

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA-501 of 2019 (O&M)
Date of Decision : 12.02.2020

Mohinder Kaur

... Appellant

versus

Jaspal Singh & Anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. G.S. Guri, Advocate
for the appellant.

ARUN MONGA, J(ORAL)

1. The appellant-defendant herein has suffered adverse findings by both the Courts below. Based thereon, the suit of the plaintiff-respondent No.1 for possession of the suit land by way of specific performance of agreement dated 14.10.2003 was decreed by the trial Court vide judgment and decree dated 18.12.2014, which in turn was upheld by the First Appellate Court vide judgment and decree dated 25.09.2018.

2. Briefly stated the facts, as noticed by the Courts below are that the parties herein entered into an agreement to sell dated 14.10.2003 for sale/purchase of the suit land as mentioned in the head note of the plaint for a total price of Rs.3,00,000/-. The defendant-appellant received a sum of Rs.1,65,000/- as earnest money. The last date for execution and registration of sale-deed was fixed as 14.05.2005. The plaintiff was willing and ready to perform his part of the agreement and went to the office of Sub Registrar on 14.05.2005 along with balance sale amount, for getting the sale-deed

registered. However, defendants did not turn up and ultimately plaintiff got his affidavit attested from Oath Commissioner, in order to prove his willingness to purchase the suit land. The original agreement to sell was lost by the plaintiff sometime in July, 2007 and he lodged a Daily Diary Report qua the same in the concerned police station. Copy of the agreement, however, was available with the plaintiff and the suit was filed relying on the same.

3. In the written statement filed by the defendants they denied that they ever entered into agreement with the plaintiff. They took up the plea that the said agreement is forged and fictitious document prepared by the plaintiff in connivance with the witnesses.

4. On the basis of oral as well as documentary evidence led by the parties, the trial Court held that by leading cogent and convincing evidence the plaintiff has been able to prove that the defendants entered into agreement to sell and the plaintiff throughout remained ready and willing to perform his part of the contract. As a result, defendants were directed to execute the sale-deed on receipt of remaining sale consideration.

5. The defendants unsuccessfully challenged the judgment and decree of the trial Court, but it met with the same fate and their appeal was dismissed, leading to the filing of instant regular second appeal.

6. I have heard learned counsel for the appellant and have gone through the paper-book carefully. I am of the considered view that no interference is warranted.

7. It is apparent that both the Courts below, on the basis of oral as well as documentary evidence adduced by the plaintiff, came to the conclusion that the agreement to sell was executed by the defendants and no

evidence, worthy of credence was led by the defendants to substantiate their plea of fraud. The relevant part of the judgment rendered by the first Appellate Court in this regard is extracted hereinbelow:-

“13. As per the case of respondent/ plaintiff, appellants/ defendants had executed agreement to sell dated 14.10.2003 in his favour for sale of suit land measuring 5 bighas 7 biswas as fully detailed in the head note of the plaint for the sale consideration of Rs.3 lac per acre and had obtained an amount of Rs.1,65,000/- towards earnest money. In order to prove his case respondent/ plaintiff examined Harinder Singh one of the marginal witnesses of said agreement as PW1 and Rajesh Kumar Deed Writer/ scribe of said agreement again as PW1. Both these witnesses fully supported the case of respondent/ plaintiff and categorically stated that agreement to sell in question was executed by appellants/ defendants in favour of respondent/ plaintiff. Respondent/ plaintiff himself stepped into the witness box as PW2 and deposed on the lines of plaint filed by him. All these witnesses were cross-examined at length by learned counsel for defendants, but nothing favourable to appellants/ defendants came out of their cross-examinations. Without doubt, there are certain contradictions in the statements made by these witnesses, but these were natural as statements of these witnesses were recorded after 10 years of execution of the agreement.

14. On the other hand, appellants/ defendants failed to rebut the evidence adduced by respondent/ plaintiff. Rather signatures of appellant/ defendant Jitpal Singh and thumb impression of appellant/ defendant Mohinder Kaur on said agreement were never disputed. Further, it was claimed by appellants/ defendants in their written statement that there was some dispute between them. Balwinder Singh one of the marginal witnesses of the agreement, being their relative intervened in said dispute and took them to Morinda and

purchased one stamp paper in their name and took their thumb impression and signatures on the same on the pretext that same were required for preparing compromise deed. Subsequently, said stamp papers were never returned and were mis-used/ mis-appropriated by respondent/ plaintiff to prepare the agreement. Thus, by taking this plea, signatures of appellant/ defendant Jitpal Singh and thumb impression of appellant/ defendant Mohinder Kaur on the agreement to sell in question were admitted by them. In view of these circumstances, entire onus was upon appellants/ defendants to prove that agreement to sell in question was forged and fabricated document and same was prepared later on stamp papers already bearing their thumb impression and signatures. Appellants/ defendants examined Balwinder Singh, second marginal witness of the agreement to sell in question as DW-2. Though said Balwinder Singh denied execution of agreement in his presence and his signatures on the same, but he did not say that he had obtained signatures and thumb impression of appellants/ defendants on some blank stamp papers as alleged by them. Thus, statement made by DW-2 Balwinder Singh does not help the case of appellants/ defendants.

15. *Without doubt, appellants/ defendants have placed on record one agreement to sell executed by Onkar Singh in favour of respondent/ plaintiff Jaspal Singh as Ex.D1 and another agreement executed by one Bhag Singh in favour of respondent/ plaintiff Jaspal Singh as Ex.D4 and on both said agreements, Harinder Singh is the marginal witness. Agreement Ex.D1 has also been executed by scribe Rajesh Kumar i.e. scribe of the present agreement. Appellants/ defendants have also placed on record a compromise deed allegedly executed by respondent/ plaintiff Jaspal Singh and marginal witness Harinder Singh with one Nachattar Singh. It clearly shows that marginal witness Harinder Singh and scribe Rajesh Kumar are close associates of respondent/ plaintiff Jaspal Singh, but that does not mean that statements made by*

them in the present case cannot be believed, particularly in view of the fact that signatures and thumb impression of appellants/ defendants on the agreement are not disputed. On the same analogy statement made by DW-2 Balwinder Singh another marginal witness of the agreement is not sufficient to hold that no agreement to sell was executed between the parties. As appellants/ defendants flatly denied execution of agreement to sell in question, respondent/ plaintiff was not required to prove that he was already ready and willing to perform his part of the agreement.”

8. The first Appellate Court below further dealt with the defence set up by the appellants that it was a loan transaction, and observed in the following manner:-

“17. I have considered these submissions made by learned counsel for appellants/ defendants, but find myself unable to agree with the same. Without doubt, from the facts and circumstances as pointed out by learned counsel for appellants/ defendants agreement Ex.P1 seems to be a money transaction, but no such plea was taken by appellants/ defendants in their written statement. Rather appellants/ defendants completely denied agreement to sell on the pretext that their signatures were obtained on some blank papers. It is settled principle of law that no amount of evidence can be looked into in absence of pleadings in that regard. As such, it cannot be held that agreement to sell Ex.P1 was in fact a loan transaction as now argued by learned counsel for the appellants/ defendants.”

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below. No fresh ground worthy of interference in the

appellate jurisdiction of this Court is made out.

10. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

12. Pending applications stand disposed of.

13. No order as to costs.

12.02.2020

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**(ARUN MONGA)
JUDGE**

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| 1. Whether speaking/ reasoned: | Yes/ No |
| 2. Whether reportable: | Yes/ No |