

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4286 of 2012 (O/M)
Date of decision : 6.11.2015

Avtar Singh

..... Appellant

Versus

Amarjit Kaur

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Jai Bhagwan, Advocate, for the appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH J. (ORAL)

Impugned in the present regular second appeal is the judgment and decree dated 3.4.2002, passed by the learned Additional District Judge, Barnala, affirming the judgment and decree dated 19.9.2011, passed by the learned Additional Civil Judge (Senior Division), Barnala, vide which in a suit for specific performance, alternative relief of recovery of rupees one lac alongwith interest at the rate of 8% per annum from the date of filing of suit till realization, was granted.

The short facts, which are required to be noticed for the disposal of the present regular second appeal are that Amarjit Kaur, mother of Amrik Singh (minor) being his natural guardian entered into an agreement of sale with the plaintiff on 10.5.2001 on behalf of

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her minor son, whereby she agreed to sell the land measuring 25 kanals 1 marla to the plaintiff at the rate of Rs. 2,25,500/- per acre. Rs. 50,000/- were paid as earnest money. It was recited in the agreement of sale dated 10.5.2001 that the mother will get permission from the Guardian Judge for executing the sale deed. The sale deed was to be executed on or before 5.5.2004. Additional sum of Rs. 50,000/- as earnest money was paid on 5.5.2004. The defendant failed to obtain the permission from the Guardian Judge. Therefore, the time was extended till 30.11.2004. On the date fixed i.e. 30.11.2004, the plaintiff waited in the office of Sub Registrar, Barnala, till 4:00 PM, but the defendant did not turn up to execute the sale deed.

The defendant in the written statement admitted the agreement of sale and receipt of earnest money. She stated that she had filed an application for seeking permission of the Court on behalf of minor, which was pending at that time. The father of the minor was not willing to sell the property of the minor. The defendant is not ready to get the sale deed executed without taking the permission of the Court.

I have heard the learned counsel for the appellant and have also carefully gone through the file.

The lower Court as well as the appellate Court have returned the findings that infact defendant (mother of the minor) had

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filed an application before the Guardian Judge for seeking permission to sell the land, but that application was not pursued and consequently the same was dismissed. It was held by the Courts below that the agreement of sale cannot be specifically enforced in view of lack of permission from the Guardian Judge. It was further held that if the plaintiff had got any grouse, he can sue the defendant for damages.

The learned counsel for the appellants has argued that the consent of the father of the minor is immaterial. The damages of Rs. 3 lacs were provided in the agreement itself and could have been awarded. The learned counsel has further argued that the defendant had mis-conducted by not filing the publication charges before the Guardian Judge and intentionally did not pursue the application. Therefore, this Court should order the specific performance of agreement of sale.

After going through the file and the facts stated herein, I am of the view that whatever may be the reason, the fact remains that there is no permission of the Guardian Judge to sell the land. It could be for any reason including the mis-conduct of the mother of the minor in intentionally not pursuing the application. In that eventuality, the plaintiff could be granted the relief of recovery of the earnest money alongwith damages. In the present case, the Courts below, while ordering the refund of earnest money of rupees one

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lacs, has ordered the interest at the rate of 8% per annum from the date of filing of the suit till realization. This, in my view, is to compensate the plaintiff. When the plaintiff entered into agreement of sale with minor, he knew that there can be obstructions in the execution of the sale deed. Therefore, he took calculated risk. In these circumstances, the agreement of sale against the minor cannot be specifically enforced without permission being granted by the Guardian Judge to sell the land. Therefore, I do not find any illegality or infirmity in the findings recorded by both the Courts below. Hence, the present appeal is dismissed.

(KULDIP SINGH)
JUDGE

6.11.2015
sjks