

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

RSA No.702 of 2012(O&M)

Date of Decision : 13.7.2015

Tasvir Singh

.....Appellant

Versus

Amrit Singh and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. S.S. Grewal, Advocate
for the appellant.

GURMIT RAM, J.

This regular second appeal has been preferred by the appellant (plaintiff) against the judgment and decree dated 25.8.2011 passed by the Court of learned Additional District Judge, Patiala vide which the appeal filed against the judgment and decree dated 21.11.2007 passed by the Court of learned Additional Civil Judge (Sr. Divn.), Rajpura was dismissed and the said judgment and decree passed by the learned Additional Civil Judge (Sr.Divn.), Rajpura was affirmed.

2. The case of the appellant-herein (plaintiff) before the learned trial Court in nutshell was that the respondent No.1-herein (defendant No.1) agreed to sell his house to the appellant-plaintiff vide an agreement dated 7.8.1990 for a sale consideration of Rs.1,25,000/-. A sum of Rs.10,000/- was received by respondent No.1-herein (defendant No.1) as earnest money at that time. The date fixed for the execution and registration of sale deed was

10.8.1990. It was also agreed that out of the balance sale consideration, the amount of Rs.52,000/- will be paid to respondent No.1 (defendant No.1) at the time of execution of sale deed and whereas the remaining amount of Rs.63,000/- was to be paid by the appellant-plaintiff to Housefed since respondent No.1 (defendant No.1) had taken a loan from the Housefed for raising construction of the house in dispute. Respondent No.1 (defendant No.1) showed his inability to execute the sale deed on the above stipulated date i.e. 10.8.1990. The date for the execution of the sale deed as agreed was extended to 18.8.1990 vide a writing dated 10.8.1990. The appellant-plaintiff had remained always ready and willing to perform the part of his contract along with balance sale consideration. On the above-said date i.e. 18.8.1990, he came to Court compound, Rajpura for the purpose above said, but respondent No.1 (defendant No.1) did not turn up there to execute the sale deed. Then again he attended the office of Sub-Registrar, Rajpura on 20.8.1990 also but to no effect. Then he served a notice upon respondent No.1 (defendant No.1) but that also did not cut any ice upon him. During the pendency of the suit, respondent No.1 (defendant No.1) alienated a portion of the house in dispute to respondent No.2 (defendant No.2) vide a sale deed dated 15.6.1992 which was stated to be null and void and therefore liable to be set aside and hence the instant suit.

3. Respondent No.1-herein(defendant No.1) in his written statement denied that he had ever agreed to sell the house in dispute to the plaintiff or that he had ever received any earnest money on 7.8.1990 from the appellant-plaintiff. The alleged agreement to sell in question was stated to be forged and fabricated document. Then as per the record this respondent No.1 (defendant No.1) was substituted by Sarabjeet Singh respondent No.1-A-herein (defendant No.1-A).

4. Respondent No.2-herein (defendant No.2) took the plea

that she was not having any knowledge about the alleged agreement to sell in question. She had purchased half portion of the house in dispute vide a registered sale deed dated 15.6.1992 executed by one Ujjagar Singh being general power of attorney of Amrit Singh – respondent No.1-herein (defendant No.1) and since then she is in its possession. Subsequently, she also got installed water connection and electric connection in this house. She is bonafide purchaser without notice as well as for consideration.

5. Respondent No.1-A-herein (defendant No.1-A) also took the plea that he purchased the suit property in an open auction. Amrit Singh who was previous owner of this house had taken loan against this house from Janta Cooperative House Building Society Ltd., Rajpura but committed default in making the payment of loan amount and subsequently this house was put to auction and the answering respondent No.1-A-herein (defendant No.1-A) purchased the same in an open auction. Sale certificate to this effect was issued in his favour on 16.3.2000. He is claiming himself to be a lawful owner of the house in dispute. Then he also took the plea that this suit is not maintainable in the present form and that the Civil Court has no jurisdiction to entertain and try the same.

6. On completion of pleadings of the parties, issues were framed. The learned trial Court after hearing the learned counsel for both the parties and going through the record as well came to the conclusion that appellant-herein (plaintiff) is not entitled to the relief of specific performance and as such his suit to this extent was dismissed, but his suit was partly decreed for the alternative relief for recovery of Rs.20,000/- along with proportionate costs, interest etc. vide the impugned judgment and decree dated 21.11.2007. Then the plaintiff preferred an appeal against this judgment and decree of the learned trial Court which was dismissed by the learned Additional District

Judge, Patiala vide the impugned judgment and decree dated 25.8.2011.

7. The appellant-herein (plaintiff) being not satisfied with the findings recorded by both the Courts below vide the impugned judgments and decrees has come up before this Court in the instant regular second appeal.

8. I have heard the learned counsel for the appellant and have also gone through the record minutely.

9. It is an admitted fact that house in dispute was mortgaged with Housefed since its owner i.e. defendant No.1 had raised a loan from the said Housefed for raising construction of the house in dispute. Then it is also an admitted fact that present appellant (plaintiff) was knowing about this fact when the alleged agreement to sell for the purchase of this house was executed between him and respondent No.1-herein(defendant No.1). Then as per the case of the appellant-plaintiff, the date fixed for the execution of the sale deed as per the above-said agreement was 10.8.1990 which was later on extended to 18.8.1990 with the consent of both the parties vide a writing dated 10.8.1990. Since the respondent No.1-herein (defendant No.1) did not make the payment of the installments of loan raised from Housefed, so the house in dispute was put to sale in an open auction which was purchased by respondent No.1-A (defendant No.1-A) in the open auction and sale certificate to this effect was also issued in his favour on dated 16.3.2000. So as such he is claiming himself as a lawful owner of this house without any knowledge of the alleged agreement to sell dated 7.8.1990. Then it was also plea of respondent No.2-herein (defendant No.2) that she had purchased half portion of the house in dispute vide a registered sale deed dated 15.6.2002 and since then she is in its possession. Further she also claimed to be bonafide purchaser without notice and for consideration.

10. Since the house in dispute has been purchased by

respondent No.1-A-herein (defendant No.1-A) in an open auction and sale certificate dated 16.3.2000 had been issued in his favour, so as such the very purpose for which the agreement to sell in question had been executed had been frustrated due to the reason that this house had already been sold, prior to the date when the alleged agreement to sell was executed, to respondent No.1-A-herein (defendant No.1-A) in an open auction due to non payment of the instalments of loan raised by respondent No.1-herein (defendant No.1) from the Housefed. So under the provisions of Section 56 of the Contract Act by applying the doctrine of frustration, the agreement in question for the purpose of specific performance became impossible. Then as above discussed respondent No.2-herein (defendant No.2) is also claiming that she had purchased half portion of this house in dispute vide sale deed dated 15.6.2002 stated to be executed in her favour by one Ujjagar Singh, attorney of Amrit Singh respondent No.1-herein (defendant No.1). So as such both the Courts below have rightly granted the alternative relief for the recovery of amount of Rs.20,000/- with proportionate costs as well as interest.

11. In view of the above discussion, nothing has been found on the record to warrant any kind of interference in the impugned judgments and decrees. This appeal is held to be bereft of any merit. So it stands dismissed and disposed of accordingly. The judgments and decrees of both the Courts below in the appeal are affirmed.

Since the main appeal has been disposed of, the miscellaneous application, if any, also stands automatically disposed of having been rendered infructuous.

13.7.2015
Brij

(GURMIT RAM)
JUDGE

1. To be referred to the Reporters or not? Yes/No
2. Whether the judgment should be reported in the Digest? Yes/No