IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1283 of 2020 (O&M)
Decided on 26.07.2021

Mangal Singh ....Appellant

VERSUS

Mohan Singh ....Respondent

CORAM : HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.S.Dhaliwal, Advocate, for the appellant.

ANIL KSHETARPAL, J. (Oral)

This hearing of the case was held through video conference on account of restricted functioning of the Courts.

The defendant/appellant assails the correctness of findings of fact arrived at by the Courts below while decreeing the alternative relief of the recovery of amount in a suit for possession by way of specific performance of the agreement to sell.

The parties are closely related. The defendant-appellant is the nephew of the plaintiff-respondent. The respondent/plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 13.12.2012. The plaintiff out of the total sale consideration of Rs.23,10,000/-, paid earnest money of Rs.19,00,000/-. As per the agreement, the sale deed was supposed to be executed and registered on 13.12.2014. However, on both days i.e. 13.12.2014 and 14.12.2014 holiday was declared. Hence, the plaintiff went to the office of the Sub-Registrar on 15.12.2014 after informing the defendant but since he did not come forward, therefore, he got his presence marked. The plaintiff also claims that he sent a registered letter on 12.01.2015 requesting the defendant to perform his part of the contract before filing the suit on 10.04.2015.

The defendant/appellant contested the suit on the ground that there is no agreement to sell and in fact the plaintiff is running a shop of commission agent under the name of M/s Zamindara Trading Company and the defendant used to sell his crop through the aforesaid firm. It is further pleaded that at one point of time, the defendant required a loan of Rs.3,00,000/- which was paid on the condition that he will pay double of the amount given as loan within a period of 3 years. The plaintiff also obtained his signatures on blank papers and on a register/note book. He further pleaded that he has returned the amount in the first week of May, 2013 and the plaintiff promised to destroy the blank signed papers, however, he has misused the same. It is further the case of the defendant that plaintiff had previously drafted a forged agreement to sell dated 14.12.2009 in favour of his son Ranjit Singh showing the payment of Rs.7,50,000/- as earnest money.

Both the Courts, on appreciation of evidence, have found that the agreement to sell was in fact a security document in order to secure the loan. Thus, both the Courts have ordered the refund of the earnest money alongwith an interest @ 9% from the date of agreement till its realization.

The learned counsel representing the appellant contends that once both the Courts have found that there was no agreement to sell, therefore, the Courts should not have decreed the alternative relief. The plaintiff had previously also forged an agreement to sell dated

14.12.2009, in which Ranjit Singh who is his son was shown as the intended purchaser. Nirvail Singh, an attesting witness of the agreement to sell has stated that the earnest money was only Rs.9,00,000/- and not Rs.19,00,000/-. The suit is bad for non-joinder of parties as the land in dispute was already mortgaged with the State Bank of India.

This Bench has considered the argument of the learned counsel and with his able assistance perused the paper book.

It is not in dispute that both the Courts have not decreed the suit in toto. Both the Courts have only granted the alternative relief of refund of the earnest money. Both the Courts have further found that the agreement to sell was only to secure the loan. Once both the Courts have found that the written document was only to secure the loan, then the Courts are justified in granting the alternative relief as provided under the Specific Relief Act, 1963. The plaintiff, while filing the suit, also prayed in the alternative, for recovery of the amount.

Still further, it is the case of the defendant/appellant that he agreed to pay double of the amount paid to him within a period of two years. Thus, the appellant does not dispute that he borrowed some amount from the plaintiff. In these circumstances, when there is a written contract between the parties, the existence of which has been proved, the Courts cannot be said to have committed an error in granting the alternative relief.

As regards the next argument, it may be noted that because of the previous agreement to sell in favour of Ranjit Singh executed on 14.12.2009, both the Courts have found that the agreement to sell executed on 13.12.2012 was only to secure the payment of the amount. It was for this reason only, both the Courts have granted the alternative relief. Hence, the argument of the learned counsel representing the appellant does not advance his case.

The next argument of the learned counsel representing the appellant is with regard to statement of Nirvail Singh, an attesting witness of the agreement to sell dated 13.12.2012 to the effect that earnest money of Rs.9,00,000/- was paid. It may be noted here that there is infact a written contract between the parties wherein the defendant has admitted the receipt of Rs.19,00,000/-. Hence, oral statement of Nirvail Singh, attesting witness, to the effect that at the time of execution of the agreement to sell, Rs.9,00,000/- was paid as earnest money and not Rs.19,00,000/- cannot be accepted particularly when there is no other cogent evidence to support this statement. Still further, there is a variance in the stand of the appellant. He claims that a loan of Rs.3,00,000/- was advanced by the plaintiff and he agreed to repay double of the loan amount within a period of two years. Still further, as per the agreement to sell dated 14.12.2009, the defendant has received Rs.7,50,000/-. Thereafter, in the written statement the defendant has himself pleaded that there is again an endorsement of payment of Rs.3,50,000/-. Hence, in such circumstances, the decree passed by the Courts below does not suffer from any error. As regards the last argument, it may be noted that the State Bank of India was not a necessary party in the suit for possession by way of specific performance. In any case, only a decree for recovery of the amount has been passed. In such circumstances, the State

Bank of India cannot be said to be a necessary party. Hence, no ground to interfere, with the concurrent findings of fact, is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

26.07.2021
ashok

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