

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1396-2023 (O&M)
Date of Decision:-24.01.2024

MAHENDER

... Appellant

Versus

KAMALJEET

... Respondent

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

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Present:- Mr. Abhimanyu Singh, Advocate
for the appellant.

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RITU TAGORE, J.

1. Appellant – defendant has not been able to defend the suit for possession by way of specific performance of agreement to sell dated 11.02.2014, preferred by respondent- plaintiff and was also not successful before learned lower Appellate Court.
2. Respondent-plaintiff filed suit for possession with averments that an agreement to sell dated 11.2.2014 of land measuring 7 Kanals 13 Marlas, as detailed in the plaint, against total sale consideration of ₹35 lakh, was executed in his favor by defendant to meet his financial needs and requirements. A sum of ₹28 lakhs was paid as earnest money by plaintiff to defendant in the presence of witnesses and agreement to sell and receipt were executed. Target date of execution of the sale deed was fixed as 10.12.2014. The plaintiff alongwith witnesses, balance sale consideration and registration

charges etc. went to the office of Sub-Registrar, Jhajjar but defendant did not come to execute the sale deed. The plaintiff marked his presence before the Sub-Registrar, Jhajjar. The plaintiff requested the defendant several times to get the sale deed executed but he did not pay any heed. A legal notice dated 19.03.2015 was also sent to the defendant for execution of the agreement to sell but to no avail.

3. Appellant- defendant contested the suit of plaintiff. He denied the execution of agreement to sell and receiving ₹28 lakhs as earnest money under the agreement from the plaintiff. He stated that his brother-in-law colluded with plaintiff and under the influence of liquor, the agreement was got executed on the pretext of becoming a witness to a pronote. He never agreed to sell his land, his only source of income. Agreement to sell dated 11.2.2014 is outcome of fraud, misrepresentation and under influence. On above material assertions challenged the maintainability of suit against him.

4. Since parties were at variance, learned lower Court framed following issues:-

1. Whether the agreement to sell dated 11th February, 2014 was made between the plaintiff and defendant and the time of execution of registration of sale deed was 10.12.2014? OPP
2. Whether the plaintiff was always ready and willing to perform his part of agreement throughout the contract? OPP
3. Whether the plaintiff is entitled for a decree for specific performance as prayed for? OPP
4. Whether the present suit in the present form is not maintainable?
OPD

5. Whether the plaintiff has no *locus-standi* to file the present suit?
OPD
6. Whether the plaintiff has not come with clean hands before the Court? OPD
7. Whether fraud has been played by brother-in-law of petitioner along with the plaintiff and no agreement dated 11.02.2014 has been executed? OPD
8. Relief.

5. Plaintiff in order to prove execution of agreement to sell (Ex.P-1), appeared as PW-1 and substantiated the facts of plaint in entirety. Parkash Chand (PW2) the deed writer, proved due execution of the agreement to sell between the parties and payment of ₹28 lakhs as earnest money by the plaintiff to defendant and further attestation of agreement to sell by the marginal witnesses. Hanuman (PW-3) Rakesh (PW-4) attesting witnesses to the agreement to sell supported the version of plaintiff. Plaintiff also tendered, application to mark his presence before Sub Registrar (Ex. P2), his affidavit (Ex P3), Jamabandi and mutation (Ex.P4 & Ex.P5) and legal notice (Ex.P6); whereas defendant appeared as DW1 and examined his brother- in-law as DW2 to support his version and led no other evidence.

6. Learned lower court while returning findings on issues No.1 to 3, held agreement to sell dated 11.02.2014 to be genuine and for valid consideration. Consequently, plaintiff was held entitled for specific performance of the agreement and issues were decided in favour of the plaintiff and against the defendant. Issues No.4 to 7 were not pressed by the defendants. Consequently, the suit was decreed and the defendant was

directed to execute sale deed within a period of 2 months from the date of passing of judgment and decree.

7. First appeal filed by the defendant was dismissed vide judgment and decree dated 11.10.2022 passed by Additional District Judge, Jhajjar, affirming the findings of the learned Court below, leading to filing of present regular second appeal.

8. Learned counsel for the appellant/defendant argued that both the Courts below overlooked the material fact that agreement to sell 11.02.2014 (Ex. P1) was out come of fraud, misrepresentation and exercise of undue influence on him, with mala fide intention to grab the property of the defendant. Brother-in-law of the appellant, with whom the plaintiff-respondent had business relations being partner in a liquor contract, played a role in committing the fraud.

9. It is further stated that respondent-plaintiff failed to prove the source of income of ₹28 lakhs, with him. No bank statement or other evidence was produced by the respondent-plaintiff to establish the availability of the cash with him. Further, recital of payment of ₹28 lakhs, more than 80% of the alleged sale amount, in cash, suggests commission of fraud with appellant, who has pointedly denied the execution of agreement to sell and receiving of any payment thereunder. The learned counsel submitted that mere oral account of the plaintiff and his witnesses was not sufficient to rely upon as they were admittedly known to the plaintiff and were not local persons.

10. The learned counsel for the appellant further submitted that the Courts below also failed to notice that respondent-plaintiff had failed to

prove the reasons for the defendant to sell his land. The suit land in fact is the only source of income of the defendant for his livelihood. The defendant and his family members are fully dependent on the income derived from the land and defendant has specifically deposed in this regard. It is further submitted that Courts below also failed to note that the respondent-plaintiff has failed to establish by bringing any documentary evidence that he was ready and willing to get the sale deed executed. Learned counsel stated that findings of learned Courts below are arbitrary, perverse and should to be set aside and suit of plaintiff -respondent be dismissed.

11. I have heard learned counsel for the appellant and have perused the record, and is of the view that there is no force and merit in the submissions made by the learned counsel for the reasons delineated below:-

i. Perusal of the oral evidence of the plaintiff and his witnesses leaves no manner of doubt that defendant had executed the agreement to sell (Ex.P1) with full knowledge and understanding and agreed to sell his land measuring 7 kanal 13 marla, detailed in the agreement to sell (Ex.P-1) for total consideration of ₹35 lakhs and under the agreement also received ₹28 lakhs as earnest money from the plaintiff, and also made additional endorsement on margin of Ex.P-1 in this regard. The oral account of the witnesses have received support from the documentary evidence i.e. agreement to sell. The defendant failed to dilute the testimonial account of the witnesses by bringing any admission in his favour or any circumstance to disbelieve them. He also failed to impeach the statement of attesting witnesses on account of any enmity with him or they being beneficiary under the

agreement to sell, as a probable ground or reason to doubt their version.

ii. PW-2 is the scribe. He is an independent witness. No suggestion was given to him of his any affiliation with the plaintiff or attesting witnesses. He categorically deposed about the execution of agreement to sell Ex.P-1 and receiving ₹28 lakhs by the defendant from the plaintiff as earnest money. He specifically deposed that he made understand the contents of agreement to sell to the parties and their witnesses and after hearing and understanding the agreement to sell as correct, the defendant signed and thumb mark in his presence and other witnesses. The aforesaid wholesome evidence has substantiated the case of the plaintiff.

iii. On the contrary, the defendant failed to bring on record any evidence or circumstance to assume and presume that agreement to sell Ex.P-1 is an outcome of fraud or misrepresentation. Firstly, law is settled that mere bald or self serving statement of defendant is not sufficient to rebut the reliable and cogent evidence led by the plaintiff proving due execution of agreement to sell and factum of payment of earnest money thereunder. In present case, quivering stand of defendant to assail agreement to sell Ex.P-1 has completely belied his version, reflecting upon his endeavour not to honor the obligations of agreement to sell.

iv. In the same breath, defendant is denying the execution of agreement to sell (Ex.P-1) and in next breath stated that it is outcome of fraud, misrepresentation and exercise of undue influence upon him

by his brother -in -law, who was having business relations with the plaintiff and was to pay ₹5 lakhs to plaintiff, on the pretext to be a witness on a pronote and further taking advantage of his inebriate condition, got the agreement to sell executed. Law is settled that whosoever takes the plea of fraud, misrepresentation of facts and exercise of undue influence, must prove the same beyond reasonable doubts like a criminal charge. However, led no cogent evidence in this regard.

v. Defendant led no evidence to show that on due date of execution of agreement to sell or any date prior thereto, his brother in law (DW2) was with him. No suggestion was given to the witnesses of plaintiff that on the date of execution of agreement to sell, his brother-in-law was with him or with the plaintiff. Chand (DW-2) the brother-in-law of defendant did not depose that he was accompanying the defendant on the date of execution of agreement to sell. Further, appearance of brother-in-law of the defendant as DW-2 hits hard on the very plea of undue influence taken by the defendant.

vi. The plea of the defendant that his brother-in-law was doing business of liquor with plaintiff and was to pay ₹5 lakhs to plaintiff and on that account, he was asked to become a witness on a pronote, is not at all proved on record. The defendant and Chand-DW-2, both have admitted that they have not placed any record regarding the said business deals. Further, the plea of execution of pronote is also not supported by any documentary evidence. Both, defendant and his witness have admitted that they made no complaint to the Police

regarding the alleged execution of agreement to sell by exercising undue influence or committing the fraud as alleged.

vii. Except the bald statement of defendant (DW1), there is no evidence to substantiate the plea that agreement to sell (Ex P1) was got executed, when he was in heavy drunkard state. So much so no suggestion was given to PW-2, the scribe that defendant was under the influence of liquor, when agreement to sell was executed. The defendant in his statement has admitted that he has gone to Tehsil office to execute the agreement to sell. This admission belies his stand that he was not aware about execution of the agreement to sell as he was in an intoxicated state.

viii. Since defendant has denied the execution of agreement to sell, it was not obligatory upon the plaintiff to establish source or arrangement of income with him on the due date of execution of agreement to sell or on the date of execution of sale deed. Furthermore, no such plea has been taken by the defendant nor any suggestion has been given to the plaintiff that he had no financial competency to make the payment. Had any such plea been taken to challenge the position of the plaintiff, the plaintiff was required to establish. Appellant is not permitted to take plea for the first time in the second appeal, which has not been taken in his pleadings.

ix. Ex.P-1 contains a recital that land has a charge for a loan from PARDB, Jhajjar and has no other encumbrance upon it. Plaintiff (PW-1) deposed that defendant was in need of money on account of marriage of his children and he was to marry his two children in the

year agreement to sell was executed. His aforesaid statement has remained unchallenged. The plaintiff proved the need for the defendant to sell the land. It is common that an agriculturist often sells his land to arrange for finances in case of need. Sale of land is generally taken as a source of income for most of the agriculturist. In the given circumstances, sale made by the defendant cannot be taken as unnatural. DW-2 the brother-in-law of the defendant has not deposed that the defendant was not in need to sell the land.

x. The unrebutted statement of the plaintiff (PW-1) coupled with the documentary evidence, such as application dated 10.12.2014 (P-2) given to sub-Registrar, Jhajjar alongwith his affidavit of even date (Ex P-3) has substantiated the plea of plaintiff that he was ready and willing to execute the sale deed in pursuance to agreement to sell (Ex P1). Ex.P-6 the legal notice also exhibit the readiness and willingness on the part of the plaintiff to execute the agreement to sell. Contrary, plea of denial of execution of agreement to sell suggests that defendant was not ready and willing to honor the agreement and perform his part of obligation.

11. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned courts below within the realm of perversity.

12. For the reasons aforementioned, I do not find any illegality or perversity, in the concurrent findings, which are based on application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law.

13. Resultantly, there is no merit in the appeal and is, hereby, dismissed.
14. Pending miscellaneous application(s), if any, are also disposed of accordingly.

24.01.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No