



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-951-2023 (O&M)

Reserved on: -16.12.2024

Pronounced on:- 19.12.2024

MANOJ KUMAR

... APPELLANT

Vs.

KRISHNA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:- Mr. J.S. Lalli, Advocate, with
Mr. Manvinder Sidhu, Advocate, for the appellant.

DEEPAK GUPTA, J.

This is defendant's Regular Second Appeal against the concurrent finding of the Courts below, inasmuch as suit filed by the plaintiff - Smt. Krishna (*respondent herein*) for specific performance of contract with consequential relief of declaration regarding the suit property was decreed by the trial Court on 16.12.2019; and the appeal filed by the appellant - defendant has been dismissed by the Appellate Court on 14.12.2022.

2.1 The trial Court record has been called and the same has been perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

2.2 The subject matter of dispute is 7 kanals 4 marlas of land situated within the revenue estate of Village Saiman, Tehsil Meham, District Rohtak, detailed in the plaint.

2.3 According to the plaintiff, the defendant agreed to sell 8 kanal of land by virtue of an agreement dated 08.08.2014 @ ₹18 lakh per acre. An amount of ₹8,54,000/- was paid as earnest money. The target date for execution of sale deed was fixed to be 07.07.2015. However, with mutual consent, the target date for execution of sale deed was extended to

08.06.2016 vide a writing dated 08.07.2015. Later on, as the share of the defendant in the land was reduced to 7 kanal 4 marla and therefore, a fresh agreement to sell was executed on 16.05.2016 for consideration of ₹14,40,000/- i.e. @ ₹16 lakh per acre. An amount of ₹13,50,000/- was received in cash by the defendant as earnest money. Target date for execution of sale deed was fixed to be 20.02.2017. Usual default clauses were also incorporated in the agreement. Further case of the plaintiff is that on 26.08.2016, defendant showed his willingness to get the sale deed registered on payment of the balance amount of ₹90,000/- immediately. Plaintiff purchased stamp papers on 29.08.2016 for ₹43,200/- and paid the remaining amount of sale consideration of ₹90,000/- on same day in cash to the defendant. On 14.09.2016, both the parties went for registration of the sale deed, pursuant to the agreement dated 16.05.2016. The documents were prepared by Subash Chander Verma, deed writer, which were signed by both the parties in the presence of witnesses but suddenly, sons of the defendant appeared and demanded extra amount of ₹5 lakhs then and there and only then defendant will be allowed to complete the sale deed. Plaintiff refused to fulfill this illegal demand, upon which the defendant ran away from there along with his sons. Plaintiff later on approached the defendant to complete the sale, but he refused. Plaintiff also appeared in the office of Sub Registrar on 20.02.2017 i.e. the target date fixed for execution of the sale deed, but the defendant did not turn up. With all these submissions, plaintiff prayed for decree of possession by way of specific performance of agreement to sell dated 16.05.2016 on payment of balance sale consideration.

2.4 In written statement, defendant alleged the execution of agreement to sell to be fraudulent having been prepared in connivance with the scribe and witnesses. According to the defendant, he was under the spell of black magic performed by the plaintiff upon him due to intimate relations amongst them, which was in the knowledge of the family members of the defendant. Defendant claimed that he was not in his proper senses due to the black magic and in fact, no agreement to sell was

executed by him in full senses. Defendant also claimed that plaintiff had already procured a sale deed regarding 4 kanal of land in her favour by inducing the defendant under black magic. Defendant controverted all other averments of the plaint and prayed for dismissal of the suit.

2.5 Necessary issues were framed. Evidence produced by the parties was taken on record.

2.6 The trial Court vide judgment dated 16.12.2019 decreed the suit by holding the plaintiff to be entitled to get the sale deed executed in his favour pursuant to the agreement to sell dated 16.12.2016 within a period of 2 months.

2.7 The appeal filed by the defendant was dismissed but with a little modification. The Appellate Court found that out of total consideration of ₹14,40,000/-, though payment of ₹13,50,000/- was proved but plaintiff had failed to prove the payment of the balance amount of ₹90,000/-. As such, the appeal was partly accepted to the effect that suit for specific performance was decreed and defendant was directed to execute the same after receipt of ₹90,000/- from the plaintiff in terms of the agreement dated 16.12.2016 within a period of two months from the date of passing of the judgment by the First Appellate Court.

3. Assailing the aforesaid judgments and decrees passed by the Courts below, it is contended by Id. counsel for the appellant-defendant that Courts below have failed to appreciate the evidence on record in proper prospective. In fact, the agreement to sell relied by the plaintiff has not been proved on record in accordance with law. Defendant-appellant did not execute the agreement in his proper senses, as he was under the magic spell of the plaintiff.

4. This Court has considered submissions of Id. counsel for the appellant-defendant and has appraised the record carefully.

5. As has been rightly observed by the First Appellate Court that defendant himself relied upon agreement dated 16.05.2016 (Ex.D5) and also produced on file the earlier agreement dated 08.08.2014 (Ex.D4). It was found by the Appellate Court that the parties had entered into an agreement dated 08.08.2014 for selling the land measuring 8 kanal @ ₹18 lakh per acre. Later on, fresh agreement (Ex.D5) was executed between parties with regard to the land measuring 7 kanal 4 marla @ ₹16 lakh per acre and thus, sale consideration of 7 kanal 4 marla was fixed @ ₹14,40,000/-. It was further found that as per the agreement dated 16.05.2016, amount of ₹13,50,000/- was paid by the plaintiff to the defendant and the date for execution of the sale deed was fixed as 20.02.2017. Defendant has not denied his signature on the agreement dated 16.05.2016 (Ex.D5) and rather, admitted his signature thereon.

6. It has been rightly observed by Id. Appellate Court that defence taken by the defendant to the effect that he was under the effect of black magic on the part of the plaintiff, is absolutely not believable even by any stretch of imagination. It has also been observed by the Courts below that defendant is a literate person working in the transport department and so, it was absolutely not believable that he was under any influence or spell of black magic on the part of the plaintiff. As such, defence taken by the defendant-appellant is absolutely not believable.

7. Defendant having executed the agreement dated 16.05.2016 (Ex.D5) is bound by the terms and conditions mentioned therein. Defendant even failed to prove that amount of ₹13,50,000/-, as mentioned in the agreement, was not received by him. Apart from this, Id. Appellate Court has rightly observed that though the earnest money of ₹13,50,000/- was proved to have been paid as per agreement (Ex.D5) placed on record by the defendant himself and on which he admitted his signature, but plaintiff had failed to produce any evidence that the remaining amount of ₹90,000/- had been paid by her to the defendant-owner on 26.08.2016. The affidavit (Ex.D2) establishes that plaintiff had appeared in the office of Sub Registrar

on 20.02.2017 i.e. the target date fixed for execution of the sale deed along with the balance sale consideration, which was required to be paid to defendant at the time of registration of the sale deed. The appellate Court rightly held that plaintiff was entitled to remaining sale consideration of ₹90,000/- payable to the defendant-appellant.

8. Ld. Counsel for the appellant could not convince this court regarding any flaw in the findings of facts recorded by the courts below. This Court does not find any reason to differ from the concurrent findings of facts as recorded by the Courts below, which are based upon proper appreciation of evidence. There is no reason to disturb these concurrent findings of facts.

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

19.12.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No