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

RSA-4585-2019 (O&M)
Reserved on : 06.07.2022
Date of decision : 13.07.2022

Om Parkash .....Appellant

versus

Satish Kumar .....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rao Ajender Singh, Advocate for the appellant.

ALKA SARIN, J.

CM-13032-C-2019

This is an application for condonation of delay of 342 days in refiling the appeal.

For the reasons stated in the application, delay of 342 days in refiling the appeal is condoned.

CM stands disposed off.

RSA-4585-2019

The present regular second appeal has been preferred by the defendant-appellant against the judgments and decrees passed by both the Courts below decreeing the suit of the plaintiff-respondent for specific performance.

Brief facts relevant to the present *lis* are that the plaintiff-respondent filed a civil suit for specific performance of agreement to sell dated 08.06.2011 whereby the defendant-appellant agreed to sell the suit land, as detailed in the plaint, for a consideration of Rs.5,10,000/-. As per the plaintiff-respondent, an amount of Rs.4,20,000/- was paid in cash to the defendant-appellant at the time of execution of the agreement to sell while the balance amount of Rs.90,000/- was to be paid at the time of execution and registration of sale deed. The date for execution of the sale deed was fixed as 12.07.2011. It was averred that on the date fixed the plaintiff-respondent remained present outside the office of Sub-Registrar, Mandi Ateli throughout the day with cash to pay the balance sale consideration and meet other expenses but the defendant-appellant did not turn up. The plaintiff-respondent thereafter got a legal notice dated 06.08.2011 served on the defendant-appellant but the defendant-appellant failed to perform his part of the contract.

The suit was contested by the defendant-appellant who raised certain preliminary objections. On merits, the defendant-appellant disputed the execution of the agreement to sell as well as payment of Rs.4,20,000/- by the plaintiff-respondent and submitted that the plaintiff-respondent had obtained his signatures on some blank stamp papers under the pretext of obtaining a loan from the bank which stamp papers were misused to forge the agreement to sell.

The Trial Court framed the following issues:

1. Whether defendant agreed to sell the suit property to plaintiff for total sale consideration of Rs.5,10,000/- and executed agreement to sell on dated 08.06.2011 ? OPP

2. Whether plaintiff has paid earnest money of Rs.4,20,000/- to the defendant on 08.06.2011 and sale deed was to be executed on 12.07.2011 ? OPP
3. Whether plaintiff was ready and willing to get executed the sale deed from the defendant ? OPP
4. If the above-said issues are to be proved, whether the plaintiff is entitled for the decree of possession and for specific performance of contract along with possession of the suit property? OPP
5. Whether plaintiff has filed false and frivolous suit? OPD
6. Whether the suit of the plaintiff is not maintainable? OPD
7. Relief.

The Trial Court, vide judgment and decree dated 14.07.2015, decreed the suit of the plaintiff-respondent directing the defendant-appellant to execute the sale deed and deliver possession of the suit land in favour of the plaintiff-respondent within a period of three months on receiving the residual sale consideration. Aggrieved by the said judgment and decree passed by the Trial Court, an appeal was preferred by the defendant-appellant which was, however, dismissed vide judgement and decree dated 23.04.2018. Hence, the present regular second appeal.

Learned counsel for the defendant-appellant has contended that the Courts below have erred in non-suiting him and in decreeing the suit of the plaintiff-respondent. According to counsel, the Courts below did not appreciate the pleadings and evidence on the record which proved that the agreement to sell was a forged document. It was also contended that the Courts below have erred in not taking into consideration the earlier agreements to sell dated 11.11.2009 (Ex.D1) and 14.03.2011 (Ex.D2). Another contention raised was that the witnesses to the agreement to sell produced by the plaintiff-respondent had given different details about the cash currency notes paid to the plaintiff-respondent and, as such, their testimony was unreliable.

I have heard counsel for the defendant-appellant and perused the paper-book and the lower court record, which was summoned vide order dated 06.02.2020.

Both the Courts below have found that the agreement to sell Ex.P1 was duly proved by the plaintiff-respondent. The witnesses to the agreement to sell stepped into the witness box as PW3 and PW4 while the lawyer who drafted the said agreement to sell appeared as PW2. The deposition of these witnesses proves that the agreement to sell Ex.P1 was prepared at the instance of the defendant-appellant and who had put his signatures thereon after receiving an amount of Rs.4,20,000/-. The cross-examination of these witnesses could not elicit anything credible to disbelieve their testimonies. The story set-up by the defendant-appellant that his signatures were obtained on certain blank stamp papers for obtaining a loan did not cut any ice as he could not prove these assertions. Infact, the lower Appellate Court held that the defendant-appellant *"is a businessman and being so there is stronger presumption that he would be more careful than ordinary person at the time of signing any document. Since appellant has already obtained loan from bank, it is to be taken that he was well* *aware of the fact that loan from a bank cannot be obtained simply by putting signatures on a stamp document and that too outside the premises of bank".*

Regarding the argument raised by the defendant-appellant that the agreement to sell is a forged document and is an act of fraud, it may be noted that fraud has not only to be specifically pleaded but also proved. In the present case the defendant-appellant failed to establish and prove that any fraud had been committed by him. No police complaint was lodged or other steps taken by the defendant-appellant to set aside the agreement to sell. No doubt that fraud vitiates everything inasmuch as it affects the very solemnity of the proceedings. However, by now it is the settled law that fraud has to be pleaded and established by leading cogent evidence. An ambiguous statement cannot per se make a document fraudulent.

The contention on behalf of the defendant-appellant that the Courts below have erred in not taking into consideration the earlier agreements to sell dated 11.11.2009 (Ex.D1) and 14.03.2011 (Ex.D2) is liable to be rejected as there is no averment in the written statement about either of these earlier agreements. Even his affidavit Ex.DW1/A produced in evidence has no mention about these earlier agreements. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case. Parties are bound by their pleadings. No evidence beyond the pleadings can be relied upon. The other contention raised that the witnesses to the agreement to sell produced by the plaintiff-respondent (PW3 and PW4) had given different details about the denomination of the currency notes paid by the plaintiff-respondent and, as such, no reliance could be placed on these witnesses is being noticed to be rejected. The said witnesses were cross-examined after over three years of signing on the agreement to sell Ex.P1. They stood the test of cross-examination about the plaintiff-respondent advancing Rs.4,20,000/- to the defendant-appellant as earnest money at the time of execution of the agreement to sell. A minor discrepancy about the value of the currency notes given by the plaintiff-respondent to the defendant-appellant as earnest money at the time of execution of the agreement to sell three years ago would not be a factor to disbelieve the testimonies of these witnesses.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent 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. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
13.07.2022 **JUDGE**
Yogesh Sharma

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