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

RSA-4971-2019 (O&M)
Reserved on:- 17.10.2023
Pronounced on:- 13.12.2023

Jai Narain Sharma

...Appellant

Versus

Balwant Singh Malik

...Respondent

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Manoj Kaushik, Advocate
for the appellant.

AMARJOT BHATTI, J.

1. The appellant/defendant has filed the present Regular Second Appeal against impugned judgment and decree dated 20.11.2018 passed by learned Additional District Judge, Karnal vide which the appeal preferred by him was dismissed by upholding the judgment and decree dated 03.08.2016 passed by the learned Additional Civil Judge (Senior Division), Karnal vide which the suit filed by the plaintiff Balwant Singh Malik was decreed for possession by way of specific performance of agreement to sell dated 03.06.2010.

2. The facts of the case are that plaintiff Balwant Singh Malik filed suit for possession by way of specific performance of agreement to sell dated 03.06.2010 against Jai Narain Sharma defendant. It was stated that the defendant entered into an agreement dated 03.06.2010 for the sale of House No. 421, Old Housing Board Colony, Karnal with plaintiff for a sale consideration of Rs. 17,70,000/-. The defendant received a sum of

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Rs.1,25,000/- as earnest money in the presence of witnesses. As per the terms and conditions of the said agreement, the date for execution and registration of sale deed was fixed up to 30.09.2010 and at that time, the balance sale consideration was agreed to be paid by the plaintiff to the defendant. The defendant also agreed to deliver the possession of said double storey house at the time of execution and registration of sale deed as per the agreement. It was agreed that in case plaintiff failed to get the sale deed executed in his name or in the name of any other person or by joining any person with him, then the earnest money paid by the plaintiff would be forfeited and agreement would stand cancelled. As per the agreement, in the eventuality of refusal on the part of the defendant to get the sale deed executed and registered, then defendant agreed and bound himself to pay double of the amount of earnest money or in alternative plaintiff was given an option to get the sale deed executed and registered through the Court of law. The defendant agreed to get the conveyance deed of house in question registered in his favour. However, the defendant could not get the conveyance deed registered due to scarcity of funds and he approached the plaintiff to get additional earnest money of Rs.11,15,000/- for the purpose of conveyance deed and registration of sale deed. On the request of defendant, the target date was extended to 30.11.2010 vide writing dated 27.08.2010, on the back of first page of the agreement and defendant agreed and bound himself to deliver the possession of ground floor of the house with an option to the plaintiff to get the house renovated and defendant shall have no objection to it. The defendant received an amount of Rs. 11,15,000/- in cash on 27.08.2010 as additional earnest money admitting receipt of total earnest money to the tune of Rs. 12,40,000/- in the presence of witnesses and his son Mr.

Jagdeep Sharma. It was further agreed that in case the house agreed to be sold was not vacated up to the date of execution and registration of sale deed, then defendant would pay Rs.10,000/- per month as rent of the occupied portion of the house to the plaintiff. The defendant failed to hand over the possession of the ground floor of the House in question to the plaintiff on or before 10.09.2010, despite number of requests. Even defendant failed to get the conveyance deed registered in his favour as per the terms of the agreement dated 03.06.2010 and writing dated 27.08.2010. The plaintiff was always ready and willing to perform his part of the contract and is still ready and willing to perform the same. The plaintiff marked his presence and remained present with the balance sale consideration and amount required for stamps, registration etc. in the office of Sub Registrar, Karnal. However, the defendant did not turn up. Ultimately, the present suit was filed.

3. Notice of the suit was given to the defendant. The defendant filed written statement taking preliminary objections regarding locus standi; maintainability; concealment of facts etc. It was submitted that the defendant was owner of one double storey House measuring 65 sq. Yards bearing House No. 421, Old Housing Board, Sector 13, Karnal. The agreement to sell dated 03.06.2010 was entered qua sale of house in favour of plaintiff for a total sale consideration of Rs. 17,70,000/-. It was admitted that defendant had received a sum of Rs. 1,25,000/- in cash from the plaintiff as earnest money. It was settled that possession of said house would be delivered in favour of plaintiff at the time of execution and registration of sale deed on 30.09.2010, on receiving the balance sale consideration of Rs. 16,45,000/-. The said contract was executed at the instance of one N.K. Sharma son of Shri Shiv Ram Sharma,

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Proprietor/Partner of M/s Jagdamba Properties, Mugal Canal, Karnal. It was further alleged that on 27.08.2010, the plaintiff alongwith aforesaid N.K. Sharma came to the house of defendant and he was told that plaintiff wanted to give Rs. 5,50,000/- as more towards earnest money by way of bank transaction and when the said amount came into saving account of defendant, the plaintiff and N.K. Sharma got signatures of defendant on the back side of aforesaid agreement to sell dated 03.06.2010 by leaving some space for writing about the aforesaid earnest money of Rs.5,50,000/-. At the same time, the plaintiff told the defendant that the date of execution and registration of sale deed has been extended from 30.09.2010 to 30.11.2010. Thereafter, on 30.11.2010, when defendant visited the Tehsil Campus for execution and registration of sale deed then he suffered a shock on seeing the writing on the backside of said agreement to sell. The plaintiff committed fraud with defendant by writing earnest money to the tune of Rs. 11,15,000/- in place of Rs. 5,50,000/- and now as per the plaintiff, the defendant has received Rs. 12,40,000/- as earnest money. It was further written that defendant was bound to deliver possession of ground floor up to 10.09.2010 and if possession was not delivered, then the defendant was bound to pay Rs. 10,000/- per month as rent of said ground floor. In-fact the defendant had received only Rs. 6,75,000/-. The plaintiff with the help of N.K. Sharma committed fraud with the defendant. The plaintiff was adamant in dispossessing the defendant from the said house illegally and forcibly on the basis of disputed writing dated 27.08.2010. Due to the act and conduct of the plaintiff, the defendant was not ready to perform his part of said agreement to sell. As such, the defendant through his counsel had sent registered legal notice dated 23.05.2012 to the plaintiff for cancellation of said agreement to sell but no

reply was received. The remaining averments were denied. It was prayed by the defendant that suit filed by the plaintiff may kindly be dismissed with costs.

4. No replication was filed. From the pleadings of the parties, following issues were framed by the trial Court on 08.01.2015 :-

(1) *Whether the plaintiff is entitled to decree of possession by way of specific performance of agreement to sell dated 03.06.2010 and possession, as prayed for?* OPP

(2) *Whether the suit is not legally maintainable in the present form?* OPD

(3) *Whether the plaintiff has no locus standi and cause of action to file the present suit?* OPD

(4) *Whether the plaintiff has no cause of action to file the present suit?* OPD

(5) *Whether the suit is barred by limitation?* OPD

(6) *Relief.*

5. In order to prove the suit, the plaintiff himself stepped into the witness box as PW-1. He further examined N.K. Sharma as PW-2, Krishan Kumar as PW-3, Ashok Kumar, Clerk, Housing Board, Haryana, Karnal as PW-4 and Sachin Bhardwaj as PW-5 and closed the evidence.

6. In order to rebut the case of the plaintiff, the defendant himself stepped into the witness box as DW-1. He further examined Kuldeep Sharma as DW-2, Jaipal Giri as DW-3, Surinder Kumar as DW-4 and Sanjay Sharma, Civil Ahlmad as DW-5 and closed the evidence.

Thereafter, learned counsel for the defendant tendered documents Ex.D1 to Ex.D10 and Mark-D1 and closed documentary evidence.

7. In additional evidence, the learned counsel for the plaintiff tendered documents Ex.PX, Ex.PY and Ex.PZ and closed the additional evidence.

8. After hearing the arguments advanced by learned counsel for both the parties, the suit filed by the plaintiff was decreed by learned Additional Civil Judge (Senior Division), Karnal vide judgment and decree dated 03.08.2016. Feeling aggrieved of this judgment and decree, the defendant filed Civil Appeal No. RBT/156 of 2017, which was dismissed by learned Additional District Judge, Karnal vide judgment and decree dated 20.11.2018. Feeling aggrieved of this judgment and decree, the present Regular Second Appeal has been filed by the appellant/defendant.

9. I have heard the arguments advanced by learned counsel for the appellant and have gone through the trial Court record with his able assistance.

The learned counsel for the appellant/defendant argued that the suit filed by the plaintiff was decreed vide judgment and decree dated 03.08.2016 passed by learned Additional Civil Judge (Senior Division), Karnal and the appeal preferred by the present appellant was dismissed vide judgment and decree dated 20.11.2018 passed by learned Additional District Judge, Karnal. The findings given by the Courts below are wrong, erroneous, against the evidence and without proper appreciation of the facts and the evidence on record. The appellant/defendant admitted the execution of agreement to sell dated 03.06.2010 Ex.P1 and also admitted that he had received earnest money of Rs. 1,25,000/-. The proposed date fixed for execution and registration of sale deed was 30.09.2010. The total sale consideration was fixed as Rs. 17,70,000/-. The plaintiff requested to extend the date for execution and registration of sale deed and offered to pay Rs. 5,50,000/- through bank transaction and accordingly, on 27.08.2010, Sh. N.K. Sharma, Property Dealer of M/s Jagdamba Properties and the plaintiff got his signatures on the reverse of first page of the

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agreement to sell for extension of date from 30.09.2010 to 30.11.2010 by playing fraud. They wrongly incorporated other conditions regarding handing over of the possession of ground floor upto 10.09.2010 and on failure to handover the possession, payment of monthly rent of Rs.10,000/- to the plaintiff and further it was wrongly incorporated that he had received Rs. 11,15,000/- at the time of said extension. In-fact, the appellant/defendant never agreed to any such condition nor he received additional amount of Rs. 11,15,000/-. On that date only additional amount of Rs. 5,50,000/- was paid by the respondent/plaintiff. The learned counsel for the appellant/defendant also referred to the statement of Jaipal Giri DW3 who has proved on record the statement of account of the appellant/defendant Ex.DW3/A regarding receipt of payment of Rs. 5,50,000/- in the account of appellant/defendant on 27.08.2010. When the appellant/defendant came to know about this fraudulent act of the respondent/plaintiff, he backed out from the said agreement to sell and issued legal notice dated 23.05.2012 Ex. D1 through his counsel regarding cancellation of agreement to sell dated 03.06.2010. The acknowledgment and postal receipt are Ex.D2 and Ex.D3 respectively. The possession of his house was never handed over to the respondent/plaintiff. He had filed a complaint, copy of the same is Ex.D4. He also filed a civil suit for declaration that the agreement to sell dated 03.06.2010 executed between the parties is null and void. The copy of plaint is Ex.D9. The aforesaid facts were duly proved on record by the appellant Jai Narain Sharma as DW1 and his son Kuldeep Sharma as DW2.

There is nothing on record to show that respondent/plaintiff had given Rs. 11,15,000/- at the time of said endorsement dated 27.08.2010. The respondent/plaintiff along with the marginal witness N.K.

Sharma played fraud upon him and managed to procure his signatures on the blank paper on which the disputed endorsement was scribed later on. It is pointed out that at the most, the learned trial Court could have given the relief for recovery of amount of earnest money i.e. Rs. 1,25,000/- along with Rs. 5,50,000/- given subsequently, thus total sum of Rs. 6,75,000/-. Therefore, the verdict of Courts below granting main relief of specific performance of agreement to sell is liable to be set aside by accepting the present appeal and the suit filed by the respondent/plaintiff seeking the relief of possession by way of specific performance may kindly be dismissed.

10. I have considered the arguments advanced by learned counsel for the appellant/defendant and have gone through the trial Court file carefully. Balwant Singh Malik, respondent/plaintiff filed suit for specific performance of agreement to sell dated 03.06.2010 regarding sale of House No. 421, Old Housing Board Colony, Karnal for total sale consideration of Rs. 17,70,000/-. The said agreement to sell dated 03.06.2010 is Ex.P1. The present appellant/defendant filed his written statement admitting the execution of aforesaid agreement to sell dated 03.06.2010. He also confirmed that out of total sale consideration of Rs.17,70,000/-, he had received earnest money of Rs. 1,25,000/- at the time of execution of aforesaid agreement to sell. Both the parties also confirmed that the date fixed for the execution and registration of sale deed was 30.09.2010. The ownership of appellant/defendant regarding the house in question is also not disputed. The respondent/plaintiff examined Ashok Kumar PW-4 who has proved on record the document regarding allotment of the said house in favour of the appellant/defendant.

11. The dispute started between the parties regarding the endorsement dated 27.08.2010, according to which it is the case of respondent/plaintiff that he gave additional amount of Rs. 11,15,000/- in cash and the date for execution and registration of the sale deed was extended from 30.09.2010 to 30.11.2010. As per this endorsement scribed on the reverse of first page of the agreement to sell, it was further incorporated that the appellant/defendant was bound to deliver possession of the ground floor by 10.09.2010 and the plaintiff could repair the same, to which the appellant/defendant will have no objection and in case he failed to vacate the house then the defendant will be liable to pay rent of Rs. 10,000/- per month to the plaintiff. The facts mentioned in the aforesaid endorsement are denied by the present appellant/defendant. However, he has not disputed his signatures on the endorsement. As per his stand, his signatures were obtained on the reverse of first page of agreement to sell which was blank by playing fraud and later on, the recital regarding additional amount of Rs. 11,15,000/- was mentioned along with total receipt of Rs. 12,40,000/- as well as the condition regarding vacating the ground floor, its renovation and failure to vacate the house, rent @ Rs. 10,000/- per month in favour of the plaintiff.

Firstly, onus was on the respondent/plaintiff to prove his own case. The plaintiff Balwant Singh Malik stepped into the witness box as PW-1. He has proved the aforesaid endorsement as well as cash payment of additional amount of Rs.11,15,000/-. He also examined N.K. Sharma, the marginal witness to the said endorsement as PW2 who tendered his affidavit into evidence but later on due to his poor health condition, he could not appear in the Court and the signatures and the writing of N.K. Sharma PW2 were proved by examining his son Krishan Kumar as PW3.

Apart from this, Sachin Bhardwaj PW5 also appeared into the witness box and proved the treatment record of his father from Fortis Hospital and also confirmed the writing and signatures of his father on endorsement dated 27.08.2010. In order to rebut this evidence, Jai Narain Sharma, the appellant has stepped into the witness box as DW1 and his version was confirmed by his son Kuldeep Sharma DW2. It is important to note that the endorsement dated 27.08.2010 was attested by two witnesses i.e. N.K. Sharma as well as Jagdeep Sharma son of the present appellant/defendant. The appellant never examined said Jagdeep Sharma as witness to prove his own version. Therefore, the appellant/defendant failed to lead any convincing evidence on record to establish that the endorsement dated 27.08.2010 is result of fraud. For the only reason that the appellant/defendant deposited Rs. 5,50,000/- in his bank account, will not establish that he did not receive total sum of Rs.11,15,000/- as additional amount apart from the earnest money.

12. The respondent/plaintiff claimed that he was always ready and willing to perform his part of agreement to sell. On the extended date fixed vide endorsement dated 27.08.2010, he appeared in the office of Sub-Registrar on 30.11.2010 to perform his part of agreement to sell but the defendant did not turn up, as a result he got his presence marked by way of affidavit dated 30.11.2010 duly attested by Executive Magistrate, Karnal which is Ex.P2. On the other hand, the appellant/defendant took the stand that he had come to the office of Sub-Registrar, Karnal on 30.11.2010. There is nothing on record to show that he got his presence marked in the office of Sub-Registrar, Karnal. At one point of time, he stated that when he came to know about the fraudulent endorsement dated 27.08.2010, he backed out from the said agreement to sell and at times he

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says that he never met the respondent/plaintiff on that day. Therefore, the question remains how he came to know about the disputed endorsement dated 27.08.2010. The conduct of appellant/defendant is material. The extended date fixed for the execution and registration of the sale deed was 30.11.2010. The respondent/plaintiff got his presence marked in the office of Sub-Registrar, Karnal. Before filing of the present suit, the respondent/plaintiff served legal notice dated 09.04.2012 which is Ex.P4 and thereafter, the present suit for specific performance of agreement to sell was instituted on 09.05.2012. On the contrary, the appellant/defendant remained silent. He served legal notice dated 23.05.2012 Ex.D1 after the institution of the present suit. In case, there was any fraud played upon the appellant/defendant, it was not possible for him to remain silent for such a long period. Therefore, the stand taken by the appellant/defendant was rightly disbelieved by the trial Court as well as by the First Appellate Court.

The facts of the case and the evidence on record were rightly appreciated. No substantial question of law is involved in the present appeal. In view of the facts and the circumstances of the present case, I do not find any reason to interfere in the verdict given by the Courts below and the same are upheld. Resultantly, finding no merits in the Regular Second Appeal, the same is accordingly, dismissed.

Pending application(s) if any, also stands disposed of.

The photocopies of records received from the two Courts below be sent back to the concerned quarters.

13.12.2023

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(AMARJOT BHATTI)
JUDGE