

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.54 of 2021 (O&M)

Date of Decision:01.04.2021

Ashok Kumar

.....Appellant

Versus

Manorama Sharma and others

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Veneet Sharma, Advocate
for the appellant.

Mr. Gaurav Arora, Advocate
for respondents no.1 and 2.

LISA GILL, J.

Appellant-defendant has filed this appeal challenging judgement and decree dated 14.01.2016, passed by the learned Civil Judge (Sr. Division), Karnal, as well as judgement and decree dated 05.03.2020, passed by the learned Additional District Judge, Karnal, whereby suit filed by respondents no.1 and 2 (plaintiffs), has been decreed.

Brief facts necessary for adjudication of the case are that respondents no.1 and 2, in this appeal (plaintiffs before the learned trial Court) filed a suit for possession by way of specific performance of agreement to sell dated 04.06.2010, along with consequential relief of permanent injunction. It is pleaded that defendants therein i.e. present appellant and his mother, arrayed as respondent no.3, in this appeal, are owners in possession of the house in question as described in the plaint. Defendants being owners in possession in equal shares of the double

storeyed residential house, executed an agreement to sell in favour of the plaintiffs on 04.06.2010 for sale consideration of Rs. 25,40,000/-. The said agreement was executed in the presence of Mukesh Kumar, PW-1 and Sanjay Kumar as witnesses. Mother and son received a sum of Rs.4,00,000/- as earnest money on that date and receipt thereof was endorsed on the agreement itself. Target date for execution and registration of the sale deed was fixed as 20.08.2010 with the remaining sale consideration to be paid on that date. It is further pleaded that the defendants agreed to get a clearance certificate from the Bank with which the house in question stood pledged and they further undertook to obtain 'no objection certificate' from the Bank, besides securing permission to sell from the Estate Officer, HUDA, Karnal along with completion certificate. It is pleaded that after receipt of earnest money, the house in question was freed of the charge from HDFC Bank with which it was pledged. Estate Officer, HUDA, Karnal, vide letter dated 14.07.2010, was also intimated, however the completion certificate as well as permission to sell was not obtained by the defendants before the target date, which was extended on two occasions i.e. firstly from 20.08.2010 to 30.08.2010 and thereafter from 30.08.2010 to 01.09.2010. On both occasions, a specific endorsement in writing in regard to the extension was carried out on the agreement to sell itself. However, as value of the property increased, defendants intentions turned dishonest and they did not come-forward for execution of the sale deed. Plaintiffs pleaded that they were always ready and willing to perform their part of contract and remained present before the Sub-Registrar, Karnal on 01.09.2010 alongwith entire balance sale consideration. Legal notice dated 15.09.2010 was served, but to

no avail. Hence the suit was filed.

Defendants contested the suit. Joint written statement was filed by the present appellant and his mother arrayed as respondent no.3 in this appeal. Execution of the agreement to sell dated 04.06.2010 in favour of the plaintiffs was denied. It was further denied that any earnest money was received by them. Dismissal of the suit was sought.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court vide order dated 01.03.2011:-

1. Whether the defendants entered into an agreement to sell the suit property on 04.06.2010 and received a sum of Rs.4,00,000/- as earnest money from the plaintiffs?OPP
2. Whether the plaintiffs were and still ready and willing to perform their part of contract, but defendants has failed to do so?OPP
3. Whether the plaintiffs are entitled to refund of earnest money along with compensation as prayed for?OPD
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the plaintiff has not come to the Court with clean hands. If so, its effect?OPD
6. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD
7. Whether suit has not been properly assessed for the purpose and no proper Court fee has been affixed on the plaint?OPD
8. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts, circumstances of the case and evidence on record, concluded that the plaintiffs had succeeded in proving execution of the agreement to sell dated 04.06.2010 as well as their readiness and willingness to perform their part of contract. It was noted that the present appellant while deposing as DW-1 had admitted his

signatures as well as signatures of his mother over the agreement to sell dated 04.06.2010, Ex.PW1/B. Defendant, it was held failed to prove that the said agreement to sell was forged or fraudulent. Accordingly, suit filed by respondent no.2 was decreed. It was directed that the sale deed be executed and registered within two months from passing of the judgement after receiving remaining sale consideration i.e. Rs., 21,40,000/-.

Appeal preferred by both the defendants was dismissed by the learned Additional District Judge, Ambala, vide impugned judgement and decree dated 05.03.2020.

Aggrieved therefrom, present appeal has been filed only by one of the defendants i.e. Ashok Kumar. Second defendant has been arrayed as proforma respondent no.3 in the present appeal.

Learned counsel for the appellant vehemently argued that property in dispute is the only residential house of the appellant constructed over a mere 65 sq. yards. Therefore, in the given situation, grant of discretionary relief of specific performance is not made out as grave hardship shall be caused to the appellant. It is further submitted that the respondents and their entire family is settled in Australia and they are not in need of the property at all. He relies upon judgement of the Kerela High Court in **Ponnankai Chriamuttil Mahmood Vs. P.V.Rajendran, A.S No. 391 of 1995 (D), decided on 23.04.2010**, in this respect. Learned counsel for the appellant further submits that both the learned Courts below have failed to appreciate that the agreement to sell was never executed by the appellant and his mother. It was in effect a document drawn up as security for a loan transaction. Learned counsel refers to the endorsement of the stamp vendor

on the agreement to sell and corresponding entry in the register of the stamp vendor, to say that the term agreement bond is mentioned therein which clearly reveals that the document is in-fact security for a loan taken by the appellant from the plaintiffs. He further submits that the application moved before the Estate Officer, is found entered at Sr. No. 836 of the stamp vendor's register on the same date on which stamp paper for the purported agreement to sell was taken i.e., 04.06.2010, whereas the application before the Estate Officer, has been moved in September 2010. It is thus urged that misuse of the documents is apparent as the said documents were taken only to draw up documents to secure repayment of loan by the appellant. Learned counsel referred to the testimony of the stamp vendor namely Virender Kumar Bakshi-PW-4. It is thus prayed that present appeal be allowed and both the judgements and decrees passed by the learned Courts below be set aside and suit filed by the respondent-plaintiffs be dismissed throughout.

Per contra, learned counsel for respondents no.1 and 2 refutes the arguments as raised by learned counsel for the appellants and submits that both the learned Courts below have rendered concurrent findings of fact on the basis of evidence on record, which calls for no interference whatsoever in this regular second appeal. It is further submitted that the sale deed pursuant to passing of the impugned judgements and decrees has already been executed on 13.01.2021 through Court, after deposit of remaining balance sale consideration of Rs.21,40,000/-. It is refuted that any hardship shall be caused to the appellant in this case. It is thus prayed that the present appeal be dismissed.

I had heard learned counsel for the parties and have gone

through the file as well as copies of some of the documents produced in Court at the time of arguments.

It is relevant to mention at the very outset that argument raised by learned counsel for the appellant are not reflected in the written statement filed on behalf of the defendants. Learned counsel for the appellant was unable to deny that in the written statement filed on behalf of the defendants, execution of the agreement to sell dated 04.06.2010 has been completely denied. Said document is averred to be a false and fraudulent document. There is not even a whisper in the written statement regarding any loan having been taken by the appellant or his mother from the plaintiffs and documents in question being drawn up as a security for the alleged loan transaction. It is further a matter of record that the appellant while testifying as DW-1 has specifically admitted his signatures over the agreement to sell as well as receipt of Rs.4,00,000/- as earnest money. He has also admitted his signatures on the endorsement regarding extension of time for execution and registration of the sale deed. Appellant-DW-1 has further admitted signatures of his mother over the said document/s. His own photograph as well as photograph of his mother on the document has been duly identified by him. DW-1 has also admitted his signatures on the application addressed to the Estate Officer, HUDA, Karnal for transfer of property in question in favour of the plaintiffs. Plea of documents being drawn up as security for repayment of loan was taken for the first time in the evidence of DW-1.

In the given factual matrix, both the learned Courts below have rightly held that the plaintiffs have successfully proved execution of the agreement to sell, receipt of earnest money of Rs.4,00,000/- including

extension in time. In this view of the matter, it was indeed incumbent upon the defendants to prove that the documents in question were bogus or fabricated as per the stand taken by them in the written statement. Ground of the said document being a security for repayment of loan, is clearly beyond pleadings of the defendants. Rather said stand is in contradiction to the pleading of the defendants, as there is a categorical denial of execution of agreement to sell dated 04.06.2010 as well as receipt of earnest money. Judgement of the Kerela High Court in case of **Ponnankai Chriamuttil Mahmood (Supra)**, is not relevant in any manner for adjudication of the present appeal. Defendant/owner in the said case had taken a specific plea of taking a loan from the plaintiff therein and papers being misused thereafter. Moreover, defendant in abovesaid did not even have exclusive ownership rights over the property.

Insofar as argument in respect to hardship being faced by the appellant is concerned and that decree of specific performance being discretionary should not be granted merely because it is lawful to do so, the same is of no avail to the appellant in the present case. This is so for the reason that question of any hardship being faced by the appellant was never pleaded at any stage and neither is there any evidence on record to indicate the same. Reference in this regard can gainfully be made to judgement of the Hon'ble Supreme Court in **Narinderjit Singh Vs. North Star Estate Promoters, 2012(3) R.C.R (Civil) 168**. The Hon'ble Supreme Court has specifically observed in the said case that appellant had neither pleaded hardship nor produced any evidence to show that it would be inequitable to order specific performance of agreement. In the abovesaid case also plea

taken by the appellant was that the agreement was fabricated, never executed and neither earnest money received. Said pleas were rejected being untenable. In the case of **Smt. Jaggo Bai Vs. Balbir Singh and another, 2006(13(R.C.R (Civil) 353**, this High Court has observed that once a plea regarding hardship was not raised before the Courts below, a party cannot be permitted to raise such an argument in second appeal for the first time.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the concurrent findings of fact recorded by both the learned Courts below after proper appreciation of evidence on record.

In my considered opinion, no question of law much less a substantial question of law arises for consideration in this appeal, challenging the concurrent finding of facts by the learned Courts below.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 14.01.2016 and 05.03.2020 passed by the learned Civil Judge (Sr. Division) Karnal, and learned Additional District Judge, Karnal, respectively, are upheld.

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

01.04.2021
s.khan

[LISA GILL]
Judge

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