintiff also examined the clerk to a learned counsel and the Notary Public, Safidon, with regard to certain receipts and acknowledgment cards

issued to the appellant-defendant in respect of the execution of the sale deed, with an affidavit showing the presence of the respondent-plaintiff before the Notary Public also proved, along with the revenue record in the form of a mutation and a '*Jamabandi*' showing that the property belonged to the appellant.

On the basis of the aforesaid evidence, it was found that the respondent-plaintiff had proved his readiness and willingness to get the sale deed executed but with the appellant not having so executed it, his defence to the suit being that the said agreement was the result of a fraud perpetuated upon him and actually no such agreement had been entered into.

However, to support that contention he had not led any evidence.

Hence, in view of the fact that other than stating so in his pleadings, he had not actually been able to prove any such fraud played upon him in any manner, relying upon Rule 4 of Order VI of the Code of Civil Procedure, 1908, the learned trial Court held that he had not discharged the onus upon him to do so, while also referring to Section 102 of the Evidence Act, 1872, in that context.

It has been further held that in his cross-examination in fact the appellant-defendant took a completely different stand to the one taken in his written statement, with him having stated in such cross-examination that the suit land was fallow land, whereas in his pleadings he had stated that construction of a '*Kotha*' on it had been made by him.

On the aforesaid findings, essentially to the effect that the agreement of sale had not been proved to have been executed by any fraud perpetuated on the appellant and that the respondent-plaintiff had also proved himself to be willing to execute the sale deed, the suit was decreed in his favour, with those finding upheld by the learned first appellate Court.

Further, the lower appellate Court also noticed that although in paragraph 11 of the written statement, the appellant-defendant had claimed himself to be the lawful owner in possession of the suit property, however, during arguments a stand to the contrary was taken, without showing that the revenue entries showing his possession over the suit land were incorrect and therefore that he was not the owner thereof. (The inference taken was that he was obviously simply trying to wriggle out of the contract).

Hence, finding that the entire sale consideration was proved to have been paid and even possession had been handed over to the plaintiff, it was held that there would be no reason for the sale deed to not be executed.

Before this Court, learned counsel for the appellant could not point out as to how the concurrent findings of fact as regards proving the agreement of sale, are erroneous or perverse in any manner, with him however submitting that no specific findings have been given on issues no. 2 to 8 as had been framed by the trial Court.

The issues framed before that court, are as follows:-

- “1. *Whether the plaintiff is entitled to relief of specific performance as prayed for in the plaint? OPP*
2. *Whether plaintiff has no cause of action to file the present suit? OPD*
3. *Whether plaintiff has no locus standi to file the present suit? OPD*
4. *Whether suit of the plaintiff is not maintainable? OPD*
5. *Whether plaintiff has concealed true and material facts from the Court? OPD*
6. *Whether plaintiff has not come in the court with the clean hands? OPD*

7. *Whether plaintiff is estopped from filing the present suit by way of his own act and conduct?*

OPD

8. *Whether suit of the plaintiff is bad for want of proper court fees? OPD*

9. *Relief.*

As regards issues no. 2 to 8, it has been held in paragraph 21 as follows by the trial Court:-

“Burden to prove these issues was on the defendant but during the course of arguments, learned counsel for the defendant did not press these issues and accordingly, all these issues are decided against the defendant being not pressed.”

To the same effect, it has been observed by the learned first appellate court that issues no. 2 to 8 were not pressed by the defendant at the time of final arguments and consequently, could also not been found faulted.

That being so, with the findings on the substantive issue (no.1) not having been shown to be erroneous or perversely decided in any manner by the learned courts below, with the agreement of sale as also the payment of complete consideration for the suit property having been proved before those courts, and nothing to the contrary shown in any manner before this court, I find no ground whatsoever, to entertain this appeal.

It however still may be noticed that as regards the finding of the trial court, to the effect that the petitioner had contradicted himself in stating in his pleadings that he had constructed a *kotha* on the suit land which in his cross-examination he admitted to be fallow, I would find no such contradiction, in view of the fact that fallow land is that which is left unsown and therefore, it would not imply that nothing can be constructed on it. Even so, though that is not a

contradictory stand taken, yet, it not having been shown in any manner that either the appellant had led any evidence to show that a fraud had been committed upon him, or that the finding of the courts below that complete consideration had also been paid for the suit land, by the respondent plaintiff, that observation of the trial court would not affect the outcome of this appeal.

As regards the finding of that court that the onus was on the appellant to prove that there was a fraud committed upon him, the statutory provisions referred to by that court, are reproduced hereinbelow.

Order 6, Rule 4, of the Code of Civil Procedure, 1908:-

“4. Particulars to be given where necessary.- In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”

Section 102 of The Indian Evidence Act, 1872:-

“102. On whom burden of proof lies.- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as

the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on *B.* ”

Thus, even in terms of Illustration (b), the burden of proof being upon the appellant-defendant to show that the agreement of sale was obtained by any fraud, or was actually a forged document, he not having led any evidence to that effect, I see no ground to entertain this appeal, which is therefore dismissed in view of what has been observed in this order.

January 14, 2020
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No.