

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

125

RSA-1825-2022 (O&M)
Date of decision: 16.09.2022

Baldev Singh

.....Appellant

Versus

Swinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. A.P.S. Sandhu, Advocate
for the appellant.

Mr. Anupam Bhardwaj, Advocate
for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

Suit for possession by specific performance of agreement to sell dated 04.01.2016 with regard to land measuring 10 kanal 00 marla situated in village Jaspal, Tehsil Baba Bakala Sahib, District Amritsar (hereinafter referred to as 'the suit land') or in the alternative for recovery of double the amount of earnest money paid to the appellant/defendant by the respondent/plaintiff as damages as agreed, along with interest @ 24% per annum from the date of execution of agreement to sell, was filed by the respondent/plaintiff with a further prayer to restrain the appellant/defendant from further selling, alienating, transferring, mortgaging or from creating any type of charge over the suit land. The suit was decreed by the Trial Court vide judgment and decree dated 28.11.2018. The appeal preferred by the appellant/defendant against the aforesaid judgment and decree was dismissed by the Lower Appellate Court vide order dated 28.04.2022. The defendant is now before this Court in Regular Second Appeal.

Parties to the *lis*, hereinafter shall be referred to by their

original positions in the suit.

The pleaded case of the plaintiff may be noticed as thus. The defendant entered into an agreement to sell the suit land with the plaintiff on 04.01.2016. A sum of Rs.14,96,000/- out of the total sale consideration of Rs.18 lakhs agreed upon between the parties was paid to the defendant as earnest money by the plaintiff. The sale deed was to be executed on or before 04.01.2017. On the date fixed, the plaintiff went to the office of Sub Registrar with the balance sale consideration and waited for the defendant, however, since the latter failed to turn up, the plaintiff got his presence marked in the office of the Sub Registrar. The plaintiff claimed that he had always been ready and willing to perform his part of the contract, however, the defendant had failed to perform his part of the contract as he had failed to show up in the office of Sub Registrar. It was also claimed by the plaintiff that the defendant had refused to reply to the legal notice sent by him and had instead threatened to alienate the suit property. Having been left with no other choice, the plaintiff instituted the suit in question.

In his written statement, the defendant denied the pleaded case of the plaintiff and instead submitted that he had borrowed money from the plaintiff by way of a loan and since the borrowed amount of loan had accumulated to approximately Rs.4 lakhs, the plaintiff had been asking the defendant and his wife to execute a loan agreement. The plaintiff thereafter, connived with the deed writer and not only got the agreement to sell executed but also got the thumb impressions of the defendant and his wife fraudulently affixed on the agreement to sell, on the pretext of it being a loan agreement. It was thus, alleged by the

defendant that the agreement to sell was a forged and fabricated document.

The Courts below on the basis of the material and other evidence led, decreed the suit of the plaintiff and recorded concurrent findings. It was held by the Courts below that (i) the defendant himself had admitted to having affixed his thumb impressions on the agreement to sell. (ii) he had himself purchased the stamp papers for the purpose of the agreement to sell which was thus contrary to the stand taken by him qua a fraud having been played upon him. (iii) the deed writer as well as the marginal witnesses had proved the execution of agreement to sell and thus, the case of the plaintiff stood duly proved as he had shown his readiness and willingness by not only paying earnest money to the defendant but also getting his presence marked in the office of the Sub Registrar on the date of execution i.e. 04.01.2017. (iv) the defendant had failed to lead any cogent evidence to prove allegations of fraud.

Learned counsel for the appellant/defendant has vehemently argued that (i) the plaintiff had not approached the Court below with clean hands as he had concealed material facts to the effect that he had loaned Rs.4 lakhs to the defendant. (ii) Though in his replication the plaintiff had denied the factum of loan, however, interestingly while stepping into the witness box as PW5, he admitted giving a loan to the defendant. PW3 one of the attesting witnesses also admitted during his deposition that the plaintiff had asked the defendant to execute a writing qua the loan amount which was due to the plaintiff. (iii) no cogent evidence had been placed on record qua amount of

Rs.14,96,000/- having been received as earnest money by the defendant, rather, it stood corroborated from the testimony of PW1, Lajwant Singh Vohra, deed writer, that no money much less earnest money was exchanged in his presence.

Learned counsel for the appellant/defendant, therefore, submitted that both the Courts had not only gravely erred in ignoring these blatant and manifest contradictions in the oral testimony of the plaintiff but also the documentary evidence which was placed on record. A prayer was, therefore, made that since the relief of specific performance was an equitable one, it should not have been granted to the plaintiff.

Learned counsel for the caveator/respondent/plaintiff while opposing the prayer and submissions made by the counsel opposite vehemently argued that there was no concealment whatsoever by the plaintiff as a perusal of his cross-examination clearly revealed that he had been forthright about there indeed being a loan transaction of Rs.4 lakhs between the parties but at the same time the plaintiff had also categorically deposed that the said amount of Rs.4 lakhs had already been returned by the defendant and nothing was due from him, and the earnest amount in the sum of Rs.14,96,000/- which had been taken in respect of the suit property was in fact a separate and independent transaction.

Learned counsel appearing for the caveator/plaintiff further submitted that the factum of the defendant having received the earnest money duly stood proved from the testimony of the deed writer which in turn found due corroboration from the testimony of the attesting

witnesses as well. Learned counsel further submitted that though the defendant had alleged fraud against the plaintiff, however, in the absence of any cogent evidence to substantiate his allegations of fraud, it was evident that the defendant was trying to fabricate a false story.

I have heard learned counsel for the parties and perused the relevant material on record.

The initial burden to prove the execution of the agreement to sell was on the plaintiff. It is a matter of record that he discharged the same by examining the attesting witnesses as well as the scribe to the agreement to sell. Thereafter, the onus shifted on the defendant to prove beyond reasonable doubt that the agreement to sell was a result of fraud. The defendant failed to lead any cogent evidence in the said regard, so much so, the best witness who could have lent credence to the case of the defendant qua a fraud having been played, would have been his wife who too was a signatory to the agreement to sell, however, strangely after filing her affidavit in her examination-in-chief, she did not even step into the witness box to subject herself to cross-examination.

This Court does not find any force in the submissions made by learned counsel for the appellant that since the factum of loan had been admitted by the plaintiff in his cross-examination though denied in the replication, an adverse inference should have been drawn by the Courts below, precisely for the reasons that though the plaintiff did admit to the loan transaction in his cross-examination but at the same time he also categorically deposed that it was a separate transaction, independent of the agreement to sell in question. It was no doubt

vehemently argued by the counsel for the defendant that there were contradictions in the testimonies of the plaintiff witnesses, however, the contradictions pointed out by the learned counsel are minor in nature and the Courts below rightly ignored them as they would not in any manner create a dent in the plaintiff's case.

The reliance placed upon judgments in *Ravinder Nath Sahni V. Poddar construction Co. P. Ltd. and another : 2014(49) RCR (Civil) 8840; Balbir Singh and another Vs. Jagtar Singh (since deceased) through his LRs and another : 2021(1) RCR (Civil) 550* and *Janardan Vs. Sau. Rekha and others : 2020(6) ALL MR 208* would not come to the rescue of the appellant/defendant in the facts and circumstances of this case and the evidence adduced before the Trial Court. The defendant clearly failed to discharge his onus to prove the allegations of fraud beyond reasonable doubt.

On being pointedly asked, learned counsel for the appellant/defendant failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by both the Courts below were either contrary to record or suffered from any material illegality. In the circumstances, this Court does not find any error in the concurrent findings recorded by both the Courts. The appeal being devoid of merit is accordingly dismissed.

16.09.2022

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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