

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**109****RSA No.2905 of 2019 (O&M)****Reserved on : 09.04.2024****Date of Decision : 24.04.2024**

Darshan Singh

....Appellant

VERSUS

Vijay Kumari

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. A.S. Dhindsa, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 26.07.2016 passed by the Trial Court and the judgment and decree dated 17.10.2018 passed by the First Appellate Court whereby his suit for specific performance and permanent injunction has been dismissed.

2. The brief facts relevant to the present case are that the plaintiff-appellant approached the Court averring that the defendant-respondent was the owner in possession of a residential house and had voluntarily executed an agreement to sell dated 01.07.2011 in favour of the plaintiff-appellant qua the said residential house. It was averred that vide the said agreement to sell the defendant-respondent received Rs.15,00,000/- as earnest money out of the total consideration agreed at Rs.24,80,000/- and it was settled that the remaining sale consideration shall be paid at the time of registration of the sale deed on 10.12.2011. It was further agreed that in case the plaintiff-

appellant failed to execute and register the sale deed then the earnest money would be forfeited and if the defendant-respondent did not execute the sale deed then the plaintiff-appellant could get the sale deed executed and registered through the Court or he would be entitled to recover Rs.30,00,000/- from the defendant-respondent. As per the plaintiff-appellant, on 08.12.2011 he approached the defendant-respondent and requested her to receive the balance sale consideration and get the sale deed registered in his favour to which the defendant-respondent gave him an assurance. On 10.12.2011 the plaintiff-appellant waited for the defendant-respondent from 9.00 am to 5.00 pm in the office of the Sub-Registrar but the defendant-respondent did not turn up. The plaintiff-appellant also swore an affidavit dated 12.12.2011 before the Executive Magistrate, Sunam. On 13.12.2011 the plaintiff-appellant approached the defendant-respondent and inquired about her absence but she postponed the matter on one pretext or the other though the plaintiff-appellant was always ready and willing to perform his part of contract. Hence, the suit. In her written statement the defendant-respondent raised objections regarding cause of action, locus standi, estoppel, suit being false, frivolous and having been filed just to harass her, etc. On merits it was submitted that the plaintiff-appellant had prepared a false and forged agreement which was never executed by her as she had no concern with the ownership of the house. The defendant-respondent denied the execution of the agreement to sell as well as receiving Rs.15,00,000/- as earnest money from the plaintiff-appellant. It was also alleged that the plaintiff-appellant had filed a false complaint under Section 138 of Negotiable Instruments Act, 1881 after forging a cheque with some person and that he had forged her signature on the alleged agreement to sell.

3. On the basis of the pleadings of the parties the Trial Court framed the following issues :

1. Whether the plaintiff is entitled for specific performance as prayed for ? OPP
2. Whether plaintiff is entitled for permanent injunction as prayed for ? OPP
3. Whether plaintiff is entitled for the alternative relief of suit for the recovery as prayed for along with interest ? OPP
4. Whether the plaintiff has no locus standi as cause of action to file the present suit ? OPD
5. Whether the plaintiff is estopped from filing the present suit by his on Act and conduct ? OPD
6. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
7. Whether the alleged agreement is result of fraud ? OPD
8. Whether the plaintiff has not come to the court with clean hands ? OPD
9. Whether the defendant are entitled to the special costs from the plaintiff ? OPD
10. Relief.

4. The Trial Court vide judgment and decree dated 26.07.2016 dismissed the suit of the plaintiff-appellant. Aggrieved by the said judgment and decree dated 26.07.2016 an appeal was preferred by the plaintiff-

appellant which appeal was also dismissed vide judgment and decree dated 17.10.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant has contended that the impugned judgements and decrees are illegal and erroneous and that the Courts have wrongly dismissed the suit of the plaintiff-appellant. It was submitted that the agreement to sell stood proved as also receipt of the earnest money by the defendant-respondent and thus the suit of the plaintiff-appellant should have been decreed. Learned counsel submitted that the plaintiff-appellant ought to have atleast been refunded the earnest money of Rs.15,00,000/-.

6. Heard counsel for the plaintiff-appellant and perused the paperbook.

7. Both the Courts have reached concurrent findings of fact and have dismissed the suit of the plaintiff-appellant. It has been found that the due execution of the agreement to sell was not proved. The Trial Court found that *“So from the evidence discussed above, it is firstly the plaintiff has to prove on record the execution agreement to sell dated 07.01.2011, then the defendant has to disprove anything, but it has been very much clear that the plaintiff has failed to prove on record the execution of agreement to sell and passing of sale consideration and even further he has failed to prove on record his readiness and willingness to purchase the property in question as in his whole evidence, he has not placed on record even a single evidence/proof showing the balance amount with him. Even further he himself has admitted that he has not seen the original registry of the property in question and neither he has made any inquiry regarding the ownership of the property in question for the reasons best known to him and*

that must be the reason for him for non placing of the site plan of the property in question on the court file. Even further this fact has not been proved on record by the plaintiff as alleged by him in the plaint that why defendant took an amount of Rs.9,01,400/- from the plaintiff once she was entitled to take balance sale price from the plaintiff as the plaintiff was liable to pay balance amount of about Rs.10 lacs to the defendant. Even further the plaintiff has not proved on record the source of the sale consideration of Rs.15,00,000/- as alleged by him paid to the defendant as an earnest money. On the other hand the defendant has proved on record her stand taken by her in her written statement. So, in the present case the plaintiff miserably failed to prove on record passing of sale consideration and his readiness and willingness to purchase the property in question. So the entitlement of the plaintiff for alternative relief does not arise. Hence, the issues No. 1, 2 and 3 are decided in favour of the defendant and against the plaintiff". The First Appellate Court also held that the plaintiff-appellant failed to prove the execution of the agreement to sell. Further, the ownership of the defendant-respondent over the house to actually agree to sell the same is not established. The plaintiff-appellant in his cross examination stated that he had never seen any registry of the suit property nor seen any record pertaining to the same in committee office. Learned counsel for the plaintiff-appellant has not been able to show any evidence on the record to prove that the defendant-respondent was owner of the house and legally competent to alienate the same. Counsel for the plaintiff-appellant has not been able to show any material on the record to displace the concurrent findings recorded by both the Courts. Since the due and valid execution of the agreement to sell has not been established and proved, there is no question of any amount

being ordered to be refunded to the plaintiff-appellant. No other point was argued.

8. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

24.04.2024

jk

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