



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

117

RSA-792-2022 (O&M)
Reserved on : 31.07.2024
Pronounced on : 24.09.2024

Ram Phal Appellant

versus

Inder Singh Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Shivdeep, Advocate for
Mr. Sandeep Singh, Advocate
for the appellant.

None for the respondent.

PANKAJ JAIN, J.

1. Defendant is in second appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellant as defendant and respondent as the plaintiff.
2. Plaintiff filed suit for possession by way of specific performance of an agreement to sell dated 25.02.2015 claiming the defendant agreed to sell suit land as detailed in para No.1 of the plaint in his favour for valuable consideration of Rs.13,12,500/-. Out of total sale consideration, Rs.10 lakh was paid as earnest money. Rs.7,82,000/- was paid by way of cheque and Rs.2,18,000/- in cash. Both the parties agreed to get the sale deed executed on or before 24.11.2015. Plaintiff further claimed that on the appointed day i.e. 24.11.2015, plaintiff remained present in the office of Sub-Registrar with balance sale consideration and the expenses of registration. However, defendant



failed to turn up. Suit was instituted on 22.03.2017.

3. Suit was contested by the defendant who denied execution of the agreement to sell. It was claimed that the agreement to sell is a result of fraud and forgery. Though receipt of amount by way of cheque was admitted, but receipt of cash amount was denied. It was further claimed by the defendant that he availed loan from the plaintiff. As a security, plaintiff asked for his signed blank stamp papers. Defendant agreed to repay sum of Rs.7,82,000/- by 25.02.2017 alongwith lump sum interest of Rs.2,18,000/-. It is those blank papers which are being misused by the plaintiff. Defendant further claimed that the transaction being a loan is evident from the fact that an amount of Rs.2 lakh was paid back to the plaintiff by a cheque dated 05.08.2015 by the defendant. On the basis of pleadings, Trial Court framed following issues:-

- “1. Whether the plaintiff is entitled to a decree for specific performance of agreement to sell dated 25.2.2015 on the grounds as averred in the plaint? OPP
2. If issue no.1 is decided in affirmative than whether the plaintiff is entitled to decree for permanent injunction as averred in the plaint? OPP
3. Whether the present suit is not maintainable in present form? OPD
4. Whether the plaintiff has no cause of action and locus standi to file the suit? OPD
5. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD
6. Relief.”

4. Plaintiff himself appeared as PW-1. Both the attesting witnesses to the agreement to sell namely Ram Bhaj and Jai Bhagwan were examined as PW-3 and PW-6 respectively. Affidavit dated



24.11.2015 attested by Executing Magistrate was proved as Ex.P-4. Trial Court returned finding on issues No.1 and 2 in favour of the plaintiff on the basis of the evidence. Issue No.3 to 5 were decided in favour of the plaintiff as defendant failed to lead any evidence. A fortiori, suit was decreed.

5. Defendant preferred appeal along with application filed under Order 41 Rule 27 CPC seeking permission to lead additional evidence by examining Ram Rattan son of defendant. The application as well as main appeal stands dismissed by the Lower Appellate Court. Before this Court also, appellant has filed application under Order 41 Rule 27 seeking permission to examine Ram Rattan.

5. Counsel for the appellant appeared on 30.07.2024. After arguing for some time, he requested for adjournment. The matter was adjourned to 31.07.2024. On the said date, counsel appearing on his behalf again made request for adjournment. On being declined, he sought time to file written arguments. In the last two weeks, no written arguments have been filed.

6. The defence of the appellant to resist suit for specific performance is denial of the agreement to sell dated 25.02.2015. It needs to be mentioned that on the same date, receipt Ex.P-3 was executed. Ram Rattan, son of the defendant signed the same as attesting witness, witnessing receipt of earnest money. The other circumstance pleaded by the defendant in his evidence is the fact of paying back Rs.2 lakhs by cheque dated 05.08.2015 to the plaintiff. Cheque has been proved on record as DW-3/4. The same was issued by Ram Rattan son of defendant. It is a self cheque issued by Ram Rattan.



The same bears signatures of one Inder at the back. Appellate Court after comparing the signatures at the back of cheque Ex. DW-3/4 and the signatures of the plaintiff on vakalatnama as well as plaint came to the conclusion that the cheque does not bear signatures of plaintiff-Inder Singh. Neither Ram Rattan appeared to explain the circumstance with respect to issuance of cheque and the person who encashed the cheque, nor he appeared to controvert receipt Ex.P-3 which shows receipt of earnest money by the defendant. It is in these circumstances that the Courts below have decreed the suit filed by the plaintiff.

7. Trite it is that in case of the contract for sale of immovable properties, the grant of relief of specific performance is a rule and the refusal is an exception that too only on cogent grounds. The defence pleaded by the defendant could not be proved by leading any evidence. So far as permission seeking additional evidence is concerned, the same is governed by the provisions as contained under Section 107 and Order 41 Rule 27 CPC which read as under:-

“Section 107 – Powers of Appellate Court

(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power-

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the



Appellate Court. But if- (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

8. Trite it is that jurisdiction under Order 41 Rule 27 cannot be exercised where the evidence sought to be produced by way of additional evidence was withheld intentionally. The appellant-defendant having propounded cheque Ex.DW-3/4 knew that it is Ram Rattan who was drawer of the same. After receipt Ex.P-3 was proved by plaintiff in his evidence, appellant-defendant was in the knowledge that his son Ram Rattan is the signatory as an attesting witness to the same. For reasons best known to him, he opted not to examine him. Thus, the power vested in this Court, Order 41 Rule 27 cannot be resorted to, to allow the defendant to fill lacuna. So far as readiness and willingness of the plaintiff is concerned, the same is evident from the fact that out of total sale consideration of Rs.13,12,500/-, he had already paid Rs.10 lakh as earnest money at the time of execution of contract. By proving Ex.P-4, he successfully demonstrated his presence before the office of Sub-Registrar on the appointed day. Thus, no fault can be



found with the findings recorded by the Courts below.

9. In view of above, this Court does not find any merit in the present appeal as well as in the application filed under Order 41 Rule 27 CPC by the defendant. Resultantly, the same is dismissed.

10. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

24.09.2024

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No