

VIKRAM v. DHARAMBIR , (2022-1)205 PLR 375

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PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anil Kshetarpal.

VIKRAM – Appellant,

versus

DHARAMBIR – Respondent.

RSA-1192-2020 (O&M)

(i) Agreement to Sell - PW-1 Scribe - Plea that he is not a licensed scribe and therefore, his evidence could not be relied upon - PW1 has stated that entry with regard to agreement to sell was made in his note book - Counsel representing the defendant /appellant failed to cross examine the witness on this aspect - The deposition of the witness in the examination in chief has not been challenged in the cross-examination - Hence, there is no substance in the first argument of the learned counsel for the appellant.

(ii) Agreement to Sell - Fraud - Defendant has failed to lead sufficient evidence to prove the fraud - A fraud is required to be proved in absolute terms - The person who alleges fraud is required to discharge the heavy burden which exists in this regard - Both the courts have held that the defendant failed to discharge the aforesaid burden.

Mr. Varun Gupta, for the appellant

Anil Kshetarpal, J. - (28th October, 2021) - The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

2. This Regular Second Appeal has been filed by the defendant assailing the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the suit for specific performance of the agreement to sell. The plaintiff (respondent herein) filed a suit on 20.05.2013 with the assertion that the defendant (appellant herein) after having entered into an agreement to sell on 11.04.2013 with respect to the land measuring 6 kanals and 3 marlas, on receipt of earnest money of Rs.5,00,000/-, out of the total sale consideration of Rs.11,34,000/-, has failed to honour the agreement. The plaintiff, after serving a notice on the defendant to get the sale deed executed, filed the suit. The defendant, while contesting the suit, has pleaded that no agreement to sell was executed by him. He has further asserted that the defendant was in need of the money and therefore, he contacted Sita

Ram, Lambardar who agreed to lend Rs.50,000/- on execution of a mortgage deed and for the same, defendant was taken to the office of Sub-Registrar (Nangal Chaudhary) whereby taking undue advantage of his innocence and illiteracy, his signatures were obtained on various papers. He has further asserted that one copy of the documents scribed was handed over to him. While coming back after the execution of the document, he met Hardhyan, his cousin who disclosed the defendant that he has executed an agreement to sell. The defendant further alleges that a Panchayat was also convened in the village but the plaintiff did not come forward. The defendant further alleges that a complaint was made to the police authorities on 01.05.2013 and 13.05.2013 but no action was taken. The trial court, after appreciating the pleadings, framed the following issues:-

- “1. Whether the defendant executed an agreement to sell dated 11.04.2013 qua the suit property for total consideration of Rs.11,34,000/- in favour of the plaintiff? OPP
2. Whether plaintiff has paid Rs.5,00,000/- out of total sale consideration of Rs.11,34,000/-? OPP.
3. Whether plaintiff is/was ready and willing to perform the part of the contract? OPP.
4. If the above said issues are to be proved, whether applicant is entitled for decree of possession by way of specific performance of the contract on the basis of agreement to sell dated 11.04.2013 against the defendant? OPP
5. Whether agreement to sell is result of fraud and misrepresentation? OPD.
6. Whether plaintiff has not locus standi and cause of action to file and maintain the present suit? OPD.
7. Whether plaintiff has not come to the Court with clean hands and concealed true and material facts from the court? OPD.
8. Whether plaintiff has filed false and frivolous suit? OPD.
9. Relief.”
3. In order to prove his case, the plaintiff examined PW1 Dholu Ram, scribe of the agreement to sell. Rajinder as well as Sita Ram witnesses of the margin were examined as PW2 and PW3 respectively, whereas the plaintiff himself appeared as PW4. The plaintiff also examined Mahender, Clerk, to prove the notice dated 07.05.2013. On the other hand, the defendant himself examined as DW1 whereas Hardhyan was examined as DW2. The defendant further examined Krishan Kumar Panch as DW3, Lal Chand Panch as DW4 and produced various documents. Both the courts, on appreciation of evidence, have concurrently found that the plaintiff was always ready and willing to perform his part of the contract and the agreement to sell was scribed on non-judicial stamp paper which was produced by the defendant himself. Thus, the courts decreed the suit.
4. Heard learned counsel for the appellant at length and with his able assistance perused

the photocopy of the record produced by him. Learned counsel representing the appellant submits that Dhola Ram is not a licensed scribe and therefore, his evidence could not be relied upon. He further submits that both the courts have failed to record a finding that the plaintiff was always ready and willing to perform his part of the contract. He further submits that the agreement to sell is surrounded by suspicious circumstances and since the appellant has alleged fraud, therefore, the court erred in decreeing the suit. He also contends that the agreement to sell is not registered.

5. This Court has considered the submission of learned counsel representing the appellant. As regards the first argument, it may be noted that Dhola Ram, while appearing in evidence as PW1 has stated that entry with regard to agreement to sell was made in his note book at sr. no.208 on 11.04.2013. On a careful reading of the cross examination, it is apparent that counsel representing the defendant /appellant failed to cross examine the witness on this aspect. The deposition of the witness in the examination in chief has not been challenged in the cross-examination. Hence, there is no substance in the first argument of the learned counsel for the appellant.

6. The next argument of the learned counsel is with regard to lack of finding with respect to readiness and willingness of the plaintiff. It is apparent that the argument is factually incorrect. Learned trial court as well as the First Appellate Court, on appreciation of evidence, had specifically found that the plaintiff was always ready and willing to perform his part of the contract. The learned trial court has recorded the aforesaid finding in para 23 of its judgment whereas the First Appellate Court has affirmed the same. Even otherwise, as per the agreement to sell dated 11.04.2013, the sale deed was agreed to be executed on 13.05.2013. The plaintiff, served a notice on the defendant on 07.05.2013 and filed the suit, on 20.05.2013. The plaintiff while filing the suit has specifically asserted that he was always ready and willing to perform his part of the contract. In such circumstances, there is no substance in the argument of the learned counsel for the appellant.

7. The next argument of the learned counsel is with regard to the agreement to sell was allegedly surrounded by suspicious circumstances. It may be noted here that learned counsel, while referring to a minor inconsistency in the oral evidence, wishes the court to record a finding that the written agreement to sell is surrounded by suspicious circumstances. It may be noted here that the defendant (appellant) appeared in the court as DW1. He has admitted that while purchasing the stamp papers, he had signed the same. He further states that he had purchased the stamp paper to file a suit against the plaintiff. There was no cause of action against the plaintiff to file any suit on 11.04.2013, the date when the agreement to sell was executed. The stamp papers have been purchased for execution of the agreement to sell. Still further, both the courts on appreciation of evidence have found that the plaintiff has successfully proved his case. In the absence of any substantial error, this Court while hearing a Regular Second Appeal cannot be expected to interfere.

8. The last argument of the learned counsel representing the appellant is with respect to the fact that the agreement to sell is a result of fraud. The defendant has failed to lead sufficient evidence to prove the fraud. A fraud is required to be proved in absolute terms.

The person who alleges fraud is required to discharge the heavy burden which exists in this regard. Both the courts have held that the defendant failed to discharge the aforesaid burden.

9. Keeping in view the aforesaid facts, there is no ground to interfere with the concurrent findings of fact.

10. Hence, dismissed.

R.M.S.

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Appeal dismissed.