

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

TARUN SAHNI
2022.12.22 16:39

**RSA No.1581 of 2020(O&M)
Date of Decision: 21.12.2022**

Ajit

.....Appellant

Vs.

Grow Buildtech Pvt. Ltd. and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Kuldeep Khandelwal, Advocate
for the appellant.

DEEPAK GUPTA, J.

This appeal is directed against the concurrent findings of the Courts below. In order to avoid confusion, the parties shall be referred as per their status before the learned trial Court.

2. According to plaintiff (now respondent No.1), the defendants (now appellant and proforma respondent Leela @ Leela) agreed to sell their land measuring 6 kanal 10 marlas situated within the revenue estate of Village Behrampur, Tehsil Sohna, District Gurugram (detailed in para No.2 of the plaint) in favour of the plaintiff on 25.05.2012 @ ₹3,60,00,000/- per acre and received ₹5 lacs as earnest money, out of which ₹4 lac was paid by way of cheques. Last date for execution of the agreement was fixed as 25.06.2012. It was agreed that in case defendants failed to execute the agreement, then receipt itself will be treated as agreement to sell. Subsequently, it came to the notice of the plaintiff that in fact, share of the defendants in the suit land was 5 kanal 3 marlas but due to miscalculation, said share was mentioned to be 6 kanal 10 marlas in the receipt (Ex.P7). Taking advantage of this mistake, defendants started demanding sale consideration for the land measuring 6 kanal 10 marlas illegally. Since prices in the land increased in the vicinity, defendants failed to abide by the receipt-cum-agreement dated 25.05.2012 despite the fact that plaintiff has always been ready and willing to perform its part of the contract. With these averments, plaintiff prayed for a decree of declaration that defendants are co-owners in the suit land to the extent of 5 kanal 3 marlas only and entitled to receive the sale consideration @ ₹3,60,00,000/- per acre in the said holding. Plaintiff further prayed for a decree of specific performance of the receipt-cum-agreement dated 25.05.2012 with the direction to the defendants to execute the sale deed and get it registered, on receiving the balance sale consideration.

3. Defendants in their joint written statement denied having entered into any agreement to sell their land. According to them, they are illiterate persons and taking benefit thereof, the plaintiff obtained their signatures/ thumb impressions on blank papers and misused the same by converting in a receipt so as to sell share of the defendants in the suit land. Defendants pleaded further that as they were owner in the suit land to the extent of 5 kanal 3 marlas, so there was no question of agreeing to sell 6 kanal 10 marlas of land, which is indicative of the fact that receipt relied by the plaintiff is forged. Defendants further pleaded that in fact, they had received ₹4 lacs as loan from the plaintiff and had not agreed to sell any share in the land. With this stand and controverting other averments of the plaint, defendants prayed for dismissal of the suit.

4. Following issues were framed for adjudication by the learned trial Court:-

- “1. Whether the plaintiff is entitled for declaration to the effect that the defendants are co-owners in the suit land mentioned in paragraph no.2 of the plaint to the extent of 5 kanal 3 Marla and that they are entitled to receive the sale consideration @ 3,60,00000/- per acre on the said holding?OPP
2. Whether the plaintiff is entitled to a decree of possession by way of specific performance of the receipt-cum-agreement to sell dated 25.05.2012 in respect of land owned and possessed by the defendants within the revenue estate of village Behrampur, Tehsil Sohna District Gurgaon alongwith costs on payment of balance sale consideration?OPP
3. Whether the plaintiff is entitled to a direction of the court to the defendants to execute and register the sale deed with respect to the land mentioned in paragraph no.2 of the plaint and to deliver its vacant possession to the plaintiff?OPP
4. Whether the plaintiff is entitled to a decree of recovery of Rs.2,31,75,000/- as damages caused to the plaintiff due to non performance of the agreement to sale by the defendants including the amount already paid by the plaintiff alongwith future interest @18% per annum from 25.05.2012 until its recovery in its favour in alternative?OPP
5. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for on the grounds mentioned in the plaint?OPP
6. Whether the suit of plaintiff is not maintainable in the present form?OPD
7. Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD
8. Whether the plaintiff has not come to the court with clean hands and suppressed true and material facts from the court?OPD

9. Whether the plaintiff is estopped by his own act, conducts, commissions and latches from filing the present plaint?OPD
10. Relief.”

5. After taking evidence produced by the parties, the learned trial Court heard the submissions of both the sides. Under joint discussion on Issues No.1 to 3 and 5, it was found that defendants had duly executed receipt-cum-agreement to sell dated 25.05.2012 Ex.P7 and had agreed to sell their land @ ₹3,60,00,000/- per acre. It was further found that the story put forth by defendants regarding the alleged loan was false. By referring to the statement of defendant- Ajit DW1, it was found that contradictory stand had been taken by the defendants. As such, these issues were decided in favour of the plaintiff. Issue No.4 was disposed of as redundant. Remaining issues No.6 to 9 were decided against the defendants, as neither any evidence was led on those issues nor the same were pressed. Consequent to these findings, suit was decreed vide judgment and decree dated 28.02.2019. Defendants were directed to execute the sale deed and get it registered in favour of the plaintiff qua their share of 5 kanal 3 marlas in the suit property on receiving the balance sale consideration. They were further restrained from alienating the suit property to anybody else except the plaintiff.

6. Appeal preferred by the defendants against the above-said judgment and decree of learned trial Court was dismissed by the First Appellate Court vide judgment and decree dated 25.11.2019.

7. One of the defendants preferred this second appeal against the above-said concurrent findings. It is contended by learned counsel that learned trial Court failed to properly appreciate the evidence, inasmuch as receipt Ex.P7 was forged and fabricated. As per this document, agreement to sell was to be executed within one month after paying 10% of the total sale consideration for 5 kanal 3 marlas of land, which works out to be ₹2,31,75,000/- but plaintiff did not pay the same upto 25.06.2012. The learned trial Court did not notice the difference between Mark A and Ex.P7. Loan transaction is sought to be manipulated by the plaintiff into agreement to sell. With these submissions, prayer is made to set aside the impugned judgments passed by the Courts below and to dismiss the suit of the plaintiff- respondent.

8. I have considered the submissions of learned counsel for the appellant and

have perused the record including the trial Court record.

9. The controversy revolves around receipt dated 25.05.2012 Ex.P7, as per which the two defendants i.e. appellant and proforma respondent agreed to sell their share of 6 kanal 10 marlas of land (detailed in para No.2 of the plaint) @3,60,00,000/- per acre and received earnest/ token money of ₹5 lacs. As per this receipt, agreement to sell was to be executed upto 25.06.2012 on payment of total 10% of the sale consideration. It was further agreed that in case the vendors i.e. defendants refused to execute the agreement, then this receipt in itself shall be considered to be agreement to sell. This receipt Ex.P7 is duly thumb marked as well as signed by both the defendants. Their signatures appear on the revenue stamps. Document is witnessed by two persons, namely, Rameshwar Sarpanch of Village Behrampur, where the suit land is situated and one Jagbir Singh. By examining one of the attesting witness Rameshwar as PW2, plaintiffs duly proved the receipt Ex.P7 to have been executed by the defendants in favour of the plaintiff. Said PW2 Rameshwar, who is Sarpanch of the Village, where the suit land is situated, was subjected to lengthy cross-examination but nothing could be elicited so as to disbelieve him. Most importantly, one of the defendants Ajit, who appeared in the witness box as DW1 candidly admitted his signatures and also that of other defendant Leele on the revenue stamps on Ex.P7. He further admitted that defendants received an amount of ₹4 lacs by way of cheques in their ICICI Bank account, which they have encashed.

10. The contention of the defendants that it was not agreement to sell and rather, they had taken the loan from the plaintiff, does not hold good in the absence of any evidence to that effect. It has been rightly observed by learned trial Court that in case any fraud was played upon the defendants by the plaintiff, as is alleged, the burden of proof was upon the defendants to prove the fraud on the standard of proof like any criminal case. However, except for the oral evidence of defendants in this regard, there is nothing to support this contention.

11. Apart from above, the plea of loan as taken by the defendants or the alleged fraud are repelled by own statement of defendant - DW1 Ajit, who disclosed during his cross-examination that rate of land was agreed to be ₹3,60,00,000/- per acre. In case, it was a loan transaction as is alleged by the defendants, it is not explained by the appellant that for what purpose the rate of ₹3,60,00,000/- per acre was agreed amongst the parties.

12. Besides above, in the written statement, defendants claimed to have taken loan from the plaintiff but during his cross-examination, DW1 Ajit says that he had returned the loan amount to Rameshwar, from whom he did not obtain any receipt. In case the loan was taken from the plaintiff as is alleged by the defendants, why the amount was returned to Rameshwar, is not explained. It is not believable that in case defendants received loan of ₹5 lacs from the plaintiff against the receipt, as is alleged by them, they will return the same to Rameshwar, that too without obtaining any receipt. DW1 also says that the amount of ₹5 lacs was withdrawn by him from ICICI Bank, but he neither disclosed the date of withdrawal nor produced any record to support this contention.

13. Another contention of learned counsel for the appellant that the plaintiff was not ready and willing to perform his part of contract, does not hold good for the simple reason that defendants having denied the execution of agreement-cum-receipt Ex.P7, cannot be allowed to take the plea of unwillingness of the plaintiff to perform its part of contract.

14. In view of the aforesaid discussion, it is held that learned Courts below did not commit any error in coming to the conclusion that defendants had agreed to sell their land to the plaintiff @₹3,60,00,000/- per acre. It is own admission of the defendants that their share in the land was 5 kanal 3 marlas. Both the impugned judgments are based upon proper appreciation of evidence on record, in which I find absolutely no illegality.

15. Consequently, holding the appeal to be devoid of any merit, the same is dismissed with costs.

December 21, 2022
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No