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

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Decided on : 11.09.2023

Prahlad Singh

... Appellant(s)

Versus

Sewak Ram

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. S.P. Arora, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

CM-7403-C-2019

For the reasons set out in the application, the same is allowed.
Consequently, the delay of 117 days in re-filing the accompanying appeal is
condoned.

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1. The present appeal has been filed by the plaintiff – Prahlad Singh (appellant herein) against the concurrent findings *qua* the dismissal of the suit filed by him.

2. Civil Suit No.379-CS, was instituted by plaintiff – Prahlad Singh against the defendant – Sewak Ram (respondent herein), for seeking a decree for possession by way of specific performance. In the said suit, plaintiff pleaded that defendant being owner of the house constructed over plot measuring 5 Marla consisting of two rooms, latrine, bathroom and boundary wall, situated within the Lal Laqir of Khan Mohammad, Fatehabad, Tehsil & District Fatehabad (for brevity, ‘the house in question’),

entered into an agreement to sell dated 08.04.2013, with the plaintiff for its

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sale in favour of the plaintiff, for a total sale consideration of Rs.4,00,000/-. Said agreement to sell was executed in the presence of one Arun Kumar (DW1) and Pawan Kumar (PW2). As per the pleaded case of the plaintiff, at the time of execution of the agreement to sell, earnest money of Rs.3,90,000/- was received by the defendant on 08.04.2013. Date of execution of sale-deed was fixed as 08.08.2013.

Agreement to sell dated 08.04.2013, was typed by one typist, and the amount of Rs.3,90,000/-, as earnest money was also received by the defendant in the presence of said typist. After typing of the agreement to sell, same was got attested by the notary public namely; Bansi Lal (PW4).

3. In the written statement filed by the defendant, it was pleaded that never any such agreement to sell was executed between the parties regarding the sale of the house in question. In fact, plaintiff, fraudulently got prepared the agreement to sell in question from the defendant. Fraud played by the plaintiff is itself clear because on the one hand, it is alleged that out of the total sale consideration of Rs.4,00,000/-, an amount of Rs.3,90,000/- as earnest money, was handed over to the defendant at the time of agreement to sell, but on the other hand, possession is still with the defendant.

It is also pleaded that defendant's son 'Mukesh Kumar' was working in the shop of the plaintiff for a monthly salary of Rs.12,000/- p.m., since January 2013. An amount of Rs.2,50,000/- was due towards the plaintiff regarding the salary of his son Mukesh Kumar. Plaintiff along with his brother in order to grab the said amount told the defendant in the month of April 2013, that his son has embezzled a sum of Rs.10.00 – 15.00 lakhs from their shop, and therefore, threatened to register a criminal case against the defendant's son 'Mukesh Kumar'. Thereafter, plaintiff obtained signatures

of the defendant on some blank stamp papers, and took him to the shop of Arun Kumar, where, they also obtained the writing of the defendant on the said blank stamp papers regarding receiving of Rs.3,90,000/- from the plaintiff in the presence of said Arun Kumar.

4. On 16.08.2013, defendant received a legal notice from the plaintiff, and came to know of the forged agreement to sell, regarding the sale of his house in favour of the plaintiff, which is in question in the suit filed before the Trial Court. Immediately thereafter, defendant moved an application before the Superintendent of Police, Fatehabad, but no action was taken by the police thereon. Thereafter, one criminal complaint was also instituted by the defendant against the plaintiff.

5. Considering the pleadings of the parties, learned Trial Court vide order dated 21.04.2014, framed the following five issues:-

- “1. *Whether the plaintiff is entitled for symbolic possession by way of specific performance of the agreement to sell dated 08.04.2013 ? OPP*
2. *Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendant from alienating or creating any type of encumbrances over the suit property ? OPP*
3. *Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD*
4. *Whether the suit of the plaintiff is not maintainable ? OPD*
5. *Relief.”*

6. For proving the agreement to sell, plaintiff has himself appeared as PW1, and produced Pawan Kumar as PW2 being the attesting witness of the agreement to sell. Stamp vendor – Hanuman Prasad, appeared as PW3, and Bansilal, Advocate, notary public, appeared as PW4.

7. It transpired from the statements of the said witnesses that an amount of Rs.3,90,000/- was paid by the plaintiff to the defendant in the presence of the typist. However, said typist was never produced by the plaintiff before the Trial court to prove the authenticity and genuineness of agreement to Sell (Ex.P1). Therefore, in the absence of producing of the said typist, it cannot be believed that in the presence of said most independent witness, who prepared the basic document in question, ever at any point of time, defendant received an amount of Rs.3,90,000/- as earnest amount. It is also found that out of two attesting witnesses, one Arun Kumar, appeared before the Trial Court as DW1, and deposed on oath in favour of the defendant. Therefore, the document i.e. agreement to sell (Ex.P1) was considered as highly doubtful document by the Courts below.

8. Even the Court has noticed that the agreement to sell (Ex.P1) bears signatures of the defendant Sewak Ram at seven places on the stamp papers. There is no explanation by the plaintiff that for what reason defendant – Sewak Ram would affix his signatures at seven different places without any purpose or mentioning of it. Obviously, it probabalizes the happening of circumstances that the said signatures were obtained on some blank stamp papers/papers without there being any specific object existing at that moment for its use or to be used as per wish of plaintiff in future according to his wish.

9. With the aforementioned circumstances, and as also discussed by the Courts below, agreement to sell dated 08.04.2013 (Ex.P1) seems to be a highly doubtful document. Thus, detailed findings recorded by the learned Trial Court in paragraphs No.20 & 21, are also necessary to be noticed, which are as under:-

“20. *It is well settled law that in a civil suit issue is decided between the parties on the basis of preponderance of evidence. It is also well settled that initial onus is on the plaintiff to prove the due execution of agreement to sell dated 08.04.2013 Ex.P1 by cogent and reliable evidence. Although PW2 Pawan Kumar, one of the attesting witness of agreement to sell Ex.P1 and plaintiff Prahlad Singh in their evidence stated that on 08.04.2013 the defendant after receiving 3,90,000/- as ₹ earnest money executed agreement to sell dated 08.04.2013 Ex.P1 vide which the defendant agreed to sell the house in question in favour of plaintiff for total sale consideration of 4,00,000/-. PW4 Bansi Lal, ₹ Notary Public also stated in his examination in chief that on 08.04.2013 he had attested the agreement to sell dated 08.04.2013 Ex.P1 and before attestation he read over and explained the contents of agreement to sell dated 08.04.2013 Ex.P1 to the parties and witnesses. However, there are certain material contradictions and inconsistencies in their evidence. PW1 Prahlad Singh stated in his evidence that agreement in question was typed by the Typist and defendant after receiving 3,90,000/- as earnest money ₹ put his signatures on the agreement Ex.P1 before the Typist. PW2 Pawan Kumar also stated that defendant, plaintiff and witnesses put their signatures on agreement to sell Ex.P1 in the presence of Typist. Neither PW1 Prahlad nor PW2 stated in their evidence that they along with defendant and other witness Arun Kumar also put their signatures on the agreement to sell Ex.P1 in the presence of Notary Public but PW4 Bansi Lal Notary Public stated in his cross examination that witnesses Arun Kumar, Pawan Kumar and both the parties Sewak Ram and Prahlad Singh put signatures on agreement Ex.P1 in his presence. Typist from whom alleged agreement Ex.P1 was got typed was not examined by the plaintiff who under the facts of the present case is the most material witness for proving that*

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defendant put his signature on agreement to sell Ex.P1 in his presence after receiving earnest money of 3,90,000/-. Further PW1 ₹ Prahlad only stated in his evidence that defendant with his own hand writing had made an endorsement on agreement to sell Ex.P1 regarding receiving of 3,90,000/-. PW2 Pawan stated in his cross examination that Sewak Ram made the endorsement with his own hand on the agreement to sell Ex.P1 regarding receiving of 3,90,000/- from the plaintiff in the ₹ presence of Notary Public whereas PW4 Bansi Lal, Notary Public stated in his cross examination that he do not remember whether endorsement regarding receiving of 3,90,000/- by the defendant was written on ₹ agreement to sell Ex.P1 when produced before him. He nowhere stated that in his presence defendant Sewak Ram put the endorsement on the agreement to sell Ex.P1 with his own hand regarding receiving of ₹ 3,90,000/- from the plaintiff. PW1 Prahlad Singh stated in his evidence that deal was finalized between the parties qua the sale of house in dispute at Kainchi Ratia Chungi and thereafter after three days on 08.04.2013 agreement to sell Ex.P1 was written whereas PW2 Pawan Kumar stated that the day on which the deal was fixed agreement was typed. He further deposed that deal was fixed regarding sale of house in dispute on 08.04.2013 at about 2:30 p.m. thereafter they came to the court complex and got the agreement to sell Ex.P1 typed. These are material contradictions in the evidence of the plaintiff and create doubt regarding the manner in which agreement to sell Ex.P1 allegedly executed by the defendant in favour of the plaintiff.

21. Proceeding further if agreement to sell Ex.P1 is perused in the light of contradictions in the evidence of the plaintiff as discussed above then it is evident that the agreement to sell Ex.P1 was not executed as alleged by the plaintiff and plea taken by the defendant appears to be more probable. Perusal of agreement to sell Ex.P1 shows that

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signatures of Sewak Ram appeared at six places. There are two signature of the defendant Sewak Ram on the back of first page of agreement to sell Ex.P1, one signature was made by the defendant while purchasing the adhesive stamp and one signature of the defendant was present at the lower part of back side of stamp paper over which nothing is written. Similarly, there is also one signature of the defendant at the lower part of the second page over which nothing is written. It has not been explained by the plaintiff or by any of the plaintiff witnesses why these two signatures of the defendant were taken on agreement to sell Ex.P1. Second page of agreement to sell Ex.P1 also bears signatures of Sohan Lal brother-in-law of defendant who appeared in the present case as DW4. PW4 Bansilal, Notary Public even stated in his evidence that no signature of Sohan Lal was there on agreement to sell Ex.P1 when produced before him. There is no explanation on behalf of plaintiff how signature of Sohan Lal came on agreement to sell Ex.P1 and in what capacity he had signed the agreement to sell Ex.P1.”

10. Considering the facts and circumstances of the case, this Court is not in a position to hold that the findings recorded by the Courts below are not based upon the sound reasoning or same are not rational. Hence, for the reasons recorded here-above, the instant appeal *sans* merits, and stands **dismissed** accordingly.

(SANJAY VASHISTH)
JUDGE

September 11, 2023

J.Ram

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