

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.783 of 2020 (O&M)

Reserved on : 21.09.2022

Date of Decision: 18.10.2022

Hans Ram

....Appellant

VERSUS

Shiv Kumar Bhardwaj

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.K. Yadav, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the plaintiff-appellant against the judgments and decrees dated 25.02.2019 and 16.11.2019 passed by the Courts below dismissing his suit for declaration and permanent injunction.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed the present suit for declaration to the effect that the agreement to sell and affidavit dated 16.11.2006 executed by him in favour of the defendant-respondent are illegal, null and void and a mere paper transaction. The plaintiff-appellant also sought the relief of permanent injunction against the defendant-respondent so as to restrain him from initiating any proceedings on the basis of the agreement to sell and affidavit dated 16.11.2006. As per the averments made, the plaintiff-appellant is the registered owner of one JCB machine bearing registration no.HR-66-3805. The defendant-respondent agreed to purchase the said JCB machine from the plaintiff-appellant vide agreement to sell dated 16.11.2006. However, by playing fraud upon the plaintiff-appellant, the defendant-respondent got executed one affidavit from the plaintiff-appellant and also got this fact

mentioned in the agreement to sell that the plaintiff-appellant has received the amount in cash though the defendant-respondent never made any payment to the plaintiff-appellant. It was also averred that one Mahender son of Sant Lal was cited as a witness on the agreement to sell and that the defendant-respondent got delivered two pronotes and receipt pronotes to the plaintiff-appellant from Mahender son of Sant Lal alongwith two post-dated cheques bearing nos.632240 and 632239 in the sum of Rs.50,000/- and Rs.30,000/- respectively and that no payment in cash was made to the plaintiff-appellant. It was stated that by misrepresenting facts to the plaintiff-appellant the defendant-respondent got executed one power of attorney in favour of Mahender son of Sant Lal and that the defendant-respondent and Mahender son of Sant Lal in collusion with each other got executed the agreement to sell and affidavit. It was further averred that in the agreement to sell dated 16.11.2006 it was agreed that the defendant-respondent shall make the payment of the installments to the finance company however the defendant-respondent failed to comply with the terms and conditions of the agreement to sell and neither made the payment of installments on time nor got the JCB machine insured nor deposited the cheques amount with the finance company due to which the finance company initiated arbitration proceedings against the plaintiff-appellant and an award for Rs.15 lac was passed and execution was filed in Court. It was therefore prayed that the plaintiff-appellant is entitled to seek a declaration that the agreement to sell has been cancelled and is not binding any more.

The defendant-respondent filed written statement wherein it was submitted that after 16.11.2006 the plaintiff-appellant has no concern with the ownership and possession of the JCB machine. It was admitted that

an agreement to sell was executed between them for transfer of the JCB machine which was scribed by Satyanarayan Bhardwaj and that thereafter both appended their signatures on the agreement to sell and on the same date an affidavit was executed by the plaintiff-appellant and on 16.11.2006 a power of attorney was executed by the plaintiff-appellant in favour of Mahender son of Sant Lal. The plaintiff-appellant got prepared all the three documents and received the earnest money from the defendant-respondent and the original registration certificate, insurance and the JCB machine was handed over to the defendant-respondent. It was also stated that one installment was paid in cash by the defendant-respondent to the plaintiff-appellant and the same was deposited by the plaintiff-appellant with the finance company and the original receipt was handed over to the defendant-respondent. As per the defendant-respondent, Mahender son of Sant Lal was a witness to the agreement to sell and that he was known to the plaintiff-appellant who had brought him along. The defendant-respondent further submitted that he has no knowledge about the fact that Mahender son of Sant Lal took any amount from the plaintiff-appellant and whether he executed any receipt and pronote in favour of the plaintiff-appellant. It was denied that the defendant-respondent never made any payment to the plaintiff-appellant or that he did not comply with the terms and conditions of the agreement to sell. It was stated that all the installments were paid by the defendant-respondent to the finance company and all the original receipts are in possession of the defendant-respondent who also obtained no objection certificate from the finance company. It was averred that the plaintiff-appellant in collusion with Magma Finance Company got instituted

a false arbitration case but the same was later on settled by the defendant-respondent after making the entire payment.

The defendant-respondent also filed a counter-claim seeking transfer of the JCB machine in his name and also claimed possession of the JCB machine. A reply was filed by the plaintiff-appellant.

The following issues were framed by the Trial Court :

1. Whether the agreement to sell dated 16.11.2006 is illegal, null and void and is liable to be set aside ?
OPP
2. Whether the plaintiff is entitled to decree for permanent injunction as well as mandatory injunction as prayed for ? OPP
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the suit is bad for want of non-joinder of necessary party ? OPD
5. Whether the plaintiff has not come to the Court with clean hands and suppressed the true and material facts from the Court ? OPD
6. Whether the defendant is entitled to a decree for mandatory injunction as prayed for in the counter-claim ? OPD
7. Relief.

Vide judgement and decree dated 25.02.2019 the Trial Court dismissed the suit of the plaintiff-appellant and decreed the counter-claim of the defendant-respondent. The Trial Court found that the execution of the

documents - agreement to sell dated 16.11.2006 (Ex.D1), affidavit dated 16.11.2006 (Ex.D2) and power of attorney (Ex.D3) – were admitted by the plaintiff-appellant. However, there was nothing on record to prove that the defendant-respondent had violated the terms of these documents so as to entail their cancellation. It was found that payment for the JCB machine made by the defendant-respondent to the plaintiff-appellant was proved. The Trial Court held that the defendant-respondent was entitled to get his name incorporated in the registration certificate of the JCB machine and was entitled to it's possession from the plaintiff-appellant.

Aggrieved by the judgment and decree passed by the Trial Court, a single appeal was preferred by the plaintiff-appellant which was also dismissed vide judgment and decree dated 16.11.2019. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant has contended that the Courts below have erred in dismissing his suit and in decreeing the counter-claim of the defendant-respondent. According to counsel, the plaintiff-appellant did not receive the sale consideration for the JCB machine and the defendant-respondent also did not pay the installments to the finance company. No amount was received in cash by the plaintiff-appellant. As such, the plaintiff-appellant was entitled to a declaration that the agreement to sell had been cancelled and was not binding any more.

Heard.

In the present case the Courts below have found that the agreement to sell (Ex.D1), the affidavit (Ex.D2) and the power of attorney (Ex.D3) stood admitted by the plaintiff-appellant. The stand taken by the plaintiff-appellant that he has not received the amount in cash from the

defendant-respondent is untenable on the face of the contents of the written documents. The agreement to sell between the parties was a written agreement and therefore the parties are bound by the terms and conditions of the agreement. Once a contract is reduced into writing, by operation of Section 91 of the Evidence Act, 1872, it is not open to any of the parties to seek to prove the terms of the contract with reference to some oral or other documentary evidence to find out the intention of the parties. Under Section 92 of the Evidence Act, 1872 where the written instrument appears to contain the whole terms of the contract then parties to the contract are not entitled to lead any oral evidence to ascertain the terms of the contract. It is only when the written contract does not contain the whole of the agreement between the parties and there is any ambiguity then oral evidence is permissible to prove the other conditions which also must not be inconsistent with the written contract. In **Nanjappan vs. Ramasamy [(2015) 14 SCC 341]** it was inter-alia held that *“As per Section 92 of the Evidence Act, when the terms of any such contract have been reduced to the form of a document, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying, adding to or subtracting from, its terms”*.

The counsel for the plaintiff-appellant has been unable to refer to any clause in the agreement to sell which was violated by the defendant-respondent so as to warrant its cancellation. No condition in the agreement to sell has been pointed out whereunder in case of non-payment of the loan amount to the finance company the said agreement to sell was liable to be cancelled. Moreover, the receipts Ex.D21 to Ex. D47 brought on record by the defendant-respondent make it clear that the loan amount was in fact paid

by him to the finance company which also issued the no objection certificate. The suit of the plaintiff-appellant has rightly been dismissed. Since the defendant-respondent has paid entire amount, he is entitled to get the JCB machine transferred in his name and also get it's possession.

In view of the above, I do not find any ground to interfere in the concurrent findings of fact returned by both the Courts below. No question of law much-less any substantial question of law arises in the present appeal. The appeal, which is wholly devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

**(ALKA SARIN)
JUDGE**

**18.10.2022
jk**

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