

(2023-4)212 PLR 603

PUNJAB AND HARYANA HIGH COURT

Before : Mrs. Justice Alka Sarin.

RAM NIWAS – Appellant,

Versus

SHANTI SARUP – Respondent.

RSA-4270 of 2019 (O&M)

Suit for specific performance of the agreement to sell – Dismissal of – Parties nephew and maternal uncle – Relationship between parties strained for a very long period of time prior – No evidence to show source of funds – No receipts in writing – Having paid a substantial amount yet not insisting on the execution of the sale deed, casts a doubt in the mind of the Court – It is unbelievable that a person would pay a huge amount and yet not insist on the execution of the sale deed – Suit rightly dismissed.

Case that after receiving the full and final consideration, the defendant executed a full payment agreement to sell in favour of the plaintiff which was reduced into writing between the parties in the presence of witnesses – Defendant is the maternal uncle of plaintiff – Attesting witness, who is the brother of the plaintiff admitted that plaintiff and he were not on visiting terms with the defendant for the last 20-25 years and that their relationship was so strained that the defendant did not even visit when their mother died – In a situation where the relationship was so strained, it does not stand to reason as to why even after making a substantial initial payment nothing was reduced into writing – Stand that the balance sale consideration was also paid and that is when the agreement to sell was executed giving liberty to the plaintiff to get the sale deed executed and registered at his convenience – Having paid an amount of Rs.30,85,000/- yet not insisting on the execution of the sale deed, casts a doubt in the mind of the Court – It is unbelievable that a person would pay a huge amount and yet not insist on the execution of the sale deed – Except for bald oral statements, there is not an iota of evidence on the record to show the said payment to the defendant – No evidence as to where the said amount was withdrawn from or got from and paid to the defendant – Suit rightly dismissed. [Para 7]

Mr. Ashish Aggarwal, Senior Advocate with Mr. Vishal Pundir, for the appellant.

Alka Sarin, J. – (Reserved on 06th February, 2023 and Date of Decision 28th February, 2023) – The present appeal has been preferred by the plaintiff-appellant against the judgments and decrees passed by both the Courts below dismissing his suit for specific

performance.

2. The brief facts relevant to the present lis are that the plaintiff-appellant filed a suit for specific performance of the agreement to sell dated 28.04.2016. It was the case set up by the plaintiff-appellant that the defendant-respondent was the owner in possession of the land measuring 11 kanals 15 marlas being 235/1885 share out of total land measuring 94 kanals 5 marlas comprised in Khewat No.84, Khatoni No.116, total Kittas 13, situated in Village Bir Badlawā, Sub-Tehsil Nigdhū, Tehsil Nilokheri, District Karnal and that he agreed to sell 11 kanals 15 marlas to the plaintiff-appellant for a total sum of Rs.30,85,000/- and on 20.01.2016 an amount of Rs.15,00,000/- was received by the defendant-respondent as earnest money and the remaining amount was to be paid on 28.04.2016 at the time of execution and registration of the sale deed. It is further the case that the plaintiff-appellant was ready and willing to get the sale deed executed on payment of balance sale consideration of Rs.15,85,000/-. On 28.04.2016 the plaintiff-appellant approached the defendant-respondent and requested him to execute the sale deed and register the land in favour of the plaintiff-appellant on receipt of the balance sale consideration. However, the defendant-respondent requested the plaintiff-appellant that he was unable to get the sale deed executed on that day and requested that the balance amount of Rs.15,85,000/- be paid to him as he was in dire need of money and hence the plaintiff-appellant paid the remaining amount of Rs.15,85,000/- to the defendant-respondent on 28.04.2016 and in this way the entire sale consideration of Rs.30,85,000/- was paid by the plaintiff-appellant to the defendant-respondent. It was further the case that after receiving the full and final consideration, the defendant-respondent executed a full payment agreement to sell in favour of the plaintiff-appellant on 28.04.2016 which was reduced into writing between the parties in the presence of witnesses. It was further the case that after the payment of the full and final consideration, despite approaching the defendant-respondent a number of times, the sale deed was not executed and hence a legal notice dated 06.12.2016 was served upon the defendant-respondent to come present in the office of the Sub-Registrar, Nigdhū at 09.00 a.m. on 15.12.2016 along with all the documentation. On 15.12.2016 the plaintiff-appellant remained present in the office of the Sub-Registrar, Nigdhū but the defendant-respondent failed to appear. It was further averred that the plaintiff-appellant was always ready and willing to get the sale deed executed. Hence, the suit. In the written statement, various preliminary objections were raised and on merits it was the stand taken that the plaintiff-appellant was a nephew of the defendant-respondent and that there was a dispute going on between the defendant-respondent and his own sons and that the sons were bent upon snatching the agricultural land. Due to this reason, the defendant-respondent approached the plaintiff-appellant for shelter and requested the plaintiff-appellant to make the sons of the defendant-respondent understand. It was further the case that the plaintiff-appellant took the defendant-respondent to the Tehsil Office by saying that they would get an application filed before the higher authorities against the sons and some signatures of the defendant-respondent were obtained on a blank and typed paper. It was further the case that the defendant-respondent was stumped and surprised when he came to know of the alleged agreement to sell and pleaded that the agreement to sell was a result of collusion, misrepresentation and fraud. It was further averred that no sale consideration was ever paid to the defendant-respondent. In the replication, the averments made in the plaint were reiterated and those in the written statement were

denied.

3. On the basis of the pleadings, the following issues were framed by the Trial Court :

1. Whether the plaintiff is entitled for the relief of possession by way of specific performance of the agreement to sell as prayed for in the plaint ? OPP
2. Whether the present suit is not maintainable in its present form ? OPD
3. Whether the plaintiff has no locus-standi or cause of action to file the present suit ? OPD
4. Whether the present suit is time barred by law ? OPD

5. Relief

4. The Trial Court, on the basis of the pleadings and the evidence on the record, held that the plaintiff-appellant had failed to prove the factum of execution of the agreement to sell as well as passing of the sale consideration of Rs.30,85,000/- and dismissed the suit for specific performance. Aggrieved by the said judgment and decree dated 03.05.2018, an appeal was preferred by the plaintiff-appellant which appeal was also dismissed vide judgment and decree dated 06.04.2019. Hence, the present regular second appeal.

5. Learned senior counsel appearing on behalf of the plaintiff-appellant has contended that the agreement to sell stood duly proved inasmuch as on 28.04.2016 the balance sale consideration of Rs.15,85,000/- was paid which was duly entered in the register of the Notary PW3 – Kanwar Harinder Singh (Ex.P7). It is further the contention of learned senior counsel that once the signatures on the agreement to sell in question were admitted and there was no evidence of fraud, there was no reason to disbelieve the agreement to sell. It has further been contended that as per the statement of Stamp Vendor PW4 – Surender Kumar and the admission of the defendant-respondent while stepping into the witness box as DW2 that he had purchased the stamp paper for executing the agreement to sell in question, both the Courts below have erred in dismissing the suit. It is further the contention that the agreement to sell was also proved by PW2 – Manoj Kumar, who was one of the attesting witnesses.

6. Heard.

7. In the present case, admittedly, the defendant-respondent is the maternal uncle of the plaintiff-appellant. PW2 – Manoj Kumar, the attesting witness, was none other than the brother of the plaintiff-appellant who admitted that he was the real brother of the plaintiff-appellant and constituted a joint family with the plaintiff-appellant. According to him, the plaintiff-appellant and he were not on visiting terms with the defendant-respondent for the last 20-25 years. He went on to state that their relationship was so strained that the defendant-respondent did not even visit when their mother died. In a situation where the relationship was so strained, it does not stand to reason as to why even after making payment of Rs.15,00,000/-, nothing was reduced into writing. Further, it is the case set up by the plaintiff-appellant that on 28.04.2016 the balance sale consideration of

Rs.15,85,000/- was also paid and that is when the agreement to sell (Ex.P1) was executed giving liberty to the plaintiff-appellant to get the sale deed executed and registered at his convenience. Having paid an amount of Rs.30,85,000/- and yet not insisting on the execution of the sale deed, casts a doubt in the mind of the Court. It is unbelievable that a person would pay a huge amount of Rs.30,85,000/- and yet not insist on the execution of the sale deed. Further still, except for bald oral statements, there is not an iota of evidence on the record to show the payment of Rs.30,85,000/- to the defendant-respondent. No evidence is forthcoming as to where the said amount was withdrawn from or got from and paid to the defendant-respondent. On a pointed query by this Court as to what was the evidence on the record to show the source of money with the plaintiff-appellant, learned senior counsel has candidly admitted that there was no evidence to this effect.

8. In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less substantial question of law, arises in the present case. Pure findings of fact have been returned by both the Courts below which call for no interference by this Court. The present regular second appeal, which is wholly devoid of any merit, is dismissed. Pending applications, if any, also stand disposed off.

9. Dismissed.

*R.M.S.
dismissed.*

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Appeal