

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

105

RSA No.1169 of 2022

Reserved on : 13.01.2023

Date of Decision : 24.01.2023

Palwinder Singh

....Appellant

VERSUS

Sawinder Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sukhdeep Singh, Advocate for the appellant.

Mr. Kushagra Mahajan, Advocate for the caveator-respondent.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant-appellant against the judgments and decrees dated 13.12.2019 and 22.11.2021 passed by the Trial Court and the lower Appellate Court, respectively, decreeing the suit of the plaintiff-respondent for possession by way of specific performance and dismissing the appeal of the defendant-appellant.

The brief facts relevant to the present *lis* are that plaintiff-respondent filed a suit for possession by way of specific performance of agreement to sell dated 19.06.2017 qua one plot consisting of one room, bathroom, verandah and boundary wall measuring 3 marlas bearing Khasra No.250/1 min, Khata/Khatauni No.484/663 as per jamabandi for the year 2014-15 in the area of village Heir, Tehsil and District Amritsar and in the alternative for recovery of Rs.3,15,000/- along with interest @ 18% per annum. It was averred in the plaint that the agreement to sell was for a total consideration of Rs.3,50,000/- out of which Rs.3,15,000/- had already been paid. The agreement to sell was witnessed by 3 attesting witnesses and that

the stipulated date for execution of the sale deed was 19.06.2018 on which

date the plaintiff-respondent remained present in the office of the Sub-Registrar along with the balance consideration, however, the defendant-appellant did not come present. Thereafter, a legal notice dated 05.07.2018 was also served, however, the defendant-appellant refused to get the sale deed executed. Hence, the suit was filed.

The defendant-appellant filed his written statement. On merits it was averred that a false story had been narrated by the plaintiff-respondent and that a fraud has been committed upon the defendant-appellant by the plaintiff-respondent. It was further averred that the signatures of the defendant-appellant had been obtained on an assurance that the plaintiff-respondent would arrange agricultural implements as the State Government was giving the same on subsidy basis.

On the pleadings of the parties, the following issues were framed :

1. Whether plaintiff is entitled for possession by way of specific performance of the agreement to sell dated 19.06.2017 as prayed for ? OPP
2. Whether plaintiff is entitled for permanent injunction as prayed for ? OPP
3. Whether plaintiff is entitled for relief of recovery of Rs.3,15,000/- along with interest as prayed for ? OPP
4. Whether suit of plaintiff is not legally maintainable ? OPD
5. Whether plaintiff has not come to the court with clean hands and has suppressed material facts from the notice of court ? OPD

6. Whether plaintiff is estopped by his own act and conduct from filing the present suit ? OPD

7. Relief.

The Trial Court decreed the suit vide judgment and decree dated 13.12.2019. Aggrieved by the said judgment and decree, an appeal was preferred by the defendant-appellant which appeal was dismissed vide judgment and decree dated 22.11.2021. Hence, the present regular second appeal.

Learned counsel for the defendant-appellant would contend that a complete fraud has been played upon the defendant-appellant and that his signatures were obtained on a blank piece of paper. Learned counsel would further contend that both the Courts have misread the evidence on the record and that the agreement to sell itself was not proved.

Heard.

The agreement to sell dated 19.06.2017 (Ex.P1) was attested by three attesting witnesses. All the three witnesses stepped into the witness-box as PW1 PW2 and PW3. All the three witnesses stated that the agreement to sell was executed by the defendant-appellant in favour of the plaintiff-respondent. No evidence to the contrary has come on the record nor has learned counsel for the defendant-appellant been able to show anything to doubt the testimony of the said three witnesses. Further, the defendant-appellant himself stepped into the witness-box as DW1 and in his cross-examination he admitted the execution of the agreement to sell (Ex.P1) and stated that the same contained his signatures as well as his photograph. He further admitted having appended his signatures on both pages of the stamp-paper. Learned counsel for the defendant-appellant has not been able to show any evidence on the record to prove that any fraud was committed by

the plaintiff-respondent upon the defendant-appellant. Apart from making bald averments about fraud, the defendant-appellant has not pleaded or proved the existence of any fraud by the plaintiff-respondent. No doubt fraud vitiates everything inasmuch as it affects the very solemnity of the proceedings, however, by now it is the settled law that fraud has to be pleaded and established by leading cogent evidence. An ambiguous statement cannot *per se* make a document fraudulent. It is trite that a person raising the plea of fraud needs to plead and prove its ingredients. In the present case, both the pleadings and the proof are woefully missing. As per the settled proposition of law, mere mentioning and using the word fraud/fraudulent is not sufficient to satisfy the test of fraud. Using the word fraud/fraudulent without any material particulars would not tantamount to pleading of fraud. In **Bishundeo Narain vs. Seogeni Rai [AIR 1951 SC 280]** it was inter-alia held that *“It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion”*.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less any substantial question of law, arises in the present case for determination by this Court. The regular second appeal being devoid of any

merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

24.01.2023
jk

(ALKA SARIN)
JUDGE

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