IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 3283 of 2012 (O&M)
Date of decision: 28.4.2015

Devinder Mohan

.. Appellant

v.

Bharat Inder Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Aakash Singla, Advocate for
Mr. Ashok Singla, Advocate for the appellant.

...

Rajesh Bindal J.

The plaintiff is before this court against concurrent findings of fact recorded by both the courts below, whereby the suit for possession by way of specific performance of agreement to sell filed by him, was decreed only to the extent of refund of earnest money along with interest.

The case set up by the appellant along with five other plaintiffs was that respondent No. 1-defendant executed an agreement to sell dated 23.11.2000 with the appellant and respondents No. 2 to 6 for sale of a plot of 500 square yards. The total sale consideration was ₹ 35,00,000/-. ₹ 5,00,000/- were paid as earnest money. Six prospective vendees were share holders, the share of the appellant being 30%. The last date fixed for execution of the sale deed was 25.3.2002. The sale deed having not been executed, the suit was filed on 1.12.2004. Respondent No. 1-defendant denied execution of the agreement to sell, however, with the ample evidence being produced on record, the execution thereof was proved. The courts below had wrongly denied the relief of possession by way of specific performance to the extent of share of the appellant in the plot, i.e., 30%. The courts below have gone wrong in recording a finding that the appellant was not ready and willing to get the sale deed executed and further he had not signed the agreement to sell as signatures of the vendee is not required in the agreement to sell once the vendor had signed it. Readiness and willingness had specifically been pleaded in the plaint and even in the statement made before the court.

After hearing learned counsel for the appellant, I do not find any reason to interfere with concurrent findings of fact recorded by both the courts below. As per the agreement to sell dated 23.11.2000, a plot measuring 500 square yards was agreed to be sold to six prospective buyers, their shares having been mentioned in the agreement to sell. The total sale consideration was ₹ 35,00,000/-. The earnest money of ₹ 5,00,000/- was paid. The share of the appellant was 30%. The last date for execution of the sale deed was fixed as 25.3.2002. Learned counsel for the appellant claimed that long date was given as there was some litigation pending pertaining to the plot, however, no material on record, as produced by the appellant, was pointed out in that regard. The suit was filed on 1.12.2004, i.e., 2 years and 8 months after the expiry of last date fixed for execution of the sale deed. There is no explanation available for the aforesaid period. There were six plaintiffs in the suit initially filed, however, during the pendency of the suit, five of them having right to the extent of 70% of the property agreed to be sold compromised the matter with the vendor and got their earnest money back. The courts below opined that in fact, it was a loan transaction. Only the appellant contested the suit.

Considering the aforesaid factual matrix, where five out of the six prospective vendees, accepted the refund of earnest money and the suit was filed by the appellant 2 years and 8 months after expiry of the period fixed for registration of the sale deed, in my opinion, no illegality has been committed by the courts below in decreeing the suit only to the extent of refund of earnest money along with interest falling to the share of the appellant.

No substantial question of law arises in the present appeal. The same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

28.4.2015
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