IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101)

RSA-1501-2019 (O&M)
Reserved on : 22.11.2022
Date of Decision:-11.01.2023.

Deshraj

......Appellant

Versus

Dharmender Saini and another

......Respondents

CORAM: HON'BLE MR. JUSTICEALOK JAIN

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Present: Mr. Vikas Kumar and
Mr.Sukhjit Singh, Advocates for the appellant.

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ALOK JAIN, J.

The present plaintiff's Regular Second Appeal arises out of a suit for specific performance of Agreement to Sell alleged to have been executed between the plaintiff as purchaser and the defendant as seller, on 20.08.2010. At the outset it is clarified that the said property was sold by the plaintiff as seller to the respondent as purchaser vide sale deed dated 20.08.2010.

Learned counsel for the appellant has submitted that the suit set up was that a loan transaction for a sum of ₹ 7,00,000/- was executed between the parties and as a security to the said loan amount, an agreement to sell dated 21.08.2009 was executed.The amount stated in the said agreement to sell was ₹9,38,500/- which in fact was the principal amount of ₹ 7,00,000/- plus interest of ₹ 2,38,500/-, which the plaintiff had to return, however, since the plaintiff could not repay the said amount, the sale deed dated 20.08.2010 was executed but to safeguard the property of the plaintiff, another Agreement to Sell for a sum of ₹ 9,58,500/- was executed whereby the respondent had agreed to return the said property. On notice, the defendants rebutted the entire story and prayed for dismissal of the suit.

The learned Court below after appreciating the entire evidence in detail, recorded a finding that the Agreement to Sell dated 20.08.2010 did not inspire confidence and the plaintiff failed to corroborate with any cogent evidence qua the same. *Per contra*, the sale deed executed 20.08.2010 in favour of the respondent was duly proved by the testimony of the stamp vendor and the copies of the sale deed itself. Accordingly, the learned Trial Court dismissed the suit.

On appeal before the learned First Appellate Court, the entire matter and the evidence was considered and the learned First Appellate Court also returned the findings on six points and consequently, dismissed the appeal.

Learned counsel for the appellant has submitted that the learned Courts below have fell in error and have not appreciated, that in fact, it was a loan transaction and the plaintiff was given ₹ 7,00,000/- on 21.08.2009 and as security of the said amount, an Agreement to Sell was executed for a sum of ₹ 9,38,500/-, which in fact was the amount which the plaintiff had to repay with interest. He further submits that due to appellant's incapacity to repay on the target date of 20.08.2010, the sale deed was executed by the appellant. However, the correct arrangement was that extended time of two months was granted to repay, for which another Agreement to Sell on 20.08.2010 was executed in which the target date was 20.10.2010. The amount for purchasing the said property back, from Dharminder Singh-Defendant No.1 was fixed as Rs.9,58,500/-. He has further submitted that the learned Courts below have fell in error in not appreciating the veracity of MarkA-1 and Mark A-2 which were placed on file with the permission of Court as secondary evidence. He has also submitted that the long duration of target date itself shows that the said Agreement to Sell was in fact only a security to the loan advanced by the Defendant No.1 and there was never any intention to sell the said property. He further submits that vide sale deed (Ex. P-4), it records that the defendant paid a sum of ₹ 2,84,000/- instead of ₹ 61,500/-, which would have been the balance amount as per the Agreement to Sell dated 21.08.2009.

No other point was raised.

After considering the arguments raised by the learned counsel for the appellant, and perusing the record, it is established that the plaintiff executed a sale deed on 20.08.2010 in favour of the respondents. There was no occasion for the respondents to have executed an Agreement to Sell by fixing the target date of two months i.e. 20.08.2010. On a specific query by the Court to the counsel for the appellant to the extent that when time was not the essence of the contract, then what stopped the plaintiff to have extended the date of the earlier Agreement to Sell dated 21.08.2009 by two months or whatever period was to be agreed to discharge his debt. Learned Counsel for the appellant has argued that since he was in financial debt and was not in a position to repay, therefore, the proposal by the respondents to first execute the sale deed and then execute a fresh Agreement to Sell was executed. The said story does not inspire confidence for the reasons:-

1. Admittedly, time was never the essence of the contract and the parties have at no point of time bound down each other. The fact remains that the first Agreement to Sell by which the appellant agreed to sell the property to the respondent had the target date of one year but there is no such clause that the same could not be extended. Since there was no such clause in the Agreement to Sell to specify that the time is the essence of the contract, it does not inspire confidence to the story built up by the appellant that on the day of the execution of the sale, the respondent executed an Agreement to Sell qua the same property back to the plaintiff.
2. In case it was a simplicitor loan transaction, the respondent would have been more than happy to get his money back but on the contrary, respondent herein spends additional amounts on the registration of the sale deed and there is no resistance of any kind whatsoever to the execution of the sale deed on the said date. Registration of the document dispels illusion of any kind.
3. That the plaintiffs have failed to prove by any cogent evidence the execution of Ex. Mark A-1 and Mark A-2 and there does not seem to be any purpose for the execution of

the same by the respondent, to sell the property on the date which he had purchased.

4. There is not even a single recital either in the sale deed or on in the Agreement to Sell viz-a-viz the said documents. In fact, the alleged Agreement to Sell dated 20.08.2010 records that the amount taken by the plaintiff has to be returned but without any interest whereas, the Counsel had argued that the Agreement to Sell dated 21.08.2009 was executed after taking loan of ₹ 7,00,000/- which had to be repaid along with interest on 20.08.2010amounting to₹9,38,500/- and the submission made by the counsel for the appellant was that further Agreement to Sell dated 20.08.2010 wherein target date was fixed as 20.08.2010 added the interest of ₹20,000/- and made it ₹9,58,500/-. Another facet of the matter is that the witness Fateh Ram's testimony wherein he claimed that Mark A-1 and Mark A-2 were executed in his presence deposed in his cross-examination that he was not present at the time of execution of the sale deed dated 20.08.2010 and admitted that no talks of said transaction had ever taken place in his presence, especially with regard to the suit property to be returned to the plaintiff. The said witness failed to corroborate the case set up by the plaintiff.

In the light of the above, the present appeal does not raise any substantial question of law and the evidence led by the parties has been rightly appreciated by both the Courts below. The sale deed executed has been duly proved and the appellant has failed to prove the Agreement to Sell Mark A-1 and Mark A-2.

Consequently, the appeal being devoid of any merit, much less raising any substantial question of law deserves to be dismissed.

Ordered accordingly.

Pending miscellaneous applications shall also stand disposed of.

(ALOK JAIN)
JUDGE

January 11, 2023.
Sandeep

Whether speaking/reasoned:- Yes/No
Whether Reportable:- Yes/No