

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 524 of 2013 (O&M)

Date of Decision: 11.07.2022

Ram Babu and Another

... Appellant(s)

Versus

Jamshed

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Shailendra Jain, Senior Advocate
with Mr. Satyendra Chauhan, Advocate
for the appellant(s).

Mr. Lokesh Sinhal, Advocate
for the respondent.

Anil Kshetarpal, J.

1. While assailing the concurrent findings of facts, arrived at by both the Courts below, defendant No.1 and 2 have filed the present appeal.
2. The plaintiff (respondent herein) filed a suit for grant of a decree of possession by way of specific performance of the agreement to sell dated 02.06.2006. It is his case that the defendants, on receipt of ₹8,00,000/- as earnest money out of the total sale consideration of ₹10,10,000/-, agreed to sell the land measuring 2 biswas (390 square yards) to the plaintiff while agreeing to execute and register the sale deed on 22.08.2007. On the agreed day, the plaintiff attended the office of the Sub Registrar, but the defendants did not show up. The plaintiff, in order to prove his presence, got an affidavit attested from the Sub Registrar.

The defendants contested the suit alleging that there was no

agreement between them and in fact, this agreement is a forged one. The defendants asserted that an affidavit, in token of loan of ₹95,000/- which was borrowed with interest @ 2% per annum, was executed. On appreciation of the pleadings, the trial Court has culled out the following issues:-

- “1) Whether the plaintiff is entitled to the relief of possession by way of specific performance on the grounds as mentioned in the plaint? OPP*
- 2) If issue No.1 is proved whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*
- 3) Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4) Whether the plaintiff has concealed the true and material facts from the Court? OPD*
- 5) Relief”.*

4. In order to prove his case, the plaintiff examined PW.1 Kasam, signatory witness of the agreement to sell, the plaintiff himself appeared in the witness box as PW.2 and PW.3 Pardeep Yadav, Advocate, who was the Scribe of the agreement to sell. On the other hand, the defendants have examined DW.1 Kallu Khan and DW.2 Ram Babu (defendant No.1).

5. Both the Courts below, on appreciation of the evidence, have decreed the suit.

6. Heard the learned counsel representing the parties and with their able assistance, perused the paper-book as well as the record of both the Courts below, which was requisitioned.

The learned senior counsel representing the appellants submits

that the plaintiff has neither pleaded his readiness and willingness to perform his part of contract nor corroborated the same by leading evidence. He further submits that the agreement to sell is doubtful as certain portions of the document have been filled in by using the handwriting, whereas the major portion of the agreement to sell is computer typed. He submits that the thumb impressions have been taken on certain typed papers as well as the blank papers. The property, agreed to be sold, is an unpartitioned area of a joint land in which the defendants were not the exclusive owners. He further submits that the plaintiff has failed to prove the availability of his resources in order to prove his readiness and willingness.

8. Per contra, the learned counsel representing the respondent has supported the judgments passed by both the Courts below.

9. On a careful reading of the plaint, it is crystal clear that the plaintiff specifically asserted in its para No.3 that he was ready and willing and is still ready and willing to perform his part of the contract. The plaint was verified and duly signed by the plaintiff. It was also supported by an affidavit. When the plaintiff appeared in evidence as PW.2, he stated that he was always ready and willing to perform his part of the contract. Furthermore, the presence of the plaintiff on the date specified in the agreement to sell for execution and registration of the sale deed proves that he was ready and willing to perform his part of the contract, whereas the defendants did not come forward to perform their part of the contract on the date agreed upon. In these circumstances, the argument of the learned senior counsel representing the appellants is incorrect. Furthermore, the plaintiff is not required to flash the availability of the cash/resources to pay

approximately 80% of the total sale consideration was paid in advance. The balance payment was only ₹2,10,000/-. While executing the affidavit, the plaintiff has asserted that he was carrying the required amount for execution and registration of the sale deed when he visited the office of Sub Registrar. In such circumstances, the argument that the plaintiff has failed to show his wherewithal to pay the remaining amount cannot be accepted.

10. The next argument of the learned senior counsel representing the appellant is with regard to certain blank portions in the document which were handwritten. A bare perusal of the agreement to sell (Ex.P1) shows that it has been scribed on a blank paper having special adhesive stamps of the requisite duty. It has been issued by the Scribe in favour of the defendant No.1. The agreement to sell runs into two separate pages. On the first page, the defendant No.1 (Ram Babu) and defendant No.2 (Phoolwati) have thumb marked the agreement. They have also signed in Devnagri script. The agreement to sell is also scribed in Devnagri. On the second page, again the defendants, namely Ram Babu and Phoolwati have not only thumb marked but also signed. Their thumb impressions and signatures are in the middle of the page, where the main part of written script of the agreement comes to an end. The learned senior counsel representing the appellants has, although, submitted that there is a vacant space of approximately 1 inch, however, that itself cannot be considered suspicious particularly when the defendants while filing the written statement have stated that they have thumb marked the document on misrepresentation.

11. It would be noted here that the plaintiff, at the time of execution of the agreement to sell, was merely 20 years old. When he was thoroughly

the amount on acquisition of his property whereas the remaining amount/money was arranged by him from his relatives. This statement becomes important in view of the fact that PW.1 Kasam, the witness who had signed the agreement to sell, stated that the defendants refused to put their thumb impressions and sign the document, unless they receive the amount of ₹8,00,000/-. Furthermore, when the defendant No.1-Ram Babu appeared in evidence, he admitted that on 02.06.2006, the agreement to sell was scribed at Tauru. He stated that Jamshed (the plaintiff) had got it scribed, though he denied the receipt of the amount of ₹8,00,000/-.

12. Both the courts while taking a plausible view decreed the suit. The Civil Court is required to decide the case on preponderance of probabilities.

13. In view of the aforesaid facts, no ground is made out to interfere. Hence, the present appeal is dismissed. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 11, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No