

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

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RSA No.1596 of 2022 (O&M)

Reserved on : 12.12.2022

Date of Decision : 20.12.2022

Jasbir Singh

....Appellant

VERSUS

Vikramjeet Singh & Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.S. Sidhu, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the defendant No.1-appellant against the impugned judgments and decrees dated 08.01.2020 and 05.05.2022 passed by the Trial Court and the lower Appellate Court respectively whereby the suit of the plaintiff-respondent No.1 was decreed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for specific performance of agreement to sell dated 08.01.2015. According to the plaintiff-respondent No.1, the defendant No.1-appellant agreed to sell the suit property to him vide the said agreement to sell for a total sale consideration of Rs.14,70,000/- out of which Rs.5,00,000/- were paid as earnest money at the time of execution of the agreement to sell. It was further agreed that the plaintiff-respondent No.1 would pay a further sum of Rs.6,00,000/- on 11.03.2015 whereafter the defendant No.1-appellant would execute the sale deed in favour of the plaintiff-respondent No.1 on 20.03.2015. As per the plaintiff-respondent No.1 he paid Rs.6,00,000/- to the defendant No.1-appellant on 11.03.2015

regarding which a writing was typed on the back of the agreement to sell. However, on 20.03.2015 the defendant No.1-appellant failed to reach the Office of the Sub Registrar, Tarn Taran for executing the sale deed though the plaintiff-respondent No.1 reached there with the balance sale consideration and other expenses. Thereafter, despite repeated requests made by the plaintiff-respondent No.1, the defendant No.1-appellant failed to execute the sale deed in his favour. Hence, the suit for specific performance was filed with an alternative relief of recovery of Rs.14,70,000/-. During the pendency of the suit the defendant No.1-appellant sold the suit property to defendant No.3-respondent No.3 vide sale deed dated 07.03.2018 and as such the plaint was amended to assail the said sale deed.

Upon notice the defendant No.1-appellant filed a written statement raising preliminary objections and averring that no agreement to sell had been executed by him. According to the defendant No.1-appellant he had taken a loan of Rs.1,00,000/- from the Satnam Singh, the brother of the plaintiff-respondent No.1, and had executed a pronote and another agreement was also executed with Satnam Singh qua the said amount and that the plaintiff-respondent No.1 might have obtained the thumb impression and signature of the defendant No.1-appellant at that time. The endorsement dated 11.03.2015 on the reverse of the agreement to sell was also termed to be forged and not bearing the signature and thumb impression of defendant No.1-appellant.

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

1. Whether the plaintiff is entitled to suit for specific performance as prayed for ? OPP

- 1-A. Whether the plaintiff is entitled to alternative relief of recovery of Rs.14,70,000/- ? OPP
2. Whether the plaintiff is entitled to suit for permanent injunction as prayed for ? OPP
3. Whether the alleged agreement to sell is illegal null and void without knowledge of the defendant no.1.
OPD
4. Relief.

No evidence was led by the defendant No.1-appellant. Vide judgement and decree dated 08.01.2020 the Trial Court, based on the pleadings of the parties and the evidence on the record, decreed the suit of the plaintiff-respondent No.1 for recovery of Rs.14,70,000/- along with pendente lite interest at the rate of 6% per annum from 17.04.2015 till the date of decree and future interest at the rate of 6% per annum from the date of decree till realization of the amount. The Trial Court declined the relief of specific performance on the ground that there were discrepancies in the boundaries. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-respondent No.1. No appeal or cross-objections were filed by any of the defendants. Vide judgment and decree dated 05.05.2022 the lower Appellate Court modified the judgement and decree of the Trial Court and held that the plaintiff-respondent No.1 is entitled to specific performance of agreement to sell dated 08.01.2015 by the defendant No.1-appellant on payment of the balance sale consideration of Rs.2,70,000/-. The lower Appellate Court held that there was no discrepancy in the description of the boundaries of the property. The sale deed dated 07.03.2018 in favour of the defendant No.3-respondent No.3 was held to be

hit by the rule of lis pendens and not binding upon the plaintiff-respondent No.1. Hence, the present regular second appeal by the defendant No.1-appellant.

It is argued by counsel for the defendant No.1-appellant that the Courts below have illegally decreed the suit of the plaintiff-respondent No.1 and that no agreement to sell was executed by the defendant No.1-appellant. It is contended that the plaintiff-respondent No.1 had played a fraud upon the defendant No.1-appellant. According to counsel, the Trial Court erred in granting the alternative relief of recovery to the plaintiff-respondent No.1 and that the lower Appellate Court further erred in granting the relief of specific performance.

I have heard learned counsel for the defendant No.1-appellant.

The facts of the case show that both the Courts below have found the agreement to sell having been proved. The defendant No.1-appellant did not lead any evidence disprove the existence or execution of the agreement to sell or to establish the plea of fraud. The Trial Court held that *“The defendant no.1 in his written statement has denied the execution of agreement to sell and pleaded that the same is result of fraud and misrepresentation etc. But the plea of defendant no.1 is of no value as he has not led any evidence in support of his pleadings. But the plaintiff in order to prove the signature of defendant no.1 on the agreement to sell in question has also called the evidence of Dr. Vikram Raj Singh Chuhan finger print and handwriting expert in the shape of PW5. Dr. Vikram Raj Singh Chuhan, who after having comparison of the signature of defendant no.1 on the agreement to sell dated 08.01.2015 with his admitted signature on power of attorney given by him to his lawyer to contest this suit on his behalf, gave an*

opinion that agreement to sell dated 08.01.2015 bears the signature of defendant no.1. Now, in view of the entire evidence of the plaintiff and in the absence of any evidence from the side of defendant no.1, the existence as well as execution of agreement to sell dated 08.01.2015 remain no more doubt". Even the lower Appellate Court found that "So far as the factum of execution of agreement to sell dated 08.01.2015 is concerned, the learned Trial Court has upheld the same. It has been specifically observed by learned Trial Court that the factum of execution of agreement to sell in dispute is proved through the testimony of attesting witness Kuldeep Singh and the scribe of agreement to sell, Sukhdev Singh, and also through the testimony of finger print expert PW5 Dr. Vikram Raj Singh Chauhan. No cross objection or cross appeal has been filed by respondent-defendant No.1 viz-a-viz the said finding returned by learned Trial Court with respect to due execution of agreement to sell dated 08.01.2015". The defendant No.1-appellant having led no evidence whatsoever to disprove the execution of the agreement to sell and the plaintiff-respondent No.1 having duly established the same, the findings recorded by the Courts below deserve to be upheld. The defendant No.1-appellant has also not been able to establish that there was any discrepancy in the description of the suit property.

It may be noticed here that the defendant No.1-appellant did not file any appeal or cross-objections against the judgement and decree of the Trial Court whereby the agreement to sell was upheld and plaintiff-respondent No.1 was granted the relief of recovery. It was necessary for the defendant No.1-appellant to file an appeal or take cross-objection against that part of the judgement and decree of the Trial Court which was against

him if he wanted to get rid of the same. Having accepted the same, he cannot challenge the same in the present regular second appeal.

No other argument has been raised. In view of the discussion above, I do not find any illegality or infirmity in the impugned judgements and decrees. 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.

20.12.2022
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(ALKA SARIN)
JUDGE

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