

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.904 of 2020 (O&M)

Reserved on : 07.12.2022

Date of Decision: 09.12.2022

Yatender

....Appellant

VERSUS

Dharamveer

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajay Ghanghas, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the defendant-appellant against the impugned judgments and decrees dated 07.08.2018 and 02.07.2019 passed by the Trial Court and the lower Appellate Court respectively whereby the suit for specific performance filed by the plaintiff-respondent has been decreed and the appeal of the defendant-appellant stands dismissed.

The brief facts relevant to the present *lis* are that the parties executed a registered agreement to sell dated 05.08.2013 whereby the defendant-appellant agreed to sell to the plaintiff-respondent agricultural land measuring 04 *kanals* 11 *marlas* (91/325 share) out of 16 *kanals* 04 *marlas* forming part of Rect. No.91, Killa No.6/1/2 (4-19), 15/1/1 (3-16), 4/2/1 (2-2), 7/1/1 (5-8) situated within the revenue estate of village Dayalpur, Tehsil Ballabgarh, District Faridabad. The total sale consideration was fixed at Rs.34,12,500/- out of which the defendant-appellant received an amount of Rs.27,20,000/- from the plaintiff-respondent as a part payment/earnest money on the same date in the presence of witnesses and also issued a

separate receipt in favour of the plaintiff-respondent. The sale deed was to be executed on or before 04.08.2014. On 03.08.2014 the plaintiff-respondent approached the defendant-appellant and requested him for execution of the sale deed and the defendant-appellant assured the plaintiff-respondent that he would appear on 04.08.2014 before the Sub-Registrar Ballabgarh. However, it is alleged that on 04.08.2014 the defendant-appellant did not come present though the plaintiff-respondent kept waiting for him along with the balance sale consideration and other expenses. The defendant-appellant also did not reply to a legal notice sent by the plaintiff-respondent. As such, the plaintiff-respondent instituted the suit for specific performance of the agreement to sell as well as for the relief for permanent injunction. A prayer in the alternative for recovery of Rs.27,20,000/- already paid by the plaintiff-respondent to the defendant-appellant as advance earnest money/part payment and liquidated damages suffered by him with interest @ 18% p.a. was also made.

Upon notice the defendant-appellant filed a written statement denying to have ever executed any agreement to sell in favour of the plaintiff-respondent or receiving any earnest money. The receipt of any legal notice was also denied and it was alleged that under the garb of the present suit the plaintiff-respondent wanted to grab his property and that the plaintiff-respondent had played fraud upon him to grab the suit land.

On the basis of the pleadings of the parties the followings issues were framed :

1. Whether the plaintiff is entitled for specific performance of agreement to sale dated 05.08.2013? OPP

2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether the present suit is not maintainable? OPD
4. Whether the plaintiff has no *locus standi* to file the present suit? OPD
5. Whether the plaintiff has not approached the court with clean hands? OPD
6. Whether the plaintiff is estopped by his own act and conduct? OPD
7. Relief.

Vide judgment and decree dated 07.08.2018 the Trial Court, based on the pleadings of the parties and the evidence on the record, decreed the suit of the plaintiff-respondent. Aggrieved by the said judgment and decree, an appeal was preferred by the defendant-appellant. However, vide judgment and decree dated 02.07.2019 the said appeal was dismissed. Hence, the present regular second appeal.

It is argued by learned counsel for the defendant-appellant that the Courts below have erred in decreeing the suit of the plaintiff-respondent. According to counsel, the parties were known to each other and that the defendant-appellant had borrowed an amount of Rs.20,00,000/- from the plaintiff-respondent as a friendly loan and at that time, on the asking of the plaintiff-respondent, the agreement to sell in question was executed as a security. As per counsel, when the defendant-appellant wanted to return the said amount but the plaintiff-respondent refused to accept the same as he had his eyes on the suit property and that since no agreement to sell was ever executed nor any earnest money was received, there was no occasion for executing any sale deed regarding the suit property.

I have heard learned counsel for the defendant-appellant.

The facts of the case show that an agreement to sell dated 05.08.2013 was executed regarding the suit property. The Courts below have found that there was readiness and willingness on the part of the plaintiff-respondent to get the sale deed executed in his favour while the defendant-appellant was not ready and willing to perform his part of the contract. There is nothing on the record to show that the plaintiff-appellant did not have sufficient means to perform his part of the agreement to sell. The story of the defendant-appellant having taken any loan from the plaintiff-respondent has not found favour with the Courts below in the absence of any cogent evidence regarding the same. The agreement to sell in the present case is a registered document. The said agreement to sell and the receipt have been held to be fully proved. It is well settled that oral evidence cannot be used to disprove a written document. Further, there is no evidence on the record to establish any fraud having been played upon the defendant-appellant.

In view of the discussion above, I do not find any illegality or infirmity in the concurrent findings of fact recorded by the Courts below. No question of law, much less substantial question of law, arises in the present regular second appeal. The appeal is accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

09.12.2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO