



1.	204	RSA-1056-1996 (O&M) Reserved on : 21.08.2024 Date of Decision: 03.09.2024
Kuljit Rai		Appellant
VERSUS		
Hardial Grover (since deceased) Thr. LRs		Respondent
2.	204-A	RSA-1335-1996 (O&M)
Hardial Grover (since deceased) Thr. LRs		Appellant
VERSUS		
Kuljit Rai		Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Subhash Aggarwal, Advocate for the appellant in
RSA-1056-1996 & for the respondent in RSA-1335-1996.

Mr. Amit Mehta, Advocate for the LR's of the deceased respondent in RSA-1056-1996 & for the LR's of the deceased appellant in RSA-1335-1996.

ALKA SARIN, J.

1. The present two regular second appeals have been filed against the same judgement and decree dated 27.02.1995 passed by the First Appellate Court. While RSA-1056-1996 has been preferred by the defendant, RSA-1335-1996 has been preferred by the plaintiff. For the sake of convenience, the parties are referred to as per their description before the Trial Court.

2. The brief facts relevant to the present *lis* are that the plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 06.06.1989. It was averred in the plaint that the defendant was owner of House No.402 and agreed to sell the same to the plaintiff for Rs.25,000/-. Rs.10,000/- was paid as earnest money on 06.06.1989 and the sale deed was to be executed and registered on or before 30.12.1990. It was alleged that the plaintiff had always been ready and willing to perform his part of the contract but the defendant did not execute the sale deed by 30.12.1990 despite issuance of notice dated 22.12.1990. Hence, the suit. The defendant contested the suit and filed written statement. He denied the execution of the agreement to sell and also denied that he was owner of House No.402. According to the defendant, his wife was the owner of House No.401. Replication was filed. The agreement to sell was alleged to being a forged and fraudulent document. The plaintiff filed a replication reiterating the contents of the plaint and denying the contents of the written statement.

3. The Trial Court framed the following issues :

1. Whether the plaintiff is entitled for the possession by way of specific performance contract dated 6.6.89 ? OPP
2. Whether the plaintiff had paid Rs.10,000/- to the defendant vide receipt dated 6.6.89 ? OPP
3. Whether the agreement dated 6.6.89 is forged fraudulent and without consideration ? OPD

4. Whether the defendant was not the owner of the House No.402 at the time of agreement, if so, what effect ? OPD
5. Whether the suit is false and frivolous ? OPD
6. Whether the defendant is entitled for special costs u/s 35-A CPC ? OPD
7. Relief.

4. The Trial Court vide judgement and decree dated 09.02.1995 decreed the suit of the plaintiff. The defendant filed an appeal. Vide judgement and decree dated 27.02.1996 the First Appellate Court modified the decision of the Trial Court. The First Appellate Court declined the relief of specific performance but decreed the suit for recovery of earnest money of Rs.10,000/-. Hence, the present two regular second appeals by both the parties.

5. Learned counsel for the plaintiff has contended that the First Appellate Court erred in declining the relief of specific performance which had been granted by the Trial Court. It is urged that since the defendant had not denied that he was the owner of House No.402, the First Appellate Court erred in non-suiting the plaintiff.

6. Per contra, learned counsel for the defendant has argued that the agreement to sell was a forged and fraudulent document and therefore the First Appellate Court has erred in ordering return of the earnest money of Rs.10,000/- which infact was never received by him. He has supported the findings of the First Appellate Court in declining the relief of specific performance to the plaintiff.

7. Heard learned counsel for the parties and perused the record.

8. In the present case the plaintiff filed the suit seeking possession by way of specific performance of agreement to sell dated 06.06.1989. The suit was filed specifically qua House No.402. In para 1 of the written statement the defendant took a categorical plea that *“The defendant is not the owner of House No.402 as alleged in this para. The House No.401 is in the name of defendant’s wife Smt. Kailash Rani”*. The ownership of House No.401 by the wife of the defendant was proved by the oral depositions as well as the documentary evidence in the form of sale deed of House No.401. Despite the defendant having denied the ownership of House No.402 qua which the agreement to sell was executed, the plaintiff led no cogent evidence to prove that the defendant was owner of House No.402. In the absence of any evidence of the defendant’s ownership of House No.402, the suit qua this House No.402 cannot be decreed. Thus, there is no error in the findings recorded by the First Appellate Court to deny the relief of specific performance to the plaintiff.

9. The argument of the counsel for the defendant that the agreement to sell was a forged and fraudulent document is to be rejected. The defendant led no reliable and cogent evidence to establish that the agreement to sell was forged and fabricated. Apart from pleading fraud the defendant was also required to prove the same, which he failed to do. On the contrary the plaintiff established and proved the execution of the agreement to sell, though it was for a property not owned by the defendant.

10. In view of the above, I do not find any merits in the present appeals. No question of law, much less any substantial question of law,

arises in the present case. Both the appeals, being devoid of any merits, are accordingly dismissed. Pending applications, if any, also stand disposed off.

03.09.2024
Ankur

(ALKA SARIN)
JUDGE

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