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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-6237-2018 (O&M)

Date of Decision: July 16, 2024

SURAJ PARKASH

.....Appellant

Versus

YOGENDER SINGH SINCE DECEASED THRU LRSRespondent**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Kanwal Goyal, Advocate,
Ms. Sheena Dahiya, Advocate and
Mr. Prince, Advocate for the appellant.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 30.09.2015 and 12.03.2018 passed by the Courts below whereby, suit for possession by way of specific performance filed at the instance of respondent-plaintiff stands dismissed.

2. Briefly stating based on an agreement to sell dated 16.10.2009 regarding 8 kanals of land situated within revenue estate of Hathin, District Palwal against total sale consideration of Rs.15 lakhs out of which Rs.10 lakhs was initially paid as earnest money with 30.11.2009 being the target date, the appellant-plaintiff filed a suit for possession by way of specific performance. It was further pleaded that respondent-defendant received another sum of Rs.3 lakhs against an endorsement at the back of the first page of the agreement to sell in question thereby extending the period for performance of agreement till 30.11.2010. It was also pleaded that a sum of Rs.2 lakhs was pending as loan against the property in question and the sale deed was to be

executed in favour of appellant-plaintiff on discharging of liability by respondent-defendant. The respondent-defendant having failed to pay the loan, was not showing his willingness to execute the sale deed in favour of appellant-plaintiff which compelled him to file the suit in hand.

3. In response, the respondent-defendant appeared and filed written statement while denying the execution of the agreement dated 16.10.2009, besides, even denying the receipt of any payment therein or even the extension as well. Even the signatures over the alleged agreement were also denied.

4. Based on the pleadings, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to decree for specific performance of contract in respect of the suit land in terms of agreement of sell dated 16.10.2009 on payment of balance consideration of Rs. 2,00,000/- OPP
2. Whether the suit is not maintainable? OPD
3. Whether the plaintiff has no locus standi and cause of action to file this suit? OPD
4. Whether the plaintiff is estopped by his own act, conduct and acquiescence from filing the present suit? OPD
5. Whether the plaintiff has concealed the material facts from the Court? OPD”

5. The trial court vide judgment and decree dated 30.09.2015 dismissed the suit filed at the instance of appellant-plaintiff while holding that the due execution of agreement to sell dated 16.10.2019 was not proved on records. Aggrieved thereof, the appellant-plaintiff filed the first appeal, however, the same came to be dismissed vide judgment and decree dated 12.03.2018 by the Court of learned Additional District Judge, Palwal.

6. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellant submits that both the Courts went wrong in discarding the execution of the agreement dated 16.10.2009, which was duly proved on record as Exhibit P1 in terms of the deposition made by the appellant-plaintiff himself as PW1 besides one of the marginal witnesses namely, PW2-Vijay Kumar . He further submits that the Courts below even went wrong while disbelieving the payment of earnest money, besides another sum of Rs.3 lakhs received by the respondent-defendant on 30.11.2009 against due receipts, Exhibits P2 and P3, which were even signed by the appellant-plaintiff as well as the marginal witnesses.

Learned counsel also points out that the handwriting expert produced by the respondent-defendant while appearing as DW-2 in his cross-examination deposed that the agreement dated 16.10.2009 contained the signatures of respondent-defendant and in such circumstances, the Courts below went wrong while disbelieving the case set up by the appellant-plaintiff as regards the valid execution of agreement in question and thus, claims that the suit was required to be decreed in his favour. He further points out that the approach adopted by the Courts below was even perverse while declining the relief for specific performance having termed the agreement in question, being surrounded by suspicious circumstance, as the courts were not dealing with the case of will. No other argument has been addressed.

7. I have heard learned counsel for the appellant and gone

through the paper-book. I am unable to find substance in the submissions made on behalf of the appellant.

8. A perusal of the record shows that agreement dated 16.10.2009 has been disbelieved and discarded by the Courts below for the following reasons :-

(i) Although, the respondent-defendant completely denied the execution of agreement to sell dated 16.10.2009, yet, none of the independent person allegedly associated with the same was ever produced by the appellant-plaintiff as witness. Neither the scribe to the agreement in question, namely Sh. Naresh Kumar Sharma, Advocate, nor even the stamp vendor, namely Jaidev were ever produced as witnesses to prove the genuineness of the transaction in hand.

(ii) Though, the agreement dated 16.10.2009 was allegedly executed in the presence of two marginal witnesses, namely, Vijay Kumar and Gopal Prasad, in the circumstances wherein, it was established on record that Vijay Kumar happened to be closely associated with the appellant-plaintiff being his employer, the non-examination of other independent witness namely, Gopal Prasad was suspicious and remained unexplained.

(iii) Moreover, a perusal of agreement in question (Exhibit-P1) and the receipt (Exhibit P2) shows that the names of vendor and vendee besides, one of the marginal witness, namely Vijay Kumar were typed, however, the name of the other witness, namely Gopal Prasad was handwritten, which enables to draw an

inference that he was not present at the time of execution of the alleged agreement or the receipts. Even the date of execution on the agreement (Ex.P-1) and receipt (Ex.P-2) was handwritten.

(iv). It was proved on record that one of the marginal witnesses, namely Vijay Kumar, who appeared as PW2 in order to prove the execution of agreement in hand was close associate of the appellant-plaintiff who even remained as marginal witness to various other transactions of Vijay Kumar. Those documents in the shape of sale deeds/executed, in favour of Vijay Kumar reflecting the appellant-plaintiff as witness were even proved on record as exhibit D1 to D4.

(v). Though, under the alleged agreement, a sum of Rs.13 lakhs was paid by the appellant-plaintiff to the respondent-defendant, however, he did not lead any evidence to establish the source thereof. In his deposition, the appellant-plaintiff while appearing as DW-1 stated that the said sum was borrowed by him from five of his relatives, i.e. his father, namely, Gyasi Ram, his younger brother Lalit Kumar, his brother-in-law, namely, Mahavir Singh, Kamal Singh and Subhash Singh and yet, none of the aforesaid persons were ever produced as witness to prove the same whereas, the income tax return of the appellant-defendant never reflected his financial capacity worth payment of earnest money.

(vi). Moreover, once the agreement in question was allegedly executed on 16.10.2009 against payment of Rs.10 lakhs as earnest money with 30.11.2009 being the target date i.e. within a

span of less than two months, the extension granted on 30.11.2009 against payment of Rs.3 lakhs till 30.11.2010 regarding performance of the agreement in question remained totally unexplained.

9. Furthermore, though undoubtedly the suit was filed at the instance of appellant-plaintiff within the statutory period of limitation, yet the same was apparently hit by delay and laches as the alleged agreement was executed on 16.10.2009 against payment of Rs.10 lakhs with one extension granted till 30.11.2010, yet the suit was filed on 04.04.2012 i.e. after more than almost 1^{1/2} year of the substantial payment of sale consideration of Rs.13 lakhs out of total of Rs.15 lakhs.

10. Though, the same set of norms and principles of discarding a Will being surrounded by suspicious circumstance with the burden upon the beneficiary to dispel the same cannot be made applicable in case of agreement to sell, however, grant of relief of specific performance in terms thereof being discretionary; certain circumstances surrounding the execution of agreement as well as its performance essentially needs to be looked into. Further, in the humble opinion of this Court, the First Appellate Court upon detailed discussion rightly found that even the report Ex.PW3/B, proved by the handwriting expert Dr. Satya Dev (PW3) being neither exhaustive nor illustrative was not to be relied upon for the purpose of proof towards the signatures of respondent-defendant upon the agreement Ex.P1, receipt Ex.P2 or the extension Ex.P-3.

11. Accordingly, in view of the detailed discussion made herein-
above, finding no illegality or perversity with the concurrent findings of
fact recorded by the Courts below declining the discretionary relief of
specific performance to the appellant-plaintiff in the facts and
circumstances of the case in hand especially, there being no
overlooking of the material available on record; re-appreciation of
pleadings and evidence being impermissible, the present appeal being
devoid of merits is thus, dismissed.
12. Pending application(s), if any, shall also stand disposed of.

16.07.2024

Tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>