

(2013) 07 P&H CK 0870

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2953 of 2013 O and M

Beant Singh and Another

APPELLANT

Vs

Nachhatar Singh

RESPONDENT

Date of Decision: July 30, 2013

Hon'ble Judges: Vijender Singh Malik, J

Bench: Single Bench

Advocate: Baldev Raj Mahajan, for the Appellant;

Final Decision: Dismissed

Judgement

Vijender Singh Malik, J.

This is a regular second appeal brought by the defendants against the judgment and decree dated 7.10.2011 passed by learned Civil Judge [Junior Division], Ajnala and judgment and decree dated 6.3.2013 passed by learned District Judge, Amritsar. Nachhatar Singh, the plaintiff had brought a suit for specific performance of agreement of sale dated 14.7.2005 in respect of land measuring 13 kanals 6 marlas being 5/6 share of land measuring 16 kanals situated in Village Khiala Khurd, Tehsil Ajnala, District Amritsar properly detailed in the headnote of the plaint.

2. The case of the plaintiff has been that on 14.7.2005, the defendants agreed to sell the aforesaid land for a consideration of Rs. 14,00,656/-. The defendants received a sum of Rs. 4,50,000/- as earnest money out of which a sum of Rs. 2,00,000/- was paid in cash and Rs. 2,50,000/- was paid by way of cheque. The agreement was reduced to writing in which usual terms as to performance thereof were incorporated. The plaintiff claimed himself to be ready and willing to perform his part of the contract and has also claimed that the defendants were not ready to do so and hence, the suit.

3. The defendants have resisted the suit and claimed that the agreement is a result of fraud, misrepresentation, forgery and concealment of real facts. The plaintiff is also claimed to be estopped from filing the present suit by his act and conduct. It is

claimed on merits that the defendants are rustic villagers and they approached the plaintiff for financial assistance. They claimed that the plaintiff got thumb impression of defendants on blank papers which the plaintiff converted into alleged agreement of sale. They denied execution of any agreement of sale on 14.7.2005 in favour of the plaintiff.

4. On the pleadings of the parties, following issues were framed by learned trial court.

1. Whether the defendants had entered into an agreement to sell dated 14.7.2005 alongwith the plaintiff? OPP

2. Whether the plaintiff is still ready and willing to perform his part of contract? OPP

3. Whether plaintiff is entitled to specific performance of the agreement to sell dated 14.7.2005? OPP

4. Whether the plaintiff in the alternative entitled to recovery of Rs. 9,00,000/- alongwith interest? OPP

5. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

6. Whether the suit is not maintainable? OPD

7. Whether the agreement to sell in question is result of fraud, misrepresentation, forgery? OPD

8. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD

9. Whether the plaintiff has got no cause of action to file the present suit? OPD

10. Whether the suit is time barred? OPD

11. Relief.

5. Taking evidence of the parties, learned trial court took up for discussion issues No. 1 to 5 together and held the plaintiff to be entitled to the relief of specific performance of the agreement of sale. Deciding the other issues suitably, the suit has been decreed for specific performance of the agreement of sale dated 14.7.2005 on payment of the remaining sale consideration.

6. As already said, the appeal preferred by the defendants-appellants failed before learned District Judge, Amritsar vide judgment and decree dated 6.3.2013.

7. Learned counsel for the appellants has contended that it was a case of loan and the loan was taken in a sum of Rs. 2,50,000/- only. According to him, the plaintiff obtained signatures and thumb impression of the defendants on blank stamp papers which he converted later on into the alleged agreement of sale. According to

him, both the witnesses on the documents are inimical to the defendants. According to him, father of Inderjit Singh had murdered brother of the defendants. He has also submitted that even Kashmir Singh is the person from whom the amount of Rs. 2,50,000/- was taken by way of a cheque which was given to the defendants as loan.

8. If father of Inderjit Singh [PW-3] had murdered the brother of the defendants, normally, he will not be taken as an attesting witness of an agreement of sale. There is no such blemish attached to Kashmir Singh, the other witness of the agreement, who was examined as PW-2.

9. It is not possible that if defendants would go to the plaintiff for financial assistance, he will provide them with the same after himself taking loan by way of cheque from Kashmir Singh. This stand of the defendants itself disproves their case. In these circumstances, I find no reason to interfere with the findings of learned courts below that the defendants had executed an agreement of sale in favour of the plaintiff on 14.7.2005. With the other findings of learned trial court and the first appellate court remaining undisturbed, I find no merit in the appeal. Moreover, no questions of law much less substantial questions of law appear to be arising in this appeal. Consequently, the appeal has no merit and is dismissed in limine.