

RSA-1205-2023(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1205-2023(O&M)

Reserved on:- 10.08.2023

Pronounced on:- 07.10.2023

Mukesh Kumar

....Appellant

Versus

Anoop Kumar and Anr.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Rai Singh Chauhan, Advocate with
Mr. P.K.S. Phoolka, Advocate,
Mr. Rohit Sapehiya, Advocate and
Ms. Deepika Chauhan, Advocate for the appellant.

Mr. Ankit Bishnoi, Advocate and
Mr. Priyanshu Kamra, Advocate
for the respondents.

AMARJOT BHATTI, J.

1. The appellant/defendant – Mukesh Kumar has filed regular second appeal against impugned judgment and decree dated 14.02.2023 passed by learned Additional District Judge, Fazilka in civil appeal bearing CIS No.CA-62 of 2022 dated 01.07.2022 dismissing the appeal of the appellant/defendant by upholding the judgment and decree dated 06.04.2022 passed in Civil Suit No.423 of 2020 by the court of learned Civil Judge (Junior Division), Abohar vide which the suit filed by the respondents/plaintiffs was decreed by granting the relief of specific performance of agreement to sell dated 21.03.2017 Ex.PW3/A against the defendant as detailed therein.

2. As per the facts of the case, Anoop Kumar and Vishnu Dutt filed suit for specific performance of agreement to sell dated 21.03.2017 executed by Mukesh Kumar – defendant regarding sale of agricultural land measuring 54 kanals as detailed in the head note of the plaint as per Jamabandi for the year 2011-12 situated in the area of Village Rajanwali, Tehsil Abohar, District Fazilka in favour of plaintiffs at the rate of Rs. 6,23,000/- per acre out of which the defendant had already received Rs.35,00,000/- as earnest money from the plaintiffs and promised to execute the sale deed on or before 20.06.2019 as per the terms and conditions of agreement to sell as well as writing dated 16.06.2018 along with the suit for permanent injunction restraining the defendants from alienating the suit property in any manner to anybody except the plaintiffs and further restraining the defendant from interfering or dispossessing them from the suit property illegally and forcibly and in the alternative suit for recovery of earnest money and damages, total Rs.42,05,250/- with interest as detailed in the plaint.

3. The plaintiff submitted that the defendant being owner in possession of the suit property entered into an agreement to sell dated 21.03.2017 regarding 54 kanals of land as detailed in the head note of the plaint at the rate of Rs.6,23,000/- per acre. The defendant had received Rs.35,00,000/- towards earnest money and agreed to execute the sale deed regarding this property on or before 20.06.2018 after receipt of balance sale consideration. The agreement to sell was reduced into writing which was duly signed by both the parties in the presence of marginal witnesses. The possession of the land was handed over to the plaintiffs and since then the plaintiffs were cultivating the suit land. The plaintiffs requested the

defendants to execute the sale deed on 20.06.2018 but with the consent of both the parties vide writing dated 16.06.2018 the date for execution of sale deed was mutually extended from 20.06.2018 to 19.06.2019. The said writing was scribed and duly signed by both the parties in the presence of witnesses and it was got attested from a Notary public. As per the terms of agreement to sell dated 21.03.2017 and writing dated 16.06.2018, the plaintiffs came to the office of Sub Registrar, Abohar on 19.06.2019 along with balance sale consideration and other expenses and kept on waiting for the defendant but he did not turn up. The plaintiffs got their presence marked by way of affidavit duly attested by the Notary Public. Thereafter, the defendant was requested several times to execute the sale deed on receipt of balance sale consideration but he did not pay any heed to their request rather threatened to alienate the property at a higher rate. The plaintiffs were always ready and willing to perform their part of contract but it was defendant who committed breach of contract. In case the plaintiffs were not found to be entitled to the relief of possession by way of specific performance then they may be granted alternate relief for recovery. Hence the present suit was filed.

4. Notice of the suit was given to the defendant who appeared in this case and filed the written statement taking preliminary objections that the suit was not maintainable in the present form. The plaintiffs concealed material facts from the Court. They did not approach the Court with clean hands. There was no question of execution of agreement to sell in favour of the plaintiffs. The alleged agreement is forged and fabricated document prepared in connivance with the marginal witnesses. The plaintiffs were not entitled to the discretionary relief from the Court. In fact the defendant

was mentally upset for the last 8/9 years. He was under treatment with Dr. Mahesh Kumar, Civil Hospital, Abohar. The plaintiff No.1 is having a firm of Zimidara Trading Co. and the defendant was having his account with the said commission agent since the year 2009. The plaintiff No.2 was having a shop of pesticides etc. and they were doing the business together. The plaintiffs obtained three blank stamp papers and obtained blank signed cheques from the defendant bearing account No.6373101 10001846 of Bank of India, Branch Abohar for security purpose. The plaintiffs in connivance with each other misused the blank signed papers and three stamp papers. They wrongly sent a legal notice dated 30.05.2020 through their counsel. Thereafter, son of the defendant namely Daksh came to know about this fact. He had not executed any agreement to sell nor received the earnest money. There was no necessity to sell the land. He was not in a position to execute the agreement to sell due to his mental condition. At the time of filing of the written statement the condition of the defendant was serious and then his son started taking him for treatment to a hospital at Jaipur, Rajasthan. The son of the defendant filed complaint with the police but no action was taken. His son had also filed one suit for rendition of account which was also pending. The plaintiff had no cause of action to file the suit. Other objections were also raised. On merits of the case, all the facts were denied. There was no question of readiness or willingness to perform the said agreement to sell. It was prayed that the suit filed by the plaintiffs may kindly be dismissed.

5. Replication was filed, in which the plaintiffs denied all the facts stated in the written statement rather it was pointed out that the defendant had wrongly claimed that he was mentally upset for the last 8/9

years. It was further denied that he was not mentally fit or he could not understand his good or bad. He had recently sold his land vide two sale deeds which are dated 12.10.2018 and 12.03.2019. The plaintiff was not running the business of commission agent. They were doing business of selling pesticides etc. It was admitted that son of the defendant namely Daksh had filed complaint to the police authorities but the said application was filed. All the facts stated in the written statement were specifically denied with the prayer that suit filed by the plaintiffs may kindly be decreed with costs. From the pleadings of the parties, following issues were framed on 29.10.2020 and 06.04.2022:-

- i Whether the plaintiffs are entitled to the relief of specific performance of agreement to sell dated 21.03.2017 as prayed for? OPP
- ii Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP
- iii If the issue No.1 is not proved, whether the plaintiffs are entitled to the alternative relief of recovery as prayed for ? OPP
- iv Whether the present suit is not maintainable? OPD
- v Relief.

6. In order to prove the suit, the plaintiffs examined Sanjay Bhatia, Stamp Vendor, as PW-1, Narinder Kumar Batra, Stamp Vendor as PW-2, Mangat Ram, Typist as PW-3, Ram Lubhaya, Notary Public as PW-4, Sanjay Kumar attesting witness as PW-5, Sushil Kumar witness of the endorsement regarding extension of time for sale deed as PW-6, Anoop Kumar plaintiff stepped into witness box as PW-7 and Vishnu Kumar as PW-8 and closed their evidence.

7. In order to rebut the evidence of the plaintiff, the defendant examined Vikramjeet Singh official from Airtel Mobile Company as

DW1, Gautam Chopra as DW2 and tendered documents Ex.D1 and Ex.D2. Thereafter, defendant closed the evidence.

8. After hearing the arguments advanced by learned counsel for the parties, the suit filed by the plaintiffs Anoop Kumar and Vishnu Dutt was decreed vide judgment and decree dated 06.04.2022 passed by the Civil Judge (Junior Division) Abohar. Feeling aggrieved of the aforesaid judgment and decree, Mukesh Kumar had filed Civil Appeal No.62 of 2022 against Anoop Kumar and Vishnu Dutt respondents/plaintiffs, which was also dismissed vide judgment and decree dated 14.02.2023. Feeling aggrieved of this judgment and decree, the appellant/defendant has filed regular second appeal.

9. I have heard the arguments advanced by learned counsel for both the parties. The learned counsel for the appellant/defendant argued that the impugned judgment and decree dated 14.02.2023 passed by learned Additional District Judge, Fazilka dismissing the appeal and upholding the judgment and decree dated 06.04.2022 passed by learned Civil Judge (Junior Division), Abohar is without justification, against the law and the facts of the case. There was no proper appreciation of the evidence on record. In fact the said agreement to sell dated 21.03.2017 is a forged and fabricated documents. He did not receive earnest money as mentioned in the disputed agreement to sell. In fact he was having account with the firm Zimidara Trading Co. run by plaintiff No.1. He being a commission agent managed to obtain three blank stamp papers and obtained blank signed cheque from the appellant/defendant at the time of opening his account with the said commission agent and later on the said documents have been misused by the respondents/plaintiffs by preparing

fake agreement to sell dated 21.03.2017 in connivance with the marginal witnesses. It is pointed out that the appellant/defendant had no necessity to sell his property. He is not liable to pay any amount to the plaintiffs regarding his account with the commission agent. His son Daksh filed a suit for rendition of account. He also filed application to the police and visited the police station several times to take action but no action was taken.

The learned counsel for the appellant further took the stand that the appellant/defendant was not keeping good health. He was suffering from depression for the last 8/9 years and he was getting treatment, earlier from Civil Hospital, Abohar and thereafter, he started taking treatment from Jaipur, Rajasthan. He was not in a position to execute the agreement of sell dated 21.03.2017. Without considering these facts, the suit filed by the plaintiff was wrongly decreed granting the relief of specific performance of agreement to sell vide judgment and decree dated 06.04.2022 passed by learned Civil Judge (Junior Division), Abohar and the appeal is wrongly dismissed by passing impugned judgment and decree dated 14.02.2023 by learned Additional District Judge, Fazilka. It is prayed that the finding given by the aforesaid courts are without merits. Therefore, the aforesaid impugned judgments may kindly be set aside and the suit filed by the plaintiff seeking specific performance of agreement to sell and in the alternative suit for recovery may kindly be dismissed.

10. On the other hand, the learned counsel for the respondents/plaintiffs pointed out that they have led convincing evidence on record to prove the due execution of agreement to sell dated 21.03.2017 Ex.PW3/A by examining Narinder Kumar Batra, Stamp vendor PW2, the

scribe/typist Mangat Ram PW3 and one of the marginal witness of the agreement to sell namely Sanjay Kumar PW5. The aforesaid agreement to sell was duly attested by Notary Public which is Ex.PW4/I and this fact is also confirmed by Ram Lubhaya, Advocate-cum-Notary examined as PW4. The facts of the case are also proved on record by one of the plaintiff Anoop Kumar PW7. It is duly proved on record from the testimony of aforesaid witnesses that the appellant/defendant had received Rs.35,00,000/- as earnest money and the date fixed for execution and registration of sale deed was 20.06.2018. Thereafter, the said time period for execution and registration of sale deed was extended mutually vide writing dated 16.06.2018 which is Ex.PW3/B. The document was scribed by purchasing non-judicial stamp papers from a stamp vendor. Sanjay Bhatia, the stamp vendor has stepped into the witness box as PW1. The Typist, Mangat Ram PW3 has also confirmed the writing of document dated 16.06.2018 regarding the extension of date for the execution and registration of the sale deed. One of the marginal witness Sushil Kumar is also examined as PW6 who further confirmed this fact. This document was also attested by a Notary Public. The attestation is Ex.PW4/F. Ram Lubhaya, Advocate-cum-Notary has stepped into the witness box as PW4 to confirm this fact.

It is argued that the stand taken by the appellant/defendant is without merits. He has wrongly claimed that he was mentally upset for the last 8/9 years. In fact after the execution of agreement to sell in dispute, he had sold his property to different vendors. The copies of sale deeds produced on record are Ex.PW7/B and PW7/C. Even otherwise the appellant/defendant has not stepped into the witness box to prove the stand

taken by him in his written statement. On this point the learned counsel for the respondent has relied upon the authority cited in 1999(2) CivCC 1 Supreme Court of India case titled as "***Ishwar Bhai C.Patel alias Bachu Bhai Patel Vs. Harihar Behera and another***" wherein the case in a suit for recovery of money, the claim was not controverted by the defendant by entering into the witness box to deny the plea taken by the plaintiff and it was held that adverse inference has to be drawn against him as per Section 114(g) of Evidence Act and accordingly the judgment passed by the High Court was held to be justified. On this point many other authorities are also relied upon by the learned counsel for the respondent. The respondents/plaintiffs were always ready and willing to perform their part of agreement to sell and they are still ready to do so. They have parted with huge money. The present regular second appeal has been filed to delay the execution proceedings. Therefore, the facts of the case and the evidence on record were rightly appreciated by the trial Court and his suit for specific performance was rightly decreed vide judgment and decree dated 06.04.2022 and the appeal preferred by Mukesh Kumar was also rightly dismissed vide impugned judgment dated 14.02.2023. It is prayed that the appeal preferred by the appellant/defendant deserves dismissal.

11. I have considered the arguments advanced before me and I have also gone through the evidence on record led before the trial Court with the able assistance of learned counsel for both the parties. Anoop Kumar and Vishnu Dutt filed suit for specific performance of agreement to sell dated 21.03.2017 regarding sale of 54 kanals of land by Mukesh Kumar @ Rs.6,23,000/- per acre and as per the case of plaintiffs, they had paid earnest money of Rs.35,00,000/-. The date fixed for the execution

and registration of sale deed was on or before 20.06.2018. All the terms and conditions of this transaction were duly mentioned in the agreement to sell dated 21.03.2017 which is Ex.PW3/A. As referred above the execution of this document is proved on record by the respondents/plaintiffs by examining all the relevant witnesses i.e. Narinder Kumar Batra, stamp vendor PW2, the scribe/typist Mangat Ram PW3, marginal witness Sanjay Kumar PW5 and by examining Notary Public-cum-Advocate, Ram Lubhaya as PW4. The date fixed for the execution and registration of sale deed was on or before 20.06.2018. However, before the date fixed, the execution and registration of sale deed was extended from 20.06.2018 to 19.06.2019 vide writing dated 16.06.2018 PW3/B. Again as referred above the execution of this writing is also proved by examining stamp vendor Sanjay Bhatia, PW1, scribe/typist Mangat Ram PW3, marginal witness Sushil Kumar PW6 and Notary Public-cum-Advocate, Ram Lubhaya as PW4. Ultimately the date fixed for the execution and registration of sale deed was 19.06.2019. One of the plaintiff Anoop Kumar has also stepped into the witness box as PW7 to prove these facts. The title of the appellant/defendant is also established by placing on record copy of jamabandi for the year 2011-12 which is Ex.PW7/R and Ex.PW7/S. The respondents/plaintiffs always remained ready and willing to perform their part of contract. One of the plaintiff got his presence marked by way of affidavit attested by Notary Public dated 19.06.2019 which is Ex.PW3/C and the attestation of this affidavit is further proved by Notary Public Ram Lubhaya Advocate as PW4. Therefore the plaintiffs had examined all relevant witnesses to prove their case.

In order to rebut the aforesaid evidence the appellant/defendant did not stepped into the witness box. Therefore, the testimony of aforesaid witnesses remained unrebutted. It was for the appellant/defendant to establish the stand taken by him in the written statement. It is not disputed that father of plaintiff No.1 was running a firm Zimidara Trading Co. in which the appellant/defendant was having his account. Even the appellant/defendant admitted this fact but he claimed that he was not having good relations with the commission agent for the last 8/9 years. He also referred a litigation regarding rendition of account initiated by his son Daksh. It is a definite case of appellant/defendant that at the time of opening his account with firm Zimidara Trading Co. three blank stamp papers and blank cheque duly signed were obtained. At the same time in the written statement no specific date is mentioned when the aforesaid documents were obtained from him. On the other hand, the respondent/plaintiff has examined Narinder Kumar Bhatia stamp vendor PW2 who categorically stated that Mukesh Kumar had purchased stamp paper worth Rs.2000/- i.e. Rs.500/- each for the execution of agreement to sell. He proved the relevant entry of his register which is Ex.PW2/A and PW2/B. Therefore the stand taken by the appellant/defendant that three blank stamp papers are misused by the respondent/plaintiff for preparing the agreement to sell in dispute does not hold any ground. Even the affidavit was scribed on a non-judicial stamp paper worth Rs.100/- which was purchased in the name of Anoop Kumar. This fact is confirmed by Sanjay Bhatia stamp vendor PW1. He also proved the relevant entry of his register which is Ex. PW1/C. The contents of written statement indicate that the appellant/defendant has not

disputed his signatures either on the agreement to sell dated 21.03.2017 Ex.PW3/A or the writing dated 16.06.2018 Ex.PW3/B. Even otherwise in the absence of testimony of appellant/defendant the stand taken by him does not hold any ground.

12. In the written statement the appellant/defendant further took the stand that he was mentally upset for the last 8/9 years. Therefore, he was not in a position to execute any agreement in favour of the respondents/plaintiffs. This stand taken by the appellant/defendant is again without any basis as neither he stepped into the witness box to confirm this fact nor there is any medical record proved on the file to support this fact.

On the other hand, the respondent/plaintiff has placed on record copies of two sale deeds PW7/B dated 19.03.2020 vide which Mukesh Kumar and one Dimple had sold property in favour of Pratiksha and Smt. Vijay Laxami and there is another sale deed Ex.PW7/C dated 12.10.2018 vide which again Mukesh Kumar along with others had sold property in favour of Pratiksha and Smt. Vijay Laxami. Therefore, the stand taken by the appellant/defendant that due to his mental condition he was not in a position to execute any document is again falsified.

Therefore, in view of all these facts and circumstances of the case as discussed above, the verdict given by the courts below is based on proper appreciation of the facts and the evidence on record and the same do not require any interference. No substantial question of law or fact arises in this appeal. With this observation, the judgment and decree dated 14.02.2023 passed by learned Additional District Judge, Fazilka upholding

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the judgment of trial Court is accordingly upheld and the appeal preferred by the appellant/defendant is accordingly dismissed with costs.

The records received from the two Courts below be sent back to the concerned quarter.

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

07.10.2023

Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No