

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

Regular Second Appeal No. 190 of 2021(O&M)

Date of Decision: April 8, 2021.

Vijay Kumar

..... APPELLANT

Versus

Rakesh Kumar

..... RESPONDENT

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashwani Bakshi, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant/defendant is aggrieved of judgment and decree dated 16.07.2018 passed by the learned Civil Judge (Junior Division), Sirsa whereby suit for a decree of specific performance of agreement to sell dated 12.06.2012, filed by the respondent/plaintiff has been decreed as well as judgment and decree dated 17.01.2020 passed by the learned Additional District Judge, Sirsa dismissing the appeal filed by the present appellant/defendant

Brief facts of the case are that, respondent/plaintiff filed a suit for specific performance of agreement to sell dated 12.06.2012 (Ex.P12) and for execution and registration of the sale-deed in his favour on payment of balance sale-consideration. It is pleaded by the plaintiff that the defendant being

owner-in-possession of the suit property conveyed his desire to a number of persons to sell it. Agreement to sell was however executed in favour of the plaintiff on 12.06.2012 for a total sale-consideration of ₹32,00,000/-, out of which ₹20,00,000/- were paid by the plaintiff to the defendant on 12.06.2012 itself as earnest money in the presence of witnesses against a receipt on which the defendant and his brother, PW6 Ashok Kumar signed. Agreement to sell (Ex.P12) was drafted and scribed by Deed Writer, PW4 Rajesh Batra, Advocate. It was stated that the sale-deed would be executed on 13.05.2013 on receipt of balance sale-consideration. The said target date was mutually extended to 13.11.2013. An endorsement to this effect was made by Deed Writer, PW4 Rajesh Batra on the backside of the first page of the agreement. A sum of ₹2,00,000/-, it is pleaded, was paid to the plaintiff on 13.05.2013 in the presence of the witnesses. Thus, a total sum of ₹22,00,000/- stood paid to the defendant. Plaintiff claimed to have visited the office of Sub Registrar, Sirsa on 13.11.2013 for execution of the sale-deed alongwith the balance sale-consideration but due to strike of employees, needful could not be done, thus, the plaintiff again visited the office of Sub Registrar on the next day i.e., 14.11.2013 with intimation to the defendant. However, the defendant did not turn up on both the dates. Legal notices dated 13.01.2014 and 26.01.2014 were sent to the defendant, who however did not carry out his part of the agreement. It is claimed that the defendant usurped the earnest money of ₹22,00,000/- of the plaintiff. When defendant threatened to alienate the suit property, suit was filed.

Appellant/defendant resisted the suit. Various preliminary objections were taken in the written statement. It is stated that defendant obtained a loan of

₹12,00,000/- from the plaintiff on 01.01.2011 with interest at the rate of 1% per month for a period of one year for domestic purposes. When he could not repay the same, the plaintiff obtained his signatures on blank stamp papers on 12.06.2012. Signatures of the defendant's brother are also stated to have been taken. It is further stated that said blank signed stamp papers were misused as the defendant has never executed any agreement to sell in respect to the property in dispute and neither received earnest money. Dismissal of the suit was prayed for.

Replication was filed. On the basis of the pleadings of the parties, following issues were framed:-

1. Whether plaintiff is entitled for a decree of declaration alongwith consequential relief of permanent injunction, as alleged? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether plaintiff has got no cause of action and locus standi to file the present suit? OPD
4. Relief.

Evidence was led by both the parties to prove their respective claims/stands.

Learned trial court on considering the facts, circumstances and evidence on record decreed the suit and the defendant was directed to execute the sale-deed in favour of the plaintiff forthwith on receiving the balance sale-consideration of ₹10,00,000/-. It is noticed by the learned trial court that agreement to sell dated 12.06.2012 (Ex.P12) was duly proved on record. Signatures of the appellant and his brother were admitted on the documents. It is further admitted by the appellant/defendant that he did not have inimical relations with his brother, PW6 Ashok Kumar who thus had no axe to grind against him.

Appeal preferred by the appellant/defendant was dismissed by the learned Additional District Judge, Sirsa vide judgment and decree dated 07.01.2020. Aggrieved therefrom, present regular second appeal has been filed.

Learned counsel for the appellant vehemently argued that both the learned courts below have grossly erred in law and on facts in allowing the suit filed by the appellant-plaintiff. It is submitted that readiness and willingness on the part of the plaintiff has not been proved. There is no evidence on record to indicate that there was any strike in the office of Sub-Registrar by the employees on 13.11.2013. It is further submitted that no signatures of any of the witnesses on the first page of the agreement to sell are present. Furthermore, on the endorsement there is no date under the signatures of the appellant, though the typed date is there. No payment is expressed to have been made to the appellant/defendant in the presence of the scribe. It is contended that the plaintiff has filed a suit for declaration, therefore, the same is not maintainable. Learned counsel for the appellant further submits that both the learned courts below have failed to appreciate that the defendant had, in fact, borrowed a sum of ₹12,00,000/- from the plaintiff for personal use on interest and no agreement to sell was drawn up. It is thus prayed that this appeal be allowed and both the impugned judgments be set aside. Consequently, suit filed by the respondent/plaintiff be dismissed throughout.

Heard learned counsel for the appellant and have gone through the file with his assistance as well as photocopy of some of the records furnished at the time of arguments.

It is a matter of record that respondent/plaintiff filed a suit for

declaration seeking possession by way of specific performance of agreement to sell dated 12.06.2012 (Ex.P12) executed by the appellant/defendant in respect to the property as detailed in the plaint. It is further a matter of record that the plaintiff himself deposed as PW7 giving entire details of the transaction. Both witnesses to the document, PW5 Sher Singh and PW6 Ashok Kumar also supported the case of the plaintiff. It is relevant to note, at this stage, that one of the witness, PW6 Ashok Kumar is none other but real brother of the appellant/defendant. PW6 Ashok Kumar has steadfastly supported execution of the agreement to sell dated 12.06.2012 (Ex.P12). Furthermore, appellant/defendant while deposing as DW1 has himself identified signatures of his real brother, PW6 Ashok Kumar on the agreement to sell (Ex.P12). PW6 Ashok Kumar has not only deposed regarding the execution of the agreement to sell dated 12.06.2012 (Ex.P12) by the appellant/defendant in favour of the plaintiff, he also deposed that he witnessed passing of the earnest money to the tune of ₹22,00,000/- to his real brother, the appellant/defendant. Learned counsel for the appellant is unable to deny that no explanation, whatsoever, is forthcoming as to why the appellant's real brother, PW6 Ashok Kumar would depose against the defendant, especially when appellant/defendant has admitted that he does not have any inimical relations with his brother, PW6 Ashok Kumar. PW4 Rajesh Batra, Advocate (Deed Writer) duly produced his register (Ex.P14) and deposed that he had prepared the agreement to sell (Ex.P12) on instructions of the present appellant in favour of the plaintiff. Same was read out to both the parties after which both signed it alongwith the witnesses, PW5 Sher Singh and PW6 Ashok Kumar. He also deposed regarding the hand-written endorsement.

Learned trial court has specifically opined that:-

“24. Moreover, a bare perusal of the agreement and endorsements would clearly depict that the signatures of parties and witnesses are placed suitably under the typed description/contents of those agreement and endoresements. Thus, it does not seem that the contents of these documents were got typed on blank signed stamp papers, neither there is any expert opinion of such alleged post dated preparation of these documents on blank signed stamp papers.”

Readiness and willingness of the plaintiff is borne out from the record as has been succinctly dealt with by both the learned courts below. Moreover, it is to be noticed that the appellant/defendant has denied execution of the agreement to sell. It is rightly observed by both the learned courts below that the appellant/defendant has failed to prove on record that there was any loan transaction between him and the plaintiff, neither has he proved any forgery as alleged by him in respect to the agreement to sell (Ex.P12). In respect to the contention raised by the appellant that the plaintiff has brought forth a suit for declaration, therefore, the relief granted is not made out, is not correct and hence rejected. Learned trial court has rightly observed that the relief clause may not be properly worded, but it is apparent that the plaintiff has sought possession by way of specific performance of the agreement to sell dated 12.06.2012 (Ex.P12).

Both the learned courts below have returned concurrent findings of fact after correct and proper appreciation of the evidence on record. Learned counsel for the appellant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this

regular second appeal.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decrees dated 16.07.2018 and 17.01.2020 passed by the learned Civil Judge(Junior Division), Sirsa and the learned Additional District Judge, Sirsa, respectively, which warrant any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

April 8, 2021.
'om'

(LISA GILL)
JUDGE

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