

(2012) 09 P&H CK 0368

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3508 of 2011

Som Singh @ Soma Singh

APPELLANT

Vs

Harbans Singh

RESPONDENT

Date of Decision: Sept. 20, 2012

Hon'ble Judges: Jaswant Singh, J

Bench: Single Bench

Advocate: Naresh Kaushal, for the Appellant; A.S. Syan, for the Respondent

Final Decision: Dismissed

Judgement

Jaswant Singh, J.

Defendant/appellant has filed the instant second appeal against the concurrent findings recorded by both the Courts below whereby suit for specific performance filed by the plaintiff/respondent was decreed by the trial court and the appeal filed by the defendant/appellant was dismissed by the appellate court while affirming the findings recorded by the learned trial court. Facts necessary for the decision of the present appeal are that plaintiff/respondent filed a suit for specific performance alleging therein that the defendant/appellant entered into an agreement to sell dated 5.12.2001 for the sale of house constructed on 150 square yards, in the presence of Karam Singh and Savinder Singh, witnesses as well as parents of the defendant, for a total sale consideration of Rs. 1.50 lacs out of which defendant received a sum of Rs. 1 lac as earnest money in the presence of aforesaid persons. The said agreement to sell was allegedly signed by Karam Singh, Savinder Singh witnesses and Devi Dayal father of the defendant and thumb marked by mother of the defendant. The target date for execution of the sale deed was fixed as 5.12.2003, however, on 4.12.2003, defendant extended the date of sale deed from 5.12.2003 to 5.12.2004 by scribing a writing on the back of said agreement which was signed by defendant/his father and thumb marked by the mother of the defendant. It was alleged that the plaintiff was always ready and willing to perform his part of the agreement, but the defendant failed to perform his part of the agreement. Since

5.12.2004 was a Sunday, plaintiff visited the office of Sub Registrar on 6.12.2004 alongwith balance sale consideration but defendant did not turn up, upon which plaintiff got his presence marked with the office of Sub Registrar, Patiala by way of an affidavit. It was further alleged that the plaintiff was still ready and willing to perform his part of the agreement and hence the suit.

2. Upon notice, defendant contested the suit by filing written statement taking certain preliminary objections. On merits it was alleged that the alleged agreement to sell was a forged and fabricated document. The plaintiff owned a Combine and defendant worked as a Foreman on the said combine from 1999 to November 2004 and on the pretext of giving him employment, the plaintiff had obtained the signatures of the defendant/his father and thumb impression of his mother on some blank papers/stamp papers. It was alleged that no agreement, as alleged was ever executed by the defendant nor he was owner of the house which was subject matter of the suit.

3. Plaintiff filed replication.

4. On the pleadings of the parties, issues were framed. Both sides led evidence in support of their respective pleas. The learned Trial Court after hearing both sides and perusing the material brought on record, decreed the suit vide impugned judgment and decree dated 24.3.2009. Aggrieved against the same, defendant filed an appeal which was dismissed by the learned Appellate Court vide judgment and decree dated 28.7.2010. Hence the present appeal.

5. I heard learned counsel for the parties and gone through the records of the case, summoned during the hearing of the case.

6. It is submitted by the learned counsel for the defendant/appellant that both the courts below have failed to properly appreciate the evidence available on the file and hence both the impugned judgment and decrees are liable to be set aside as the alleged agreement to sell is a result of fraud and mis-representation.

7. After hearing the learned counsel for the parties, I find no merit in the submission made on behalf of the defendant/appellant.

8. From a perusal of the impugned judgments and decrees, it is clear that plaintiff has been able to fully prove due execution of the agreement to sell by deposing on the lines of his pleaded case. The case of plaintiff was further corroborated by the testimony of PW2 Karam Singh, attesting witness of the agreement to sell Ex.P1, who stated that the agreement was executed in his presence and defendant after receiving Rs. 1 lac as earnest money agreed to sell the house in question. As regards readiness and willingness of the plaintiff, the same also stands proved by way of affidavit dated 6.12.2004 (Ex.P4) sworn before the Executive Magistrate, Patiala.

9. In order to prove his case the defendant himself appeared in the witness box as DW1 and reiterated his version given in the written statement. During his deposition

it was admitted by defendant/appellant that he had studied upto 6th standard and used go sign in Punjabi. It may be noticed here that the agreement to sell dated 5.12.2001 (Ex.P1) as well as writing dated 4.12.2003(Ex.P2) vide which the date for execution of the sale deed was extended upto 5.12.2004 are in Gurmukhi script. Further, it is also admitted case of the defendant himself that aforesaid Ex.P1 and P2 bear the signatures of his father and thumb impression of his mother. It is astonishing to note that in order to substantiate his plea that the agreement to sell (Ex.P1) and writing Ex.P2 were result of fraud and misrepresentation, the defendant did not examine his own parents, who were the best witnesses to explain the circumstances under which their signatures/thumb impressions appeared on those documents.

10. During the course of hearing, I have gone through the most material document i.e. original agreement to sell (Ex.P1) to test the veracity of the plea taken by defendant/appellant that the agreement to sell is a result of fraud and misrepresentation as his signatures were obtained on blank papers/stamp papers. A perusal of the aforesaid document shows that defendant/appellant has put his signatures exactly beneath the last lines on page 1 and 2 and at earmarked place at page 3 of the agreement to sell (Ex.P1). From a perusal of the same it can not be said that these signatures were obtained on blank stamp papers.

11. Thus, once the due execution of the agreement to sell/receipt of earnest money and readiness and willingness of the plaintiff/respondent is proved, in my considered opinion, no fault can be found with the discretion exercised by the courts below.

12. Further, wherever a plea is taken by the defendant/vendor that the agreement to sell is a forged and fabricated document and the plea is found to be false, no equity lies in favour of the defendant/vendor. In view of the above, the present second appeal stands dismissed as no question of law much less substantial question of law arises for consideration in this appeal.