
(2007) 05 P&H CK 0174
In the Punjab And Haryana At Chandigarh

Abhey Ram

APPELLANT

Vs

Miyan Singh and Others

RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 340
Penal Code, 1860 (IPC) — Section 120B, 193, 420

Citation : (2007) 4 PLR 243 : (2007) 3 RCR(Civil) 630

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The present Regular Second Appeal has been filed against the judgments and decrees by the learned Court below vide which the suit for specific performance filed by the plaintiff-respondent Miyan Singh was ordered to be decreed.

2. The plaintiff-respondent brought a suit for specific performance of agreement to sell dated 11.7.1997. The suit was contested on the plea that the agreement to sell was a forged and fabricated document to defeat the rights of the appellant. On appreciation of evidence, a concurrent finding of the fact has been recorded to the effect that Dalip Singh had executed an agreement to sell in 11th July, 1997 and further that respondent-plaintiff was willing to perform his part of the contract. The sale deed executed by Dalip Singh in favour of the appellant was held to be an attempt to defeat the rights of the plaintiff-respondent as it was executed in favour of a close relation.

3. Mr. Arun Jain, learned Counsel appearing on behalf of the appellant contended that the judgment and decree passed by the learned courts below cannot be sustained as the plaintiff had failed to prove the agreement by examining an expert. The contention of the learned Counsel for the appellant was that once Dalip Singh had denied his signatures on agreement as well as receipt, the same were required to be proved by examining an expert witness. There is no force in

this contention. The plaintiff-respondent produced the witnesses to prove the due execution of agreement and also proved on record his willingness to perform his part of the contract by attending the office of Sub-Registrar alongwith consideration amount for execution of the sale-deed.

4. Learned Counsel for the appellant thereafter contended that the learned Courts below have wrongly accepted the agreement of sale. Even though, it was shown on record that Dalip Singh was an illiterate person and, therefore, there was no occasion for him to sign the agreement of sale, thus the allegation of forgery stood proved.

5. It was next contended by the learned Counsel for the appellant that the plaintiff-respondent had failed to prove the payment of consideration of earnest money. I find no force in this contention, as the learned courts below on appreciation of evidence have recorded a concurrent finding of fact that the agreement to sell was entered into between the respondent-plaintiff and Dalip Singh and consideration amount was duly passed.

6. The contention of the learned Counsel for the appellant that the signatures of Dalip Singh on agreement to sell would lead to conclusion of forgery is also misconceived as there was no evidence in support of this allegation. The learned Counsel for the appellant thereafter contended that the reading of the agreement would show that the parties had stipulated that in the event of failure to execute the sale-deed, the vendee would be entitled to refund of double the amount of earnest money and, therefore, the courts below were wrong in decreeing the suit for specific performance. This contention of the learned Counsel for the appellant is also totally misconceived as it is contrary to the settled law that in case of sale of immovable property, the damages cannot be treated to be adequate compensation. It is also settled law that mere stipulation in the agreement that the vendee would be entitled to double the amount in the event of failure cannot be treated to be a bar for specific performance of contract of sale of immovable property.

7. It was finally argued by the learned Counsel for the appellant that the learned lower Appellate Court had ordered the prosecution of Dalip Singh and Abbey Ram for commission of offences under Sections 193 and 420 read with Section 120B of the Indian Penal Code by following procedure laid down u/s 192 and Section 340 of the Code of Criminal Procedure. The contention of the learned Counsel for the appellant was that the suit filed by the plaintiff-respondent has been decreed on appreciation of evidence on record. However, in view of the evidence brought on record, it could not be said that there was any conspiracy between Dalip Singh and Abhey Ram to attract criminal proceedings. The contention of the learned Counsel for the appellant was that the civil suits are decided on probabilities and on appreciation of evidence where plea of one can be accepted qua the other. This could not entitle the lower Appellate Court to order the prosecution of the appellant and Dalip Singh. There is force in this contention. Once the sale-deed was not disputed, it could not be said to be a case of forgery

or conspiracy. The learned Courts below, however, were justified in setting aside the said sale-deed affecting the rights of the plaintiff-respondent in whose favour there was a prior agreement of sale, but in any case, it does not justify the initiation of criminal proceedings.

Accordingly, the impugned part of the judgment of the learned lower Appellate Court ordering the prosecution of Dalip Singh and Abhey Ram is set aside whereas the decree passed by the learned Courts below for specific performance of the agreement is upheld and the present regular Second Appeal is dismissed.