

- (iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the ad valorem Court fee as provided under Section 7(iv) (c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.”

(4) Indisputably, in this case, plaintiffs were not the executants of the documents, which they sought to be annulled, nor they are seeking possession of the suit land and, as such, their case falls under paragraph No.(ii), quoted above.

(5) The legal position has been fairly conceded by the counsel for the respondents – defendants.

(6) In view of this, the plaintiffs - petitioners were not required to pay ad valorem court fee, but to affix court fee as per Article 17(iii) of the Second Schedule of the Court Fee Act, 1870.

(7) This being so, revision is accepted. Order, under challenge is set aside. Consequently, the plaintiffs are not required to pay ad valorem court fee as directed by the Trial Court.

J.S. Mehndiratta

Before Tejinder Singh Dhindsa, J.

DARSHAN SINGH,—Appellant

versus

JOGINDER SINGH,—Respondent

RSA No.4013 of 2010

9th February, 2012

Code of Civil Procedure, 1908 - S.100 - Plaintiff instituted a suit for possession by way of specific performance of agreement to sell dated 27.5.2002 - Defendant/Appellant contested the suit - In the written statement he pleaded that land was ancestral - He used to borrow small amounts from people as he was an alcoholic and drug addict - He further pleaded that agreement to sell was a forged and fabricated document as he had already mortgaged the suit land in favour of a bank - Trial court decreed the suit in favour of plaintiff - Appeal dismissed - Defendant filed RSA - Dismissed holding that

appellant had failed to substantiate his case - Hypothecation or a mortgage deed would only create a charge over the property and the mortgage would only have a charge over the property for the purpose of realization of the debt.

Held, Even the submission raised by the learned counsel for the appellant that the suit property stood mortgaged and as such the suit for specific performance could not have been decreed is without merit. At best, a hypothecation or a mortgage deed would only create a charge over the property and the mortgagee as a result thereof would have a charge over the property for purposes of realisation of the debt. Such a plea could not be used as a tool to deny the execution of a sale deed in pursuance to an agreement to sell.

(Para 8)

Further held, that I do not find any perversity in the findings of the judgments and decrees passed by both the Courts below. The present second appeal does not raise any question of law much less substantial question of law

(Para 9)

B.S. Bhalla, Advocate, *for the appellant.*

TEJINDER SINGH DHINDSA, J.

(1) The defendant/appellant is in second appeal before this Court.

(2) Briefly noticed, the plaintiff/respondent instituted a suit for possession by way of specific performance in respect of agreement to sell dated 27.05.2002 stated to have been executed between him and the defendant for sale of land measuring 16 kanals. It was pleaded that the total sale consideration was agreed at the rate of Rs. 3,60,000/- and a sum of Rs. 2,65,000/- had been paid as earnest money by the plaintiff to the defendant in the presence of marginal witness as well as the scribe of the agreement to sell. The last date for execution of the sale deed was stipulated as 27.05.2003. It was pleaded that the plaintiff had all along been ready and willing to perform his part of contract and even on the stipulated date i.e. on 27.05.2003, he had remained present before the Sub-Registrar, Zira. The defendant had not come present and finally, in the evening, the plaintiff had got his presence marked in terms of moving an application. On such circumstances, the suit had been instituted.

(3) The suit was contested by the defendant in terms of filing of a written statement stating that the property in dispute was ancestral property and as such could not have been the subject matter of the agreement to sell in question. The defendant took up a stand that he is an alcoholic, who was even addicted to drugs. For the sake of indulging in such activities, he used to take money from different people, who obtained his thumb impressions on blank stamp papers and used to advance amount of Rs. 500/- to Rs. 1000/-. It was pleaded that the agreement to sell is a forged and fabricated document. The defendant had in fact taken a sum of Rs. 15,000/- from the plaintiff but the agreement to sell has been manipulated and prepared for a sum of Rs. 3,60,000/-. Still further, the defendant stated that he had already mortgaged the suit land in favour of Punjab Agricultural Development Bank for a sum of Rs. 2,06,000/- and an entry to such effect was there in the copy of jamabandi for the year 1999-2000.

(4) Upon the pleadings of the parties, the following two crucial issues were framed by the trial Court:

1. Whether the plaintiff is entitled for specific performance of the agreement of sale dated 27.05.2002? OPP
2. Whether in the alternative, plaintiff is entitled for recovery as prayed for? OPP

(5) The trial Court decreed the suit in favour of the plaintiff for specific performance of agreement to sell dated 27.05.2002 alongwith possession of the suit land and the defendant was directed to execute the sale deed in favour of the plaintiff upon receiving the balance sale consideration. Defendant/appellant aggrieved by the same filed appeal and the same has been dismissed vide judgment dated 24.05.2010 passed by District Judge, Ferozepur. Accordingly, the defendant/appellant is in second appeal before this Court.

(6) I have heard Mr. B.S. Bhalla, Advocate, for the appellant at length.

(7) Both the Courts below have returned a concurrent finding as regards the agreement to sell dated 27.05.2002 (Ex.P-1) to be duly proved in accordance with law. Lakhvir Singh, one of the marginal witnesses was examined as PW-2 and Ravinder Kumar Kalia, document writer as PW-3. Lakhvir Singh, PW-2 has completely corroborated the statement of the respondent/plaintiff as regards the agreement to sell dated 27.05.2002

for selling the suit land for a sale consideration of Rs. 3,60,000/- and the defendant/appellant having received earnest money to the extent of Rs. 2,65,000/-. The marginal witness, PW-2 has further corroborated the statement of respondent/plaintiff regarding the last date for execution of registration of sale deed as 27.05.2003. The deed writer, PW-3 has also deposed regarding scribing the agreement to sell at the instance of defendant/appellant and the contents thereof, having been read over and explained to him, who thereupon, put his thumb impressions in token of its correctness. To the contrary, there is just a bald statement of the defendant/appellant to set up a plea of simple denial as regards the execution of the agreement to sell as also receipt of any earnest money. Even though, the appellant/defendant did not deny his thumb impression on the agreement to sell but took up a plea that people had been obtaining his thumb impressions on blank stamp papers on advancing him small amounts of money to take alcohol and drugs. The Courts below have held that there was no corroboration to such statement. Even the plea that the suit land, being ancestral coparcenary property was not substantiated in terms of leading any evidence. The Courts below have held the agreement to sell to be duly proved and have also held the plaintiff/respondent to be ready and willing to perform his part of the contract.

(8) Even the submission raised by the learned counsel for the appellant that the suit property stood mortgaged and as such the suit for specific performance could not have been decreed is without merit. At best, a hypothecation or a mortgage deed would only create a charge over the property and the mortgagee as a result thereof would have a charge over the property for purposes of realisation of the debt. Such a plea could not be used as a tool to deny the execution of a sale deed in pursuance to an agreement to sell.

(9) I do not find any perversity in the findings of the judgments and decrees passed by both the Courts below. The present second appeal does not raise any question of law much less substantial question of law.

(10) Appeal accordingly, is dismissed.

J.S. Mehndiratta