IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1539-2024 (O&M)
Reserved on : 31.05.2024
Pronounced on : 07.06.2024

AVTAR SINGH ....Appellant

VERSUS

JARMANJIT SINGH ...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Bansal, Advocate for the appellant.

ALKA SARIN, J.

1. This is a second appeal by the unsuccessful plaintiff-appellant against the judgment and decree dated 03.10.2018 passed by the Trial Court and judgment and decree dated 07.02.2024 passed by the First Appellate Court whereby his suit for possession by way of specific performance or in the alternative suit for recovery, mandatory injunction and permanent injunction has been dismissed.

2. As per the plaintiff-appellant the defendant-respondent is the owner of the suit land and he proposed to sell the same to the plaintiff-appellant. An agreement to sell was reduced into writing on 27.02.2013 and the sale price was fixed as Rs.20,00,000/- per acre. The total sale consideration was to be Rs.17,50,000/- out of which Rs.12,00,000/- was paid as earnest money as part of the sale consideration and the date of execution of the sale deed was fixed as 01.03.2014. On 01.09.2014 the defendant-

respondent got the date for execution of the sale deed and registration extended vide an endorsement on the back of the agreement to sell and the same was signed and thumb marked by him and attested by the attesting witnesses. As per the plaintiff-appellant the defendant-respondent did not disclose that the suit land was under encumbrance and when the revenue record was perused it come to light that the suit land is subject to mortgage without possession with the Punjab State Federation of Coop. Society. The defendant-respondent orally agreed to remove the encumbrance before the stipulated date of execution and registration of the sale deed and also promised that if he was not able to redeem the suit land the plaintiff-appellant shall be entitled to redeem the same on becoming owner of the suit land with the balance sale consideration and as such the mortgage money was within the balance sale consideration agreed to be paid at the time of execution and registration of the sale deed. On the stipulated date i.e. 01.09.2014 the plaintiff-appellant came to the office of Sub Registrar with the balance sale consideration but 01.09.2014 was a holiday and the defendant-respondent promised to perform his part on the next day. On 02.09.2014 the plaintiff-appellant remained present in the Tehsil compound till 5.00 pm along with the balance sale consideration as well as stamp papers and also brought the other expenses of writing and registration of the sale deed and both the attesting witness but the defendant-respondent did not turn up and the plaintiff-appellant got marked his presence before the Sub

Registrar. As per the plaintiff-appellant he had always been ready and willing to perform his part of the contract but the defendant-respondent was resiling from the same. Hence, the present suit. The defendant-respondent contested the suit and filed his written statement raising preliminary objections of suppression of material facts, the alleged agreement to sell dated 27.02.2013 being a fabricated document, no cause of action and no locus standi etc. On merits it was denied that the defendant-respondent ever proposed to sell the suit land to the plaintiff-appellant and that the alleged agreement was forged and fabricated. It was contended that the plaintiff-appellant was doing the business of commission agent and had prepared a forged and fabricated agreement to sell in connivance with the marginal witnesses who are closely related to him. It was stated that the defendant-respondent never received a single penny from the plaintiff-appellant as alleged in the agreement to sell and that the plaintiff-appellant wanted to grab the property of the defendant-respondent and that the defendant-respondent never entered into any agreement to sell with the plaintiff-appellant so there was no occasion for him to come present in the office of the Sub Registrar or receiving earnest money of Rs.12,00,000/-. The plaintiff-appellant filed a replication controverting the allegations made in the written statement and reiterating those made in the plaint.

3. From the pleading of the parties the following issues were framed by the Trial Court :

1. Whether defendant executed agreement to sell dated 27.02.2013 in favour of plaintiff ? OPP
2. Whether plaintiff was ready and willing and is still ready and willing to perform his part of contract ? OPP
3. Whether plaintiff is entitled for possession of suit land by way of specific performance of agreement to sell dated 27.02.2013, as prayed for ? OPP
4. Whether the plaintiff is entitled for consequential relief of permanent injunction, as prayed for ? OPP

4A. Whether the plaintiff is entitled for the alternative relief of recovery of Rs.24 lakhs along with interest as pleaded for ? OPP

5. Whether the agreement to sell dated 27.02.2013 is a forged and fabricated document ? OPD
6. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
7. Whether the plaintiffs have got no locus-standi and cause of action to file the present suit ? OPD
8. Whether the plaintiff has not come to the court with clean hands and has concealed the material facts from the court ? OPD

9. Whether the suit of the plaintiff is not properly valued for the purposes of court fee and jurisdiction ? OPD
10. Relief.

4. Vide judgment and decree dated 03.10.2018 the Trial Court dismissed the suit. It was held that the plaintiff-appellant had failed to prove the execution of the agreement to sell dated 27.02.2013 by the defendant-respondent in his favour. On Issue No.5 it was held that the defendant-respondent had failed to prove that the agreement to sell was a forged and fabricated document. The plaintiff-appellant filed an appeal against the judgement and decree passed by the Trial Court. The defendant-respondent also filed cross-objections challenging the findings given on Issue No.5. Vide judgment and decree dated 07.02.2024 the appeal of the plaintiff-appellant was dismissed by the First Appellate Court. The cross-objections filed by the defendant-respondent were accepted. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant has contended that the Courts below have erred in dismissing his suit for specific performance. According to counsel, the agreement to sell dated 27.02.2013 was fully proved as also the payment of earnest money by the plaintiff-appellant. It is urged that the plaintiff-appellant was always ready and willing to perform

his part of the contract and therefore the Courts ought to have granted him the relief of specific performance.

6. Heard learned counsel for the plaintiff-appellant and perused the paper book.

7. As per the plaintiff-appellant the defendant-respondent agreed to sell the suit land to him vide agreement to sell dated 27.02.2013 and also received Rs.12,00,000/- as earnest money. However, the plaintiff-appellant did not prove the source from where he generated a huge cash amount of Rs.12,00,000/- allegedly paid to the defendant-respondent as earnest money. Though the witness of the plaintiff-appellant deposed that he had withdrawn the amount from the bank, however, no record pertaining to the said withdrawal was produced. The Trial Court found that the agreement to sell was surrounded by suspicious circumstances. The deed writer who allegedly scribed the agreement to sell admitted that though he maintained a register, there was no entry made regarding scribing of the agreement to sell dated 27.02.2013. The original agreement to sell dated 27.02.2013 also did not bear any signature/seal of the scribe which could show that he scribed the said agreement to sell. The agreement to sell dated 27.02.2013 also did not bear any signature/seal of the stamp vendor. Still further, the plaintiff-appellant admitted in his cross-examination that the suit land was under encumbrance and he checked the jamabandi at the time of execution of agreement to sell dated 27.02.2013 but surprisingly there is no reference in

the agreement to sell that the suit land was under encumbrance. The plaintiff-appellant had to prove his case by standing on his own legs and he cannot take advantage of any lacunae in the evidence of the defendant-respondent to establish his case. No other point was argued.

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

07.06.2024 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No