

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Regular Second Appeal No.4705 of 2012 (O&M)
Date of decision: 05.08.2015**

Mohinder Kaur

.....Appellant

Versus

Dial Kaur @ Gurdial Kaur and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. H.P.S. Ghuman, Advocate,
for the appellant.

Mr. J.S. Bandohal, Advocate,
for the respondents.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgment dated 13.12.2011 passed by the District Judge, Patiala dismissing her appeal against the judgment and decree dated 23.02.2001 passed by the Addl. Civil Judge (Senior Division), Nabha, whereby suit filed by the plaintiff-respondent has been partly decreed for alternative relief of recovery of Rs.30,000/- which as paid as earnest money along with interest at the rate of 12% per annum from the date of agreement i.e. 12.10.1989 till its realization.

Dial Kaur @ Gurdial Kaur-defendant No.1, through her husband
Balbir Singh (Power of Attorney) vide agreement to sell dated 12.10.1989

had agreed to sell her land measuring 45 Bighas and 17 Biswas in favour of

Kulwant Singh (since deceased) son of Mohinder Kaur-plaintiff at the rate of Rs.9000/- per Bigha and received a sum of Rs.30,000/- as earnest money in the presence of marginal witnesses. The sale deed was agreed to be executed and registered on or before 15.06.1990. On 15.06.1990, the plaintiff remained present in the office of Sub Registrar, Nabha, along with balance sale consideration and requisite money for getting execution and registration of sale deed, but defendant No.1 did not turn up to perform her part of the contract. The plaintiff got his presence marked by way of an affidavit, which was attested by the Executive Magistrate, Nabha. Thereafter, the present suit was filed on 23.01.1993.

Upon notice, the defendant-respondent No.1 filed her written statement, wherein execution of agreement to sell dated 12.10.1989 and receipt of earnest money was specifically denied. It was stated that defendant No.1 had already agreed to sell the suit land to Sadhu Singh son of Kundan Singh, resident of village Bhumsi and in this regard, she had received a sum of Rs.25,000/- as earnest money from Sadhu Singh on 10.07.1989. The sale deed was to be executed and registered on or before 10.07.1992. Later on, the date of execution and registration of the sale deed was extended up to 10.12.1998. There was no valid power of attorney in favour of Balbir Singh. Due to litigation between the defendants, sale deed in favour of Sadhu Singh could not be executed.

Defendant No.2 filed a separate written statement and controverted the allegations made by the plaintiff-appellant in the plaint.

The trial Court, after going through the evidence led by the parties, held that the agreement to sell dated 12.10.1989 had been executed by defendant No.1 in favour of the plaintiff and she had also received a sum

with regard to the land in dispute was pending between Dial Kaur @ Gurdial Kaur-defendant No.1 and Rohi Ram-defendant No.2, who were brother and sister. Defendant No.2 was, admittedly, in possession of the suit land. As per copy of Jamabandi for the year 1988-89, Ex.P3, in the column of remarks there was an entry regarding injunction order qua the suit land. In the backdrop of the fact that litigation was pending between defendant No.1 and 2, the plaintiff-appellant was held entitled for recovery of earnest money which was given pursuant to the agreement to sell dated 12.10.1989. The agreement to sell was executed by Dial Kaur-defendant No.1, who was not in possession of the land in dispute. Defendant No.2, who was in possession of the said land, was not a party to the agreement. On the basis of these observations, alternative relief of recovery of Rs.30,000/- was granted by the trial Court.

The lower appellate Court affirmed the findings returned by the trial Court and dismissed the appeal. While dismissing the appeal, the lower appellate Court had observed that on the reverse side of the agreement, Ex.P1, it was mentioned that there was a correction of rate of land at the rate of Rs.17,000/- per Bigha and the same was signed by the plaintiff. The said fact was concealed by the plaintiff at the time of filing of the suit. Hence, an attempt was made by the plaintiff-appellant to take undue advantage of the agreement to sell by quoting the rate of land as Rs.9000/- per Bigha. Further, as per the judgment dated 24.04.2002 passed by Civil Suit No.23 AT of 16.02.1994, it was held that Dial Kaur @ Gurdial Kaur was co-sharer to the extent of 5/12 share in the land measuring 91 Bighas 14 Biswas, but the agreement to sell in question was with regard to sale of half share.

In view of the above reasons, both the Courts below have partly

earnest money to the tune of Rs.30,000/-.

After going through the impugned judgments, this Court is of the view that the plaintiff has been rightly held not entitled for a decree of specific performance of the agreement to sell dated 12.10.1989, Ex.P1. No illegality, much less perversity, has been found in the impugned judgments passed by the Courts below, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

05.08.2015
ajp

(RITU BAHRI)
JUDGE