



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-662-2020

Date of Decision: 16.12.2024

PAWAN KUMAR (NOW DECEASED) THROUGH LRS AND OTHERS

... APPELLANT

Vs.

ANUP SINGH

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Akash Vashisth, Advocate, for the appellant.

DEEPAK GUPTA, J.

Defendant of the case is against the concurrent findings of the Courts below in the present Regular Second Appeal.

2. Plaintiff-Anup Singh (*respondent herein*) filed a suit seeking decree of specific performance against defendant-Pawan Kumar (*appellant herein*) in respect of 15 biswas of land detailed in head note of the plaint. It was claimed that defendant had agreed to sell the suit land vide an agreement dated 18.06.2010 (Ex.P1) for consideration of ₹25 lakh. Defendant had received an amount of ₹20 lakh as earnest money. Balance sale consideration was agreed to be paid at the time of execution of the sale deed for which purpose, 15.05.2011 was agreed to be the target date. Plaintiff claimed that he had always been ready and willing to perform his part of contract, but defendant failed to do so and as such, decree for specific performance was sought.

3. Defendant in his written statement denied execution of any agreement. He further denied receipt of earnest money of ₹20 lakh. Refuting the entire claim of the plaintiff, he prayed for dismissal of the suit.

4. Necessary issues were framed. Evidence produced by the parties were taken on record. Trial Court vide judgment dated 04.03.2016 declined the relief of specific performance but decreed the suit for alternative relief for recovery of earnest money of ₹20 lakh along with interest @ 6% per

annum from the date of agreement (Ex.P1) till realization of the decretal amount. The appeal filed by the defendant-appellant Pawan Kumar against the aforesaid judgment has been dismissed by the First Appellate Court on 15.11.2019.

5. Assailing the aforesaid concurrent findings, it is contended by Id. counsel that both the courts below have failed to appreciate the evidence in right perspective. It is argued that although the appellant-defendant had admitted his signature on the agreement to sell (Ex.P1), but had denied the contents thereof; that plaintiff had failed to prove the contents of the agreement to sell. It is also argued that plaintiff failed to prove payment of ₹20 lakh to the appellant-defendant and that Courts below wrongly relied upon the statements of the witnesses examined by the plaintiff in this regard, as none of them stated regarding receipt of amount of ₹20 lakh by the defendant.

6. Trial Court record was called and the same has been perused.

7. Perusal of the agreement (Ex.P1) would reveal that it is drafted by Shri Keshav Sanghi, Advocate (PW3). Apart from bearing the signature of both the parties on the agreement i.e. plaintiff & defendant, it is witnessed by Manish Kumar (PW-4) and Anil Kumar. There is an endorsement by the document writer that the agreement was dictated and drafted by him and that Pawan Kumar had received ₹20 lakh before him. Apart from the endorsement made by the document writer, there is purported handwriting of defendant-Pawan Kumar himself to have received ₹20 lakh. Not only this, even both the witnesses have also endorsed in their own handwriting that ₹20 lakh were received by Pawan Kumar in their presence.

8. In order to prove the aforesaid agreement and receipt of ₹20 lakh by defendant-appellant, plaintiff-Anup Singh not only examined himself as PW1, but further examined Keshav Singh, Advocate i.e. draftsman of the agreement as PW3; and one of the attesting witness Manish as PW4. PW3 in his testimony proved to have drafted Ex.P1, but in his cross-examination, he stated that no transaction took place in his presence. He admitted that he had incorporated in the agreement Ex.P1 that ₹20 lakh had been paid on the

asking of the plaintiff. PW4-Manish Kumar proved the execution of the agreement (Ex.P1) in his presence and that amount of ₹20 lakh was received by defendant-Pawan Kumar in his presence.

9. On the basis of testimony of above witnesses, the First Appellate Court has rightly observed that it had been testified by attesting witness PW4 that ₹20 lakh was paid to the defendant in his presence and also in presence of other witness-Anil Kumar, regarding which defendant-appellant himself had put endorsement in his own handwriting. It has been rightly observed by Id. Appellate Court that Keshav Sanghi, Advocate, who had drafted the agreement had been engaged by defendant-appellant in many cases, as had been admitted by him during his cross examination as DW1. Defendant had admitted that Keshav Sanghi, Advocate was a good and honest advocate in whom he had complete faith. In these circumstances, it cannot be believed that Keshav Sanghi, Advocate would make his endorsement on the agreement Ex.P1 regarding receipt of ₹20 lakh by defendant-appellant Pawan Kumar, simply on the asking of the plaintiff-respondent.

10. It is further important to notice that in his testimony, defendant took the stand that there was a dispute between plaintiff and his (defendant's friend) Shiv Parkash regarding some money transaction and that in order to mediate between them, he (defendant) had purchased a stamp paper on 11.06.2010 and handed over the same to the plaintiff after signing on the blank papers. The said story put forth by the defendant-appellant is absolutely not believable considering the fact that said stand taken by him is beyond pleading. Not only this, the alleged friend of the defendant namely Shiv Parkash has not been examined to prove that there was any dispute with the plaintiff with him or to settle the same, defendant had to purchase any stamp paper.

11. Once the execution of the agreement to sell is proved by the testimony of the attesting witness along with the payment of ₹20 lakh to the defendant, it does not lie in the mouth of the defendant-appellant to contend that mere admission of his signature on the agreement to sell will not make it

a valid document or that he is not bound by the contents thereof or that payment of ₹20 lakh made to him is not proved.

12. After perusing the entire record of the trial Court and the judgments passed by the Courts below, I am of the considered view that there is absolutely no scope to interfere in the well reasoned concurrent findings of the facts as recorded by the Courts below, which are based upon proper appreciation of evidence on record. No substantial question of law is found to be involved.

13. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

16.12.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No