IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: October 14, 2015

1. R.S.A.No.3987 of 2011 (O&M)

Kasturi Lal & another

...Appellants

Versus

Jarnail Singh and another

...Respondents

2. R.S.A.No.4934 of 2011 (O&M)

Gurmail Singh

...Appellant

Versus

Kasturi Lal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Rajinder Kumar Singla, Advocate,
for the appellants (in RSA No.3987 of 2011) &
for respondent Nos.1 & 2 (in RSA No.4934 of 2011).

Mr.Sanjiv Gupta, Advocate,
for the appellant (in RSA No.4934 of 2011) &
for respondent No.2 in RSA No.3987 of 2011).

Mr.Sushil Bhardwaj, Advocate,
for respondent No.1 (in RSA No.3987 of 2011) &
for respondent No.3 (in RSA No.4934 of 2011).

*****

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Regular Second Appeals bearing No.3987 and 4934 of 2011 as the common questions of law and facts involved in both the appeals are the same. The facts are being taken from RSA No.3987 of 2011.

The appellant-plaintiffs are in Regular Second Appeal against the findings rendered by both the Courts below, whereby relief qua damages has not been granted.

Mr.Rajinder Kumar Singla, learned counsel appearing on behalf of the appellant-plaintiffs in RSA No.3987 of 2011, in support of his contention, has relied upon the judgment of the Hon'ble Supreme Court rendered in **Jagdish Singh Versus Natthu Singh, AIR 1992 (SC) 1604** to contend that where the agreement to sell becomes unexecutable on account of the acquisition of land, the Court can always modify the relief of granting the damages by taking into consideration the market value of the land as assessed by the Land Acquisition Collector.

Regular Second Appeal bearing No.4934 of 2011 has been filed on behalf of the appellant stating therein that the subsequent vendees, during the currency of the agreement to sell dated 11.5.1989, purchased the land in dispute vide two sale deeds dated 19.3.1990 and 19.4.1990. The trial Court decreed the suit by holding that the plaintiffs are entitled to refund of double the earnest money along with interest @ 9% per annum. The plaintiffs assailed the findings of the trial Court by filing an appeal. It is in the appeal, the Lower Appellate Court set-aside the aforementioned sale deeds and it is on this count, the beneficiaries of the sale deeds, i.e., the vendees have assailed the findings by filing the said appeal.

The trial Court, though noticed that the copy of the reference dated 20.11.2003 (Ex.DW4/A) has been placed on record to show that the enhancement of the compensation has been sought by vendor Jarnail Singh and not by vendees-defendant No.2, though on the same date the vendor had executed a sale deed in favour of defendant No.2. This fact would show that there was an apparent collusion between the vendor and the defendant No.2, who is close relative, i.e., brother-in-law. The Land Acquisition Collector, vide award dated 9.10.2003, assessed the amount of compensation as ₹9.00 lacs per acre for Chahi, ₹4,70,000/- per acre for Banjar and ₹2,30,000/- per acre for Gair-mumkin.

Mr.Singla submits that the appellants are entitled to compensation by taking into consideration the amount of compensation assessed by the Land Acquisition Collector in respect of Chahi land. The agreement to sell was in respect of land measuring 8 kanals 15 marlas and the total sale consideration was ₹89,695/- for the entire land.

Mr.Sanjiv Gupta, learned counsel appearing on behalf of the appellant in RSA No.4934 of 2011 submits that there was no occasion for the Lower Appellate Court to set-aside the sale deed as it was the vendor Jarnail Singh, who had sold the land vide aforementioned sale deeds. In essence, the appellants are bonafide purchasers as per the provisions of Section 41 of the Transfer of

Property Act. The appellants have made reasonable enquiries from the revenue record and found that there was no impediment, much less, charge. In support of his contention, relied upon the judgment of the Hon'ble Supreme Court rendered in **Gian Chand Versus Gopala, 1995(2) R.R.R. 70** to contend that where the agreement to sell becomes unexecutable/frustrated on account of the acquisition of the land, the vendee is entitled to claim the refund of the earnest money. He further submits that as per the provisions of Section 33 of the Indian Contract Act, 1872, once the future events are uncertain and happening of that event becomes impossible, the appellants are entitled to any damages.

I have heard the learned counsel for the parties and appraised the paper book.

It is a matter of record that the notification under Section 4 of the Land Acquisition Act was promulgated on 16.3.1999, whereas the agreement to sell is dated 11.5.1989, thus, there was no concealment on the part of vendor Jarnail Singh vis-a-vis the acquisition of the land. The trial Court, though held that since the agreement to sell had become unexecutable, much less unenforceable, ordered refund of double the earnest money along with interest @ 9% per annum, but did not quantify the damages as per the provisions of Section 73 of the Indian Contract Act. It would be apt to reproduce Section 73 of the Contract Act, which reads thus:-

> *"**73. Compensation for loss or damage caused by breach of contract.—**When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.*
>
> *Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.*
>
> ***Compensation for failure to discharge obligation resembling those created by contract.—** When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.*
>
> *Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account."*

Language of Section 73 is clear and ambiguous, which provides that where certain things become unexecutable, the compensation cannot be granted on account of a breach, but the party is entitled for loss or damage when there is no intention or breach on the part of the other party. The ratio decidendi culled out by the Hon'ble Supreme Court in **Jagdish Singh (supra)** is squarely applicable to the facts of the present case, wherein, after deciding the similar facts, the Court came to the conclusion that once it is ascertainable to determine the market value of the land acquisition proceedings, the compensation can be awarded as a measure of damages.

The ratio decidendi culled out in **<u>Gian Chand's case</u> (supra)** would not be applicable as it is a case where agreement to sell had been entered after the land was acquired, but the position is converse in the present case.

Since the land in question has been acquired, the value of the cultivable land has been assessed @ ₹9.00 lacs per acre, I deem it appropriate to award damages to the tune of ₹4.00 lacs to be paid by defendant No.1 Jarnail Singh as the compensation stood deposited in his name and not in the account of defendant No.2, thus, the following substantial question of law arises for determination:-

> "Whether the appellant-plaintiffs are entitled to damages as per the provisions of Section 73 of the Indian Contract Act or not?"

Keeping in view the aforementioned findings, the substantial question of law, which has arisen for determination is, thus, answered in favour of the appellant-plaintiffs and against the defendants. Accordingly, the impugned judgment and decree of the Lower Appellate Court is modified by upholding the judgment and decree of the trial Court. The appellant-plaintiffs, over and above the decree already passed, are entitled to damages to the tune of ₹4.00 lacs without any interest.

Resultantly, RSA No.3987 of 2011 is allowed and RSA No.4934 of 2011 is dismissed.

October 14, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**