

Naveen Kumar

....Appellant

versus

Om Parkash and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vimal Kumar Gupta Advocate for the appellant.

None for respondents.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellant-plaintiff is in second appeal before this Court assailing learned trial Court judgment and decree dated 21.02.2012, as upheld by learned First Appellate Court vide its judgment and decree dated 07.07.2015, declining the relief *qua* specific performance and instead, passing a money decree.

3. Briefly stated, facts, as noticed by learned Courts, are as below:

3.1 Defendant No.5 executed power of attorney for suit land in favour of defendant No.6, who agreed to sell out property to defendant No.1. The latter himself did not obtain the sale deed in his favour but executed an agreement to sell this property to plaintiff-appellant. Through his general power of attorney, defendant No.1 entered into agreement to sell dated 06.03.2004 in favour of plaintiff on receiving earnest money Rs.7,000/-. Sale deed was to be executed in terms of agreement to sell on or before 06.05.2004. The attesting witnesses were Mukesh Kumar and Rakesh Kumar. Defendant No.1 had already received balance sale consideration amounting to Rs.25,436/- from plaintiff, on 03.05.2004 and

executed a valid receipt at the back of agreement to sell dated 06.03.2004. Defendant No.1 did not turn up on the appointed date, i.e., 06.05.2004 in the office of Sub Registrar, Jagadhri for executing sale deed in favour of plaintiff. Plaintiff got his presence marked. Later on, defendant No.1 in connivance with defendants No.2 to 4 sold out suit property through different sale deeds dated 27.08.2004 and 04.01.2005 to defendants No.2 to 4, though possession of suit property was with plaintiff. He made complaint against defendant No.1 under Sections 420 & 406 IPC. Defendant No.1 had neither executed sale deed in favour of plaintiff nor did he return sale consideration amount received by him even after making repeated requests.

4. Upon notice, defendant No.1 filed separate written statement controverting averments of the plaintiff in toto and pleaded that no agreement to sell in question had ever been executed by him in favour of plaintiff regarding suit property. He averred that it was a false and fabricated document because plaintiff obtained signatures of defendant No.1 on 3-4 blank papers when he was in good terms as a security of his 50% share plus profit Rs.5,000/- which was to be fetched out of sale of suit property as he (defendant No.1) and plaintiff were dealing in property business. They had jointly agreed to purchase it from defendant No.6 being power of attorney of defendant No.5, who executed agreement to sell in favour of defendant No.1, but later on, plaintiff surrendered his all rights after receiving his shared amount Rs.32,500/-plus profit amount Rs.5,000/- and a receipt to that effect had been executed by him in favour of defendant no.1. He further averred that when he demanded blank papers from plaintiff, he did not return the same, rather same might have been used by him for creation of false and fabricated agreement to sell in question. Prayer for dismissal of suit was made.

4.1 Defendants No.2 to 4 filed their joint written statement pleading themselves to be in possession of suit property by virtue of different sale deeds.

They claimed themselves to be *bonafide* purchasers without notice of any agreement in favour of plaintiff regarding suit property. They also denied averments made in the plaint and pleaded agreement to sell in question to be false and fabricated document. Lastly, they prayed for dismissal of the suit.

4.2 Defendants No.5 and 6 also jointly filed separate written statement praying for dismissal of suit being false and frivolous. They claimed that possession of the suit property was with defendant No.1 and true owner of suit property, i.e. defendant No.5 had given general power of attorney in favour of defendant No.6 regarding suit property.

5. Based on the rival pleadings, following issues were framed:

- “1. *Whether the plaintiff had been and is still ready to perform his part of agreement to sell dated 06.03.2004, as alleged? OPP*
2. *If issue no.1 is proved, whether plaintiff is entitled for permanent injunction as alleged on the ground mentioned in the heading of the plaint? OPP*
3. *Whether plaintiff has no locus stand to file the present suit? OPD*
4. *Whether the plaintiff has no cause of action to file the present suit? OPD*
5. *Whether plaintiff has not come to the Court with clean hands? OPD*
6. *Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD*
7. *Whether suit is liable to be dismissed with special costs? OPD*
8. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issues No.1 to 6 against plaintiff and in favour of the defendants except defendant No.1. Issue No.7 was decided in favour of plaintiff. Consequently, learned trial Court declined prayer of plaintiff *qua* relief of specific performance. However, money decree amounting to Rs.32,436/- was passed in favour of plaintiff. In addition to aforesaid money decree, plaintiff was also held entitled to

costs of suit from defendant No.1 payable within a period of two months failing which future interest at the rate of 6% per annum on decretal amount from the date of passing of judgment till its actual realization, was ordered, vide impugned judgment and decree dated 21.02.2012.

8. Feeling aggrieved against the said judgment and decree dated 21.02.2012, appellant-plaintiff preferred first appeal.

9. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“14. Moreover, there is no proof on record to show that plaintiff was infact put in possession of the suit property. It is also not proved that on 03.05.2004 Mohinder Singh was in possession of the suit property, hence, it is not established that the defendant no. 1 was in position to give the possession of the suit property to the plaintiff.

15. Further, in para no. 7 and 13 of the plaint, the plaintiff has restricted his claim to refund of the sale consideration amount. Para no. 7 and 13 of the plaint are reproduced as under:

“7. That the defendant no. 1 have already been sold the land in dispute to the defendants no. 2 to 4 but the defendant no.1 also did not return the sale consideration received by him from the plaintiff on demand made by the plaintiff many times, but the defendants postponed the matter by one pretext or the other.”

“13. That the cause of action for the suit firstly arose on 06.03.2004 when the defendant no.1 entered into an agreement to sell regarding the suit land in dispute, but the defendant no.1 did not perform his part of the agreement to sell and in the last the defendant no.1 totally refused to repay the total sale consideration received by the defendant no.1 from the plaintiff with penal interest, and thereafter when the defendant no.1 sold the land in suit to the defendants no. 1 to 4 in violation of the earlier agreement to sell with the plaintiff, and last a few days back when the defendant no. 1 to 6 have finally refused to accede the genuine request of the plaintiff at Jagadhri, Tehsil Jagadhri, District Yamuna Nagar within the territorial jurisdiction of this Hon'ble Court, and as such this Hon'ble Court has got the jurisdiction to try and decide the present suit.”

16. Taking into consideration all relevant facts and attending circumstances, the Court is of the considered view that learned Civil Judge has not committed any error in passing the money decree instead of specific performance of the agreement, which is permissible

only in case of irreparable loss. More so, defendant no.1 had executed sale deeds in favour of the defendants no. 2 to 4 much prior to filing of the civil suit. The plaintiff has not challenged those sale deeds. The subsequent vendees defendants no. 2 to 4 have also claimed protection under Section 41 of the Transfer of Property Act asserting that they are bonafide purchasers of the suit property for valuable consideration without any knowledge of the agreement to sell set up by the plaintiff. Court finds merit in the contention of learned counsel for the defendants no. 2 to 4. Nothing has been placed on record showing that defendants no. 2 to 4 had any knowledge of the execution of the agreement to sell dated 06.03.2004 between the plaintiff and defendant no.1. Affidavit (Ex.P2) produced by the plaintiff to show his readiness and willingness on 06.05.2004 is not attested by any Sub Registrar. It is also not proved that the said affidavit was infact endorsed into any register of Oath Commissioner. In his cross-examination plaintiff has specifically admitted that defendants no. 2 to 4 were not aware of the agreement to sell in question. No entry of any such agreement is alleged or proved in any revenue record in respect of suit property. There is nothing on record which dis-entitles the defendants no. 2 to 4 from the protection of Section 41 of the Transfer of Property Act.

17. Court below has appreciated the entire evidence and thereafter, came to the conclusion that the plaintiff does not deserve the relief of specific performance of the contract. Agreement to sell does not create any right, title or interest in respect of the suit property It is nowhere established that the defendant no.1 was in position to enter into agreement to sell on 06.03.2004 in favour of the plaintiff to sell the suit property. Defendant no.1 has failed to prove that he had returned the amount of Rs.32,436/- and Rs. 5,000/- as alleged by him in the written statement. Further, he (defendant no.1) has not preferred any appeal against impugned judgment and decree.

18. In such scenario when the agreement to sell, though, was technically proved, and signatures thereon have not been disputed by the defendant no.1, learned Civil Judge has rightly granted money decree instead of grant of relief of specific performance of the contract. Hence, findings of learned lower Court on issues no. 1 to 6 do not call for any interference. Findings on issue no. 7 have not been assailed, hence, affirmed.”

11. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by learned Courts below are against the facts of the case and are based on conjectures and surmises; and are contrary to law and evidence on record.

12. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly considered and repelled and the concurrent findings of fact recorded by the two Courts below were

correctly recorded by giving sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

12.1 No new arguments have been raised other than reiteration of the stand taken before the courts below.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

14. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

15. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

16. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

17. Pending application(s), if any, shall also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

March 13, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No