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

**1. RSA-3662-2019 (O&M)
Date of decision : 18.04.2022**

Najar SinghAppellant

Versus

Dilawar Singh & OthersRespondents

2. RSA-3709-2019 (O&M)

Najar SinghAppellant

Versus

Dilawar Singh & OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Tarunveer Vashist, Advocate for the appellant.

Mr. Sarju Puri, Advocate for respondent No.1.

ALKA SARIN, J.

The present two regular second appeals have been preferred by the defendant No.1 against the judgements and decrees passed by the Courts below decreeing the suit filed by the plaintiff. While the Trial Court had decreed the suit with regard, to the alternative relief of recovery of ₹12,00,000/-, the lower Appellate Court decreed the suit for specific performance of agreement to sell dated 25.11.2013. The status of the parties before the Trial Court and this Court is that the plaintiff is the present respondent No.1, defendant No.1 is present appellant, defendant No.2 is present respondent No.2 while defendant No.3 is present respondent No.3.

Brief facts relevant to the present *lis* are that the plaintiff filed a suit for specific performance of agreement averring that the defendant No.1 through his attorney defendant No.2 had entered into an agreement to sell dated 25.11.2013 agreeing to sell the suit land measuring 10 Kanals 17 Marlas to the plaintiff for a total sale consideration of ₹15,00,000/- and had received ₹12,00,000/- as an earnest money and had agreed to receive the balance sale consideration of ₹3,00,000/- from him at the time of execution and registration of the sale-deed. The sale-deed was to be executed on or before 24.11.2014. However, vide sale-deed dated 27.05.2014 the defendant No.1 allegedly alienated land measuring 13 Kanals 12 Marlas, including the suit land, to defendant No.3 and mutation no.1218 was also got entered and sanctioned in favour of defendant No.3 who is the maternal nephew of defendant Nos.1 and 2 and was having full knowledge regarding the agreement to sell in question. It was averred that since the date of the agreement to sell the plaintiff had always been ready and willing to perform his part of contract and is still ready and willing to do so.

Defendant Nos.1 and 3 contested the suit while defendant No.2 was proceeded against ex-parte. In their joint written statement defendant Nos.1 and 3 raised preliminary objections regarding the alleged agreement to sell being a forged and fabricated document, suppression of true and material facts, estoppel, maintainability, locus-standi, limitation, suit not being properly valued, suit being collusive with and at the instance of defendant No.2 and cause of action. On merits it was submitted that defendant No.1 never appointed defendant No.2 as his attorney and that defendant No.1 neither himself nor through his alleged attorney entered, into or executed any alleged agreement to sell dated 25.11.2013 or any other

date. It was alleged that the agreement to sell is a forged and fabricated document and had been prepared by the plaintiff in connivance with defendant No.2 and its alleged scribe and alleged witnesses with an oblique motive to cheat and defraud the answering-defendants and to grab the suit land. It was further stated that defendant No.1 was residing with defendant No.2 and his family, and he was having love and affection for Mandip Singh son of defendant No.2 and due to this fact the defendant No.1 executed a Will dated 05.06.2003 in favour of Mandip Singh and his father, defendant No.2. However, subsequently Mandip Singh and his father, defendant No.2, started insulting and misbehaving with defendant No.1 and he started residing with defendant No.3 and since then he was residing with him. It was alleged that defendant No.3 was serving and looking after defendant No.1 and therefore defendant No.1 executed a Transfer of Ownership Deed dated 27.05.2014 in favour of defendant No.3 qua his land measuring 13 Kanals 12 Marlas including the suit land. It is alleged that when Mandip Singh and his father, defendant No.2, got to know about this fact they got filed the present suit filed by concocting a false story. The answering-defendants also alleged that after going through contents of the present suit they came to know that on 05.06.2003, at the time of execution of the Will, defendant No.2 and his son Mandip Singh had also procured a general power of attorney dated 05.06.2003 in favour of defendant No.2 by misleading and misrepresenting defendant No.1 and that the alleged general power of attorney dated 05.06.2003 is a result of fraud and misrepresentation and that defendant no.1 had cancelled the Will dated 05.06.2003 vide cancellation deed dated 11.08.2014.

Replication was filed by the plaintiff wherein the allegations

raised in written statement by the answering-defendants were denied and those of the plaintiff were reiterated to be correct. From the pleadings of the parties the following issues were framed by the Trial Court :

1. Whether defendant no.1 through defendant no.2 executed agreement to sell dated 25.11.2013 with regard to the suit property in favour of plaintiff ? OPP
2. Whether the agreement to sell dated 25.11.2013 is forged and fabricated document ? OPD
3. Whether the plaintiff was ready and willing to perform his part of the contract ? OPP
4. Whether the plaintiff is entitled for specific performance of agreement to sell dated 25.11.2013 as prayed for ?OPP
5. Whether the plaintiff is entitled for consequential relief of permanent injunction as prayed for ?OPD
6. Whether in the alternative, plaintiff is entitled for recovery of ₹12,00,000/- as prayed for ? OPP
7. Whether the suit is barred by limitation ?OPD
8. Relief.

The Trial Court vide judgement and decree dated 06.09.2016 held that the plaintiff is not entitled for specific performance of agreement to sell dated 25.11.2013 and decreed the suit with regard for the alternative relief of recovery of ₹12,00,000/- with costs against defendant Nos.1 and 2 while the suit against defendant No.3 was dismissed. Against the judgement and decree passed by the Trial Court, two appeals were filed – one by the plaintiff and the other by defendant No.1. The lower Appellate Court vide

judgement and decree dated 25.03.2019 accepted the appeal of the plaintiff and decreed his suit for specific performance of agreement to sell dated 25.11.2013. The appeal of defendant No.1 was dismissed. Hence, the two regular second appeals by defendant No.1.

Learned counsel for the defendant No.1 has contended that both the Courts below had erred in decreeing the suit of the plaintiff. According to counsel, the agreement to sell was a forged and fabricated document which was created after defendant No.1 transferred his land, including the suit land, in favour of defendant No.3. It has further been submitted that the agreement in sell is a creation of fraud and misrepresentation and that defendant No.1 never executed it. Learned counsel argued that the agreement to sell was not proved in accordance with law inasmuch as both it's attesting witnesses were not examined and neither was the scribe examined. According to counsel, on 05.06.2003 when defendant No.1 executed a registered Will in favour of his nephew Mandip Singh son of defendant No.2 then at that time some papers may have been got signed which were typed as a power of attorney and got registered which power of attorney was later used to execute the agreement to sell. Further, there is nothing on record to show that defendant No.1 ever received ₹12,00,000/- in cash as earnest money from the plaintiff and the plaintiff did not show how he could pay such a huge amount in cash which was in violation of the provisions of the Income Tax Act, 1961. It was also submitted that the earnest money purportedly received by the defendant No.1 i.e. ₹12,00,000/- was 80% of the total sale consideration and that nobody would part with such a huge component of the total sale consideration at the time of execution of agreement to sell. He further submitted that in any event the

plaintiff had failed to prove that he was ready and willing to perform his part of the contract.

Per contra, learned counsel for the plaintiff supported the decisions arrived at by both the Courts wherein the execution of the agreement to sell was held to be proved. According to counsel, the defendant No.1 through his attorney, defendant No.2, executed the agreement to sell and received ₹12,00,000/- as earnest money. Defendant No.2 was none other than the real brother of defendant No.1. However, later defendant No.1 tried to wriggle out of the contract by transferring the suit land in favour of defendant No.3. It was also submitted that the Courts below had arrived at concurrent findings of fact which did not warrant any interference by this Court.

I have heard learned counsel for the plaintiff-appellant and perused the Trial Court record.

In the present case both the Courts below have concurrently held that the defendant No.1 through his attorney defendant No.2 had executed the agreement to sell, Ex.P1. The defendant No.2 is the brother of defendant No.1 and in whose favour there is a power of attorney Ex.P4 on the record. The best person to disprove the agreement to sell would have been its signatory, defendant No.2. However, defendant No.1 did not summon him as a witness. After the filing of the present suit the defendant No.1 also executed a cancellation deed Ex.D4 dated 11.08.2014 cancelling the power of attorney executed in favour of his brother. In the recitals of this cancellation deed Ex.D4 there is a specific admission that defendant No.1 had executed a registered power of attorney dated 05.06.2003 in favour of defendant No.2. There is no averment that the power of attorney Ex.P4 was

a creation by fraud. Defendant No.1 only stated that the power of attorney Ex.P4 was misused and is being misused by defendant No.2. Counsel for defendant No.1 could offer no explanation as to why someone would wait for ten long years to misuse a registered power of attorney. The registered Will which was allegedly executed by defendant No.1 on 05.06.2003 in favour of Mandip Singh has not seen the light of the day and is not on the record. Only a cancellation deed Ex.P3 dated 11.08.2014 cancelling the Will has been produced in which no reasons for cancelling the Will are forthcoming. The cancellation deed does not mention that on 27.05.2014 defendant No.1 had already transferred his land in favour of his other nephew, defendant No.3, and was no longer in a position to bequeath it.

No doubt the earnest money paid by the plaintiff was a huge sum but counsel for defendant No.1 has not pointed out any illegality in payment of a major portion of the total agreed sale consideration as earnest money at the time of execution of the agreement to sell. Though it has been argued on behalf of defendant No.1 that the plaintiff had failed to prove that he was ready and willing to perform his part of the contract, in para 4 of his plaint the plaintiff stated that “...*the plaintiff had always been willing and ready and he is still willing and ready to perform his part of the contract. The balance sale price and the amount required for necessary expenses of sale deed was/is ready with the plaintiff*”. Even in his affidavit submitted in examination-in-chief the plaintiff stated that “...*the deponent had always been willing and ready and he is still willing and ready to perform his part of the contract. The balance sale price and the amount required for necessary expenses of sale deed was/is ready with the deponent*”. The cross-examination of the plaintiff shows that no suggestion or any question was

put to him regarding readiness and willingness or about the availability of the balance sale consideration.

Regarding the plea by the defendant No.1 that payment of ₹12,00,000/- in cash by the plaintiff was in violation of the provisions of the Income Tax Act, 1961 suffice it to say that in such a situation it is for the competent authority to initiate appropriate action against the plaintiff. No decision has been cited which lays down that in a suit for specific performance of agreement to sell the plaintiff has an obligation not only to explain his capacity to pay the balance sale consideration but also to explain that money paid/to be paid is accounted one. This contention raised by counsel for the defendant No.1 does not carry weight.

No question of law, much less, any substantial question of law arises in the present case. The Courts below have concurrently recorded pure findings of fact warranting no interference by this Court.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. Both the regular second appeals are dismissed. Pending applications, if any, also stand disposed off.

18.04.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
 Whether reportable : Yes/No