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Sees Vs. Baksho

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Court : Punjab and Haryana

Decided On : Jan-28-2014

Appellant : Sees

Respondent : Baksho

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Rs.No.3878 of 2011 (O&M) Date of decision: 28th January, 2014 Sees Appellant Versus Baksho Respondent CORAM: HONBLE Mr.JUSTICE RAKESH KUMAR GARG1 Whether Reporters of Local Newspapers may be allowed to see the judgment?.

2.

Whether to be referred to the Reporters or not?.

3.

Whether the judgment should be reported in the Digest?.

Present: Mr.V.K.Jain, Sr.Advocate with Mr.V.K.Kadiyan, Advocate and Mr.G.S.Bhatia, Advocate for the appellant.

RAKESH KUMAR GARG, J.

CM No.11137-C of 2011 Application is allowed subject to all just exceptions.

CM No.11138-C of 2011 Application is allowed subject to all just exceptions and the delay, if any, in making up the deficiency in court fee is condoned.

CM No.11139-C of 2011 For the reasons mentioned in the application, which is supported by an affidavit, delay of 68 days in re-filing the appeal is condoned.

The application stands disposed of.

Singh Rattan Pal 2014.01.31 17:55 I attest to the accuracy and integrity of this document Punjab & Haryana High Court Rs.No.3878 of 2011 (O&M) 2 Rs.No.3878 of 2011 (O&M) Plaintiff-respondent filed a suit for specific performance of the agreement in question against the present appellant on the averments that the appellant agreed to sell the suit land @ `3.00 lakh per acre and received a sum of `3,07,500 as earnest money in the presence of witnesses and executed an agreement to sell on 29.05.2003.

The last date for execution of the sale deed was stipulated as 02.12.2003, which was later-on extended to 02.02.2004.

The plaintiff-respondent remained ready and willing to perform her part of the agreement, but the appellant failed to be present on the stipulated date.

Hence necessity arose to file the instant suit.

Upon notice, the appellant appeared and filed written statement raising various preliminary objections.

It was further submitted that the appellant neither executed the agreement to sell in question nor received any earnest money and as such question of extending the time of the agreement for execution of the sale deed does not arise.

However, it was admitted that the defendant was the owner of the suit property but the agreement relied upon by the plaintiff may be the result of fraud, misrepresentation and concealment of true facts.

The defendant was not competent to alienate the suit land and thus, the suit was liable to be dismissed with costs.

On the basis of the pleadings of the parties, the following issues were framed by the trial Court: 1.

Whether the plaintiff is entitled for possession by way of specific performance of the agreement to sell dated Singh Rattan Pal 2014.01.31 17:55 I attest to the accuracy and integrity of this document Punjab & Haryana High Court Rs.No.3878 of 2011 (O&M) 3 29.5.2003 in respect of the land in dispute as detailed in the heading of the plaint?.

OPP2 Whether the plaintiff was ready and willing and still ready and willing to perform his part of the contract?.

OPP3 Whether in the alternative, plaintiff is entitled for the recovery of Rs.4,50,000/- as prayed for?.

OPP4 Whether suit of the plaintiff is not maintainable?.

OPD5 Whether the plaintiff has no locus standi to file the present suit?.

OPD6 Whether the plaintiff is estopped by her own act and conduct from filing the present suit?.

OPD7 Relief.

To prove these issues, the plaintiff-respondent led evidence, however the defendant-appellant failed to produce any evidence despite availing sufficient opportunities and ultimately it was closed by order of the Court.

After appreciating the evidence so produced on record and hearing learned counsel for the parties, the trial Court decreed the suit with costs vide its judgment and decree dated 20.04.2007.

Feeling aggrieved against the aforesaid judgment and decree of the trial Court, the defendant preferred an appeal, which was also dismissed by the fiRs.appellate

Court vide its judgment and decree Singh Rattan Pal 2014.01.31 17:55 I attest to the accuracy and integrity of this document Punjab & Haryana High Court Rs.No.3878 of 2011 (O&M) 4 dated 14.03.2011.

While dismissing the appeal, the fiRs.appellate Court observed as under: 12.

The plaintiff examined Bakhsho herself as PW1 and tendered into evidence her affidavit Ex.A1 in which she mainly deposed the same facts as stated by her in the plaint.

PW2 Kulwant Singh is the Deed Writer, who deposed regarding scribing of the agreement.

PW3 Palwinder Singh in his affidavit Ex.A3 mainly deposed regarding the attestation of the agreement.

PW4 Lakhbir Singh is the witness regarding endorsement of extension and he deposed that the plaintiff and the defendant with mutual consent agreed to extend the date of execution of the sale deed from 2.12.2003 to 2.2.2004.

PW5 Bhajan Singh is the other attesting witness of the agreement to sell.

Then the plaintiff closed the evidence after tendering into evidence the Jamabandi Ex.P4 and postal receipts, etc.On the other hand, the defendant has not led any evidence despite reasonable opportunities granted to the defendant to produce and complete his evidence.

13.

I have perused the record.

The plaintiff closed the evidence on 20.11.2006.

Then the case was fixed for 22.12.2006 for evidence of the defendant and then for 20.1.2007, 12.2.2007, 20.3.2007 and then for 10.4.2007.

This date was given subject to payment of costs of Rs.300/- and it was last opportunity.

On 10.4.2007, neither the costs were paid nor any witness was present.

Therefore, the evidence of the defendant was closed by order.

Perusal of the record shows that reasonable opportunities were given to the defendant to produce and complete his evidence but the defendant has not produced any evidence.

I have gone through the statements of the PWs.

The PWs have deposed on oath and there is nothing Singh Rattan Pal 2014.01.31 17:55 I attest to the accuracy and integrity of this document Punjab & Haryana High Court Rs.No.3878 of 2011 (O&M) 5 in the cross-examination of these PWs to make their statements unreliable.

Next, I find that the oral statements of the PWs are duly supported by documentary evidence i.e.Agreement to sell, Jamabandi, affidavit, postal receipts, etc.The statements of the PWs have remained unrebutted on the file as the defendant has not led any evidence.

Further, I find that the defendant took up the plea regarding execution of the agreement as a result of fraud, misrepresentation and concealment of true facts.

The onus to prove fraud, misrepresentation and concealment of true facts is on the defendant but the defendant has not led any evidence.

Next I find that the defendant has not taken up any plea that any loan transaction had taken place with the plaintiff, etc.and thumb impression, etc.might have been obtained but in the appeal, a fresh plea regarding taking of loan of Rs.50,000/- from the plaintiff etc.is taken which is out of pleadings.

I have also gone through the written arguments filed on behalf of the plaintiff.

I find that firstly the plea regarding advancement of loan of Rs.50,000/- etc.was not taken up in the written statement.

Secondly, reasonable opportunities have already been granted to the defendant to produce and complete his evidence.

The execution of the agreement has been duly proved by the plaintiff as well as by bringing the Deed Writer and the attesting witnesses.

Further, the statements of the PWs remained unrebutted on the file and the statements of the PWs are duly supported by the documentary evidence.

Therefore, from the above, I find that the plaintiff has duly proved her case by leading cogent evidence.

I have also gone through the judgment and decree dated 20.4.2007 passed by the learned Addl.

Civil Judge (Senior Division).Nakodar, which are correct and as per law and do not require any interference from this Court and the same are Singh Rattan Pal 2014.01.31 17:55 I attest to the accuracy and integrity of this document Punjab & Haryana High Court Rs.No.3878 of 2011 (O&M) 6 upheld.

Finding no merit in the appeal, the same is dismissed with costs.

Decree sheet be prepared accordingly.

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Still not satisfied, the defendant has approached this Court by filing the instant appeal submitting that the following substantial questions of law arise in this appeal: (i) Whether in a transaction (as in the present case).where more than 65% of the sale consideration stands paid, the transaction is required to be got registered and the plaintiff was required to take possession of the property in question?.

(ii) Whether the judgments and decrees passed by the courts below suffer from erroneous legal construction, in as much as when the passing of the consideration was not proved on record?.

(iii) Whether the learned trial Court was justified in not granting sufficient and proper opportunity to the appellant to lead evidence?.

(iv) Whether the impugned judgments and decrees are perverse?.

In support of his case, counsel for the appellant has vehemently argued that while passing the impugned judgments and decrees, the Courts below have not taken into consideration that the appellant had clearly denied execution of any agreement to sell.

Falsity of the case set up by the plaintiff is proved on record from the very fact Singh Rattan Pal 2014.01.31 17:55 I attest to the accuracy and integrity of this document Punjab & Haryana High Court Rs.No.3878 of 2011 (O&M) 7 that though the plaintiff has pleaded that the agreement to sell has been executed in respect of 12 Kanals of land but there is no mention regarding total sale consideration.

Such fact clearly proves that case of the plaintiff is nothing but a result of sheer concoction.

Moreover, as per the facts, the plaintiff-respondent had paid almost 65% of the total sale consideration to the present appellant, however, no man of ordinary prudence would compromise with the factum of taking over the possession of the property, when such a major part of the amount had already been paid.

Thus, non proving of passing of the consideration clearly proves the stand of the appellant and without taking such material aspect into consideration, the impugned judgments and decrees have been passed by the courts below, and therefore, the substantial questions of law as raised do arise in this appeal and the impugned judgments and decrees of the Courts below are liable to be set aside.

During the couRs.of arguments, learned counsel for the appellant has further argued that the defendant-appellant had taken a loan of `50,000 from the plaintiff-respondent and it was in this connection that the plaintiff-respondent had taken the appellant to the Tehsil Complex and got his thumb impression on the blank stamp papers making him understand that such document had been executed as a security.

The appellant, being totally an illiterate person, accepted the version of the plaintiff-respondent and put his thumb impression on the stamp papers and they were the same documents bearing thumb impression of the appellant whereupon forged and false agreement to Singh Rattan Pal 2014.01.31 17:55 I attest to the accuracy and integrity of this document Punjab & Haryana High Court Rs.No.3878 of 2011 (O&M) 8 sell has been prepared by the plaintiff.

However, such material aspect of the case has totally been brushed aside by the courts below.

I have heard learned counsel for the appellant and perused the impugned judgments and decrees of the Courts below.

The arguments raised on behalf of the appellant are misconceived and liable to be rejected.

The defendant-appellant failed to step into the witness box to support the averments made in the written statement or to rebut the positive evidence led by the plaintiff- respondent.

On reading the deposition of the plaintiff coupled with the witnesses produced by her and the documentary evidence on the file, there remains no doubt that the facts alleged in the plaint are proved.

Though the defendant has taken a plea regarding execution of the agreement as a result of fraud, misrepresentation and concealment of true facts and the onus to prove such fraud, misrepresentation and concealment of true facts was upon the appellant but he has failed to lead any evidence in this regard.

Not only this, the plea with regard to taking of loan of `50,000 from the plaintiff, as raised before the lower appellate Court, is beyond pleadings.

No other argument has been raised.

Thus, the substantial questions of law, as raised, do not arise at all in this appeal.

Dismissed.

(RAKESH KUMAR GARG) JUDGE January 28, 2014 rps Singh Rattan Pal 2014.01.31 17:55 I attest to the accuracy and integrity of this document Punjab & Haryana High Court

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