

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.101

RSA No.1493 of 2013 (O&M)
Date of Decision: 14.12.2022

Alizan

.... Appellant

Versus

Abdul Sattar

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Abhilaksh Grover, Advocate for the appellant.

Mr. S.S.Dinarpur, Advocate for the respondent.

TRIBHUVAN DAHIYA, J. (ORAL)

This is defendant's second appeal against the concurrent findings of both the Courts below.

2. The facts of the case in brief are, the respondent/plaintiff (hereinafter referred to as the 'plaintiff') filed a suit for possession by way of specific performance of the agreement to sell dated 02.07.1999. The appellant/defendant (hereinafter referred to as the 'defendant') being owner in possession of the suit land measuring 16 *kanal* 14 *marla* entered into the said agreement to sell with the plaintiff for a sum of Rs.5 lakh, and received Rs.1,80,000/- as earnest money against receipt executed at the bottom of the agreement. Inadvertently, the amount of earnest money was written as Rs.3,20,000/- therein, and pursuant to demand made by the defendant, the balance earnest money of Rs.1,40,000/- was also paid on 01.08.1999 against receipt recorded at the back of the agreement to sell. The sale deed, in terms of the agreement to sell, was to be executed on or before 31.03.2000, the date was subsequently extended up to 26.09.2000 with mutual consent of the parties on defendant's request.

3. The suit was contested by the defendant *inter alia* by denying that the said agreement to sell, dated 02.07.1999, was ever executed, or that earnest money was ever received.

4. On the pleadings of the parties, the following issues were settled by the trial Court:

1. Whether the defendant executed agreement to sell dated 02.07.1999, as alleged? OPP
2. Whether the defendant has received an earnest money of Rs.3,20,000/- from the plaintiff, as alleged? OPP
3. Whether the plaintiff is always willing and ready to perform his part of contract. If so, to what effect? OPP
4. Whether the agreement to sell dated 02.07.1999 is forged and fabricated by the plaintiff, as alleged? OPD
5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Relief.

5. Issues no. 1 to 4 were decided together by the trial Court in favour of the plaintiff, and based on that Issue no.5 was also decided in his favour. Accordingly, the suit was decreed. The findings were affirmed in appeal by the lower appellate Court.

6. Both the Courts below have concurrently held that ownership and possession of defendant over the suit land stood established by *jamabandi* for the year 1992-93 (Ex.P27). Execution of the agreement was also duly established on record by way of testimony of the plaintiff, PW1, and one of the attesting witnesses PW2, Som Parkash, Namberdar, as also payment of earnest money of Rs.1,80,000/- against receipt. The subsequent

payment of earnest money of Rs.1,40,000/- was also proved by examining

PW4, Aabu, and PW5, Mubarak Khan, who deposed about the payment to the defendant on 01.08.1999 and proved its receipt (Ex.P1) also.

7. Regarding readiness and willingness of the plaintiff with regard to execution of the sale deed, both the Courts below have held that initial date of execution, i.e., 31.03.2000 was extended up to 26.09.2000 with mutual consent, vide endorsement dated 27.03.2000 (Ex.P2), entered at the back of the agreement to sell dated 02.07.1999 (Ex.P3), which stood duly proved on record. Besides, a registered notice for execution of the sale deed was sent to the defendant. Plaintiff's presence in the office of Sub Registrar for the purpose with balance sale consideration stands established by the affidavit dated 26.09.2000, Ex.P5.

8. Regarding forgery, the defendant relied upon the criminal case registered on his complaint against the plaintiff and his associates for forgery of the agreement to sell dated 02.07.1999 under Sections 471, 420, 467, 468, 323, 596 and 120-B IPC by FIR No.62 dated 09.12.2000 at Police Station Jathlana. However, the accused in that criminal case were acquitted by the Court of Judicial Magistrate I Class, Yamunanagar, vide judgment dated 20.04.2009 (Ex.P-28) by observing that the prosecution case was nothing but a bundle of lies.

9. Learned counsel for the appellant/defendant has raised two-fold arguments before this Court for setting aside the impugned judgments and decree. Firstly, it was contended that readiness and willingness of the plaintiff for execution of the sale deed has not been established on record. The findings recorded by the Courts below are in the absence of any evidence to that effect. Secondly, he has contended that execution of the agreement to sell as well as extension of the date of execution of the sale

deed have also not been established on record, as there is no cogent evidence to that effect.

10. *Per contra*, learned counsel for the respondent/plaintiff contends that the judgments of the Courts below are well reasoned and the same do not suffer from any error of law.

11. Learned counsel for the parties have been heard and record perused.

12. The arguments raised by the learned counsel for the appellant are not sustainable in the light of the evidence on record. As aforementioned, it has been concurrently held by both the Courts below that execution of the agreement to sell, receipts of earnest money and extension of date for execution of the sale deed, duly stand established on record by way documentary evidence as well as testimonies of the plaintiff and attesting witnesses. On the contrary, there is no evidence on record to dispute the findings recorded. The oral testimony of the deceased defendant's son Alizan, DW2, and that of his co-villager Jagmal Singh, DW1, are not sufficient to disbelieve execution of the agreement in question, or that it is a forged document, as pleaded by the defendant.

13. Despite denying execution of the agreement to sell and the receipts in question, the defendant has failed to lead any evidence to establish the fact. Even thumb marks of the defendant were not got compared, though plaintiff examined a handwriting and finger print expert as PW6. The expert, in his report, Ex.P11, concluded that defendant's thumb impressions tally with five disputed thumb impressions on the agreement to sell, though the other impression on the receipt dated 01.08.1999 could not be compared as the same was mostly smudged. Learned counsel for the defendant, has laid much stress on this to contend that the receipt, therefore,

could not be said to have been executed. The sole thumb impression not being tallied, that too only on account of it being smudged, would not establish the defendant's case in the light of sufficient evidence on record establishing its due execution, as discussed above. The thumb impression in question could not be compared at all. It is not a case that the thumb impression did not match with other impressions of the defendant; it is not positive evidence to doubt the impression in question. Therefore, it cannot be a basis to impute the evidence establishing due execution of the agreement in question as well as the receipt.

14. The argument raised by learned counsel for the appellant/defendant to dispute readiness and willingness of the plaintiff on the ground that there was no evidence to establish he had the resources to pay the balance sale consideration, is also pointless. The very fact that substantial amount of sale consideration already stood paid by the plaintiff in the form of earnest money, i.e., Rs.3.2 lakh out of Rs.5 lakh, and also that he was present for execution of the sale deed in the office of the Sub-Registrar on the date fixed, leaves no doubt about his readiness and willingness to pay the sale consideration, even in the absence of any explicit material on record pointing out the availability of balance sale consideration with him on that date. Besides, the plaintiff specifically pleaded and proved before the Court that he has always been ready and willing to perform his part to get the sale deed registered. On 29.09.2000, he served a registered A.D. Notice (Ex.P10) upon the defendant also, which stands established by the postal receipts, (Ex.P6 and Ex.P7), which the defendant refused to receive. However, notice sent through U.P.C. to the defendant was delivered. He also testified that he remained present before the Sub Registrar on the date fixed along with

balance sale consideration and other expenses for execution and registration of the sale deed, but the defendant did not turn up for the purpose.

15. Still further, the defendant has denied execution of the agreement to sell altogether, and termed it a fraudulent document. As per settled proposition of law, once the defendant denies execution of the agreement itself, he cannot dispute readiness and willingness on the part of plaintiff to execute the sale deed. Reference in this regard can be made to law laid down by this Court in *Sant Singh v. Amarjit Singh* 2015(2) PLR 497. The relevant paragraph of the judgment reads as under:

3. I am afraid, the aforementioned submission of learned counsel for the appellant-defendant sans merit, for the simple reason that appellant-defendant in the written statement denied the execution of the agreement to sell. It is cardinal/settled proposition of law that a person who denies the execution and registration of the sale deed, cannot be permitted to raise the plea of readiness and willingness. Reference invited to the judgment of *Jora Singh v. Lakhwinder Kumar and others* 2011(1) RCR (Civil) 130.

16. In view thereof, there is no error of law in the judgments of the Courts below. No substantial question of law arises for consideration either.

17. Appeal stands dismissed.

18. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

14.12.2022
Maninder