



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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RSA-337-2016(O&M)
Date of decision: 21.08.2025

Devinder Kumar Gupta

...Appellant(s)

Vs.

Sardara Singh (since deceased) through LRs

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. N.S. Sodhi, Advocate
for the appellant.

Mr. Amandeep Singh Saini, Advocate
for the respondent.

NIDHI GUPTA, J.

Present second appeal has been filed by the plaintiff against the judgment dated 19.10.2015 passed by learned Additional District Judge, Jalandhar thereby reversing the well-reasoned judgment and decree dated 11.04.2014 of the learned trial Court, whereby suit of the appellant for possession by way of specific performance of Agreement to Sell dated 03.02.2009, had been decreed.

2. Brief facts of the case are that the appellant had filed a suit for possession by way of specific performance of Agreement to Sell dated 03.02.2009 pertaining to the suit house measuring 2 marla 66 square feet as described in the head note of the plaint; **and** suit for permanent injunction



restraining the defendant from creating any kind of charge over the suit property. The facts as pleaded in the plaint are that the defendant was owner in possession of the suit house. The defendant had entered into Agreement to Sell dated 03.02.2009 in respect of the suit house with the plaintiff for total sale consideration of Rs.1,50,000/- of which Rs.1,25,000/- was paid as earnest money. Target date for execution of the Sale Deed was fixed for 02.05.2009. However, on the said date the defendant had expressed his inability to execute the Sale Deed. As such, vide Endorsement dated 04.05.2009, the date for execution of Sale Deed was extended to 01.06.2009. It was the case of the plaintiff that on the said date i.e. 01.06.2009, he remained present in the Office of Sub-Registrar but defendant did not turn up. The plaintiff sent telegram dated 27.07.2009 to the defendant; and thereafter, legal notice dated 17.03.2010 was served upon the defendant but to no avail. Accordingly, present suit was filed on 26.04.2010.

3. Upon notice, the defendant appeared and filed written statement denying the Agreement to Sell and inter alia stating that the said Agreement was a forged and fabricated document prepared by the plaintiff in connivance with tenant of the defendant, to grab the property of the defendant. It was further pleaded that value of the property was about Rs.10 lakh and therefore, it was not believable that the defendant had sold the suit property to the plaintiff for a mere amount of Rs.1,50,000/-. Accordingly, dismissal of the suit was prayed for.



4. Replication was filed by the plaintiff rejecting the averments made in the written statement and reiterating those made in the plaint.

5. On the basis of pleadings of the parties, following issues were framed:-

"1. "Whether Plaintiff is entitled to the relief of Possession by way of specific performance as prayed for? OPP.

1A. Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP.

2. Whether suit of the plaintiff is not maintainable? OPD.

3. Whether Plaintiff has not come to the Court with clean hands? OPD.

4. Whether suit of the plaintiff is barred by limitation? OPD.

5. Whether plaintiff has no locus standi to file the present suit? OPD.

6. Whether no cause of action arose to the plaintiff to file the present suit? OPD.

7. Relief."

6. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, learned trial Court vide judgment and decree dated 11.04.2014 had decreed the suit of the plaintiff *"...with costs, for possession of suit property by way of specific of agreement to sell dated 03.02.2009. The plaintiff is directed to deposit the balance sale consideration in the Court within one month from the receipt of certified copy of Judgment and Decree, failing which the agreement shall stand rescinded as per the provisions of Section 28 of the Specific Relief Act, 1963. The defendant, his agents, attorneys, servants are perpetually restrained from alienating, selling,*



mortgaging, creating any kind of charge over the suit property or any portion of it...". However, the appeal filed by the defendant/respondent was partly allowed by the learned lower Appellate Court vide judgment and decree dated 19.10.2015 in the following manner: -

"Therefore, the alternative relief of recovery of Rs.1,25,000/- along with 6% interest per annum from the date of extending loan till realization is granted. Findings on issue no.1 is altered. Findings on issue no.1-A is therefore reversed against the plaintiff and in favour of the plaintiff to seek recovery of amount. Findings of the lower Court on remaining issues are not altered and upheld. Accordingly, the present appeal is partly accepted by granting the alternative relief of recovery of the amount..."

7. Hence, present second appeal by the plaintiff.
8. It is inter alia submitted by learned counsel for the appellant/plaintiff that in partly allowing the appeal of the respondent, the learned lower Appellate Court has failed to appreciate that the Agreement in question stood duly proved from the evidence of marginal witnesses. Moreover, respondent Sardara Singh is not an illiterate person. He is a retired School Teacher. As such, burden was upon the respondent to prove his assertion that the Agreement to Sell is a forged and fabricated document. However, except for his bald statement, there is no evidence to substantiate the said allegation. Even no Handwriting Expert was examined by the respondent to give a specific opinion that the signature of the defendant borne on the Agreement to Sell is forged. but the respondent failed to



produce any such evidence. As such, suit of the plaintiff could not have been decreed for alternative relief. The findings of the Appellate Courts on all the issue are perverse being against the actual, factual as well as legal position on the record available on the file and deserve to be set aside being based on presumption and assumption without applying judicial mind.

9. It is further submitted that the plea taken with regard to the inadequacy of sale consideration in the agreement to sell but there is nothing on record to suggest that property has been undervalued. Even otherwise on the ground of inadequacy of sale consideration though may be less that collector rate cannot be faulted with and is not ground to evade the specific performance of agreement to sell on this plea. As per Section 10 of Specific Relief Act, which says that in case of specific performance of contract, the discretion of the court would be enforced when there exists no standard of ascertaining the actual damage caused by non-performance of the act agreed to be done and act to be done is such that compensation in money for it is non-performance would not afford adequate relief. Though the plea of fraud has been taken by respondent, but nothing has come out that the respondent ever filed any application/ complaint before respectable or before police official at any time or to any higher official saying that how fraud and deception and forgery has been committed upon him.

10. It is further submitted that in compliance of Section 101 and 102 of Evidence Act, there is Sanjiv Kumar marginal witness of agreement to sell,



who proved the existence of agreement to sell and has deposed that he has seen the property and witnessed the agreement to sell between the parties and his testimony has corroborated the version of appellant. Further, having acquaintance of this witness with the appellant and if he stands witness in other case of plaintiff, it does not prove any mala fide rather shows that plaintiff acted in a prudent manner. There is nothing to show that PW-1 was having some motive for having stood witness or motive was such deep and pervasive. It is accordingly prayed that the present appeal be allowed and the impugned judgment passed by learned lower Appellate Court be set aside; and judgment and decree dated 11.04.2014 in the Civil Suit be upheld and suit of the plaintiff/appellant be decreed in the interest of justice.

11. Per contra, learned counsel for the respondent/defendant submits that in actual fact, the purported Agreement to Sell is a forged and fabricated document. It is submitted that the defendant had borrowed money from the plaintiff which was misused by the plaintiff. Learned counsel accordingly prays for dismissal of the present appeal.

12. No other argument is made on behalf of the parties.

13. I have heard learned counsel and perused the case file in great detail. I find merit in the submissions made on behalf of the appellant.

14. First and foremost, the appellant has been successful in proving the Agreement in question, by examining one marginal witness namely Sanjeev Kumar as PW1 who had witnessed the Agreement to Sell between



the parties. The testimony of PW1 has duly corroborated the version of the plaintiff. It may be pointed out that the learned lower Appellate Court has recorded that PW1 has stood as witness for the plaintiff in other cases for recovery; and therefore, his testimony is not reliable. However, the learned trial Court has categorically recorded in Para 14 of the judgment and decree dated 11.04.2014 that *"...It may be mentioned here that there is nothing on record to suggest that PW-1 had some motive for having stood by the side of the plaintiff and to an extent that the motive was such deep and pervasive that he even acquiesced to be part of a conspiracy to forge the agreement to sell Knowing fully well that if caught, it could have repercussions in the form of criminal case being registered against him..."*. I am in agreement with the aforesaid observations of the learned trial court. Even otherwise, each case has to be decided on the strength of its own merits without advertng to any other litigations where PW1 Sanjeev Kumar may have stood as witness for the plaintiff. Even further, details of such other cases/transactions have not been specified by the learned lower Appellate Court in the impugned judgment dated 19.10.2015. Thus, the said reasoning of the learned first Appellate Court is conjectural and deserves to be rejected. Even no adverse inference can be drawn against the plaintiff in not examining the second marginal witness as admittedly there is no such stringent stipulation of law that mandates examination of both marginal witnesses. Furthermore, the



plaintiff himself has appeared as PW2; and along with PW1 had duly proved execution of the Agreement to Sell.

15. On the other hand, the defendant has miserably failed to substantiate his contention that the Agreement to Sell was a forged and fabricated document. Even no Handwriting Expert was examined by the defendant to show that his signatures on the Agreement in question were forged; or prove the fabrication of the said Agreement in any manner.

16. More importantly, it is imperative to note that the plaintiff has also proved his readiness and willingness by producing his Affidavit of Attendance dated 01.06.2009 (Ex.P4), thereby showing that he was very much present in the Tehsil Office on the target date of 01.06.2009. It is not denied or disputed that of the total sale consideration of Rs.1,50,000/-, the defendant had received Rs.1,25,000/-. Learned lower Appellate Court has also non-suited the plaintiff on account of the fact that the sale consideration was inadequate considering the current value of the suit property. However, the said assumption of the learned lower Appellate Court is again based on surmises as there was nothing on record to suggest that the suit property had been under-valued at the time of execution of Agreement to Sell. Again, as opined by the learned trial Court *"...the agreement to sell cannot be faulted with as inadequacy of sale consideration is no ground to evade performance of the agreement to sell..."*. Clearly, the judgment of the learned lower Appellate Court is based on presumptions and assumptions. Thus, the



fundamental facts established from the record are that: a) Agreement to Sell in question stood proven in accordance with law; and b) the plaintiff had duly proved his readiness and willingness to perform the contract.

17. In this regard, reference needs to be made to judgment of the Hon'ble Supreme Court in '*R. Shama Naik vs. G. Srinivasiah*' 2024 INSC 927, wherein it is held that in order to establish readiness and willingness, the following two specific ingredients are required to be fulfilled: (a) presence in the Tehsil office; and (b) demonstrate availability of funds. In the present case, the plaintiff has proved that he has fulfilled both requirements.

18. Therefore, no ground is made out to deny relief of specific performance to the plaintiff. Hence, present appeal is **allowed**; and judgment and decree dated 19.10.2015 passed by learned lower Appellate Court, is set aside. The judgment and decree dated 11.04.2014 passed by the learned Civil Judge is restored in entirety.

19. Pending application(s) if any also stand(s) disposed of.

21.08.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No