

(2012) 03 P&H CK 0139

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1424 of 2012

Raj Kumar @ Ram Kumar

APPELLANT

Vs

Surinder Kumar Sood and
Another

RESPONDENT

Date of Decision: March 27, 2012

Citation: (2012) 168 PLR 716

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Tarunvir Vashist, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Defendant Raj Kumar @ Ram Kumar having been unsuccessful in both the courts below has approached this Court by way of instant regular second appeal. Respondents-Plaintiffs Surinder Kumar Sood and his wife Shashi Bala Sood filed suit against defendant-appellant claiming specific performance of agreement to sell.

2. The plaintiffs alleged that the defendant agreed to sell the suit property to the plaintiffs for Rs. 7,00,000/- (Rupees seven lacs) and received Rs. 4,80,000/- (Rupees four lacs eighty thousand) as earnest money i.e. Rs. 3,80,500/- (Rupees three lacs eighty thousand five hundred) vide cheque dated 01.02.2003 and Rs. 99,500/- (Rupees ninety nine thousand five hundred) in cash and executed agreement dated 01.02.2003. Sale deed was agreed to be executed up to 05.08.2004. Date for execution of sale deed was extended to 14.10.2004. Accordingly the plaintiffs remained present in the office of Sub-Registrar on 14.10.2004 with requisite amount to get the sale deed executed in terms of the agreement but the defendant did not turn up and committed breach of the agreement although plaintiffs have always been ready and willing to perform their part of the contract. The plaintiffs also sent legal notice dated 18.11.2004 to the defendant who received it on 19.11.2004. Still he failed to execute the sale deed, necessitating the filing of the suit.

3. The defendant in his written statement broadly controverted the plaint averments. The defendant alleged that he never agreed to sell the suit shop to the plaintiffs. On the contrary, according to defendant, he agreed to mortgage the disputed shop with plaintiffs for Rs. 4,80,000/- (Rupees four lacs eighty thousand) as mortgage money out of which the defendant received Rs. 3,80,500/- (Rupees three lacs eighty thousand five hundred) by way of cheque whereas the balance mortgage amount of Rs. 99,500/- (Rupees ninety nine thousand five hundred) was to be received after few days. However, after few days, the defendant learnt that the plaintiffs had got executed impugned agreement to sell in connivance with witnesses and scribe, in place of mortgage deed. Various other pleas were also raised.

4. Learned Additional Civil Judge (Senior Division), Rajpura vide judgment and decree dated 01.10.2010 decreed the plaintiffs' suit. First appeal preferred by defendant stands dismissed by learned Additional District Judge, Patiala vide judgment and decree dated 27.01.2012. Feeling aggrieved, defendant has filed this second appeal.

5. I have heard Learned Counsel for the appellant and perused the case file.

6. In order to prove his case, the plaintiff No. 1 himself appeared in the witness box and examined scribe as well as one attesting witness of the impugned agreement. He also examined witnesses regarding writing of extension of the date for execution of the sale deed. Said cogent evidence led by the plaintiffs has not been rebutted by the defendant. Self-serving bald and oral statement of the defendant is not sufficient to rebut the same. Virender Kumar DW-2 admitted that he was not present when the impugned agreement was scribed and, therefore, he was having no knowledge about it. Consequently, his statement has no evidentiary value to substantiate the defendant's version that the agreement was got executed in place of mortgage deed. Bidosh Shashi DW-3 did not step into witness box for cross-examination and, therefore, his examination-in-chief cannot be taken in to consideration. Statement of DW-4-Hardeep Singh is not sufficient to prove the alleged fraud, which is required to be proved beyond reasonable doubt just like a criminal charge. On the other hand, not only the original agreement dated 01.02.2003 was executed but also writing was executed for extension of date for execution of the sale deed. There is no plea regarding the said writing taken by the defendant. Such writing further corroborates the version of the plaintiffs that defendant had agreed to sell the suit shop to the plaintiffs. The impugned agreement also recites that defendant received Rs. 4,80,000/- (Rupees four lacs eighty thousand) as earnest money i.e. Rs. 3,80,500/- (Rupees three lacs eighty thousand five hundred) by way of cheque and the balance amount of Rs. 99,500/- (Rupees ninety nine thousand five hundred) in cash. Plaintiffs' witnesses have also stated about the said payment.

7. In addition to the aforesaid, the impugned agreement was also signed by defendant's brother Krishan Kumar as witness. Consequently, Krishan Kumar was

the most material witness to have been examined by the defendant to substantiate his version. However, the defendant failed to examine his own brother Krishan Kumar in support of his version, giving rise to very strong adverse presumption against the defendant.

8. In view of the aforesaid evidence led by both the parties, there is no escape from the conclusion that the concurrent finding recorded by the courts below to decree the suit of the plaintiffs does not suffer from any infirmity, much less perversity or illegality nor the said finding is based on misreading or misappreciation of the evidence. On the contrary, the said finding is the only reasonable finding that can be arrived at on the basis of the evidence on record. Consequently the said finding does not warrant any interference

9. Counsel for the appellant contended that readiness and willingness of the plaintiffs to perform their part of the contract is not proved because their affidavit dated 14.10.2004 was not affirmed before the sub-Registrar but was affirmed before Notary/Oath Commissioner. The contention cannot be accepted. Affirmation of the said affidavit by the plaintiffs proves their presence in the office of Sub-Registrar on the extended date fixed for execution of the sale deed. Moreover, the plaintiffs have also produced evidence of their bank accounts depicting their financial status to prove their readiness and willingness to perform their part of the contract. The plaintiffs also immediately sent notice dated 18.11.2004 to the defendant for execution of the sale deed in terms of the agreement, but the defendant failed to do so. The plaintiffs then promptly filed the suit on 22.01.2005. All these steps taken by the plaintiffs are more than sufficient to prove their readiness and willingness to perform their part of the contract. It would also not be out of place to notice here that the defendant in the written statement did not even plead that he was ever ready or willing to perform his part of the contract nor specifically pleaded that plaintiffs were not ready and willing to perform their part of the contract. Thus examined from any angle, the aforesaid contention raised by counsel for the appellant is devoid of any substance. For the reasons aforesaid, I find no merit in this second appeal. No question of law, much less substantial question of law, arises for adjudication in this second appeal. Accordingly, the appeal is dismissed in limine.