IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1282 of 2014 (O&M)

Date of decision : 13.7.2015

Bharat Bhushan ... Appellant

versus

Jang Singh ... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh, Advocate, for the appellant.

Rajesh Bindal, J.

The plaintiff is before this Court against the judgment and decree of the learned Lower Appellate Court whereby that of the trial Court was partially reversed and in the suit for possession by way of specific performance of agreement to sell, the relief of refund of earnest money along with interest was granted.

Learned counsel for the appellant submitted that an agreement to sell 24 kanals of land was executed by the respondent in favour of the appellant on 27.10.2004 for a total sale consideration of ₹ 3,00,000/-. Earnest money of ₹ 2,25,000/- was paid. The last date for registration of sale-deed was 28.10.2005. As the same was not got registered, the suit in question was filed. He further submitted that trial Court, while appreciating the evidence produced on record properly, decreed the suit in its entirety while directing execution of sale-deed on payment of balance sale consideration. The learned Lower Appellate Court on erroneous grounds partially modified the decree of the trial Court while directing refund of earnest money along with interest. The ground on which the relief of specific performance has been denied cannot sustain in judicial scrutiny. It has been noticed by the learned Lower Appellate Court that the property in question was mortgaged with the banks and under these circumstances, it was not possible to get the sale deed registered. The submission is that the appellant is ready and willing to take whatever rights in the property he has. He is even ready to settle account with the banks subject to his rights against the respondent.

After hearing learned counsel for the appellant, I do not find any merit in the present appeal.

Admittedly, the agreement to sell was executed on 27.10.2004. The last date fixed for registration of sale-deed was 28.10.2005. The suit was filed three years thereafter on 30.10.2008. Learned counsel for the appellant did not refer to any document on record to show that there was any extension of time for registration of sale-deed. Hence, apparently the suit itself was time barred.

Further it has come on record by way of judgment and decree of the civil court in Civil Suit No. RT 66 of 2.4.2011 titled as Bharat Bhushan vs Jang Singh, whereby a suit was filed by the appellant against the respondent for recovery of ₹ 1,08,800/- i.e. including ₹ 80,000/- as principal and ₹ 28,800/- as interest on the basis of a pronote and receipt dated 20.9.2004. The suit was filed on 21.9.2007, which was decreed on 18.5.2011 (Ex. P8). There is no reason forthcoming on record as to why the suit was not filed immediately after the expiry of last date fixed for registration of sale-deed i.e. 28.10.2005, even after the appellant filed suit for recovery against the respondent on 21.9.2007 on the basis of pronote and receipt dated 20.9.2004, the suit for specific performance of agreement to sell was not filed. The same was filed only after the expiry of three years and two days. Further at the same time, the respondent raised a loan while executing a pronote dated 20.9.2004 and then executed an agreement to sell dated 27.10.2004. The loan of ₹ 1,08,800/- was raised, whereas the earnest money of ₹ 2,25,000/- was taken at the time of execution of agreement to sell. If the appellant was ready with the money, he could very well get the sale-deed registered at that time only instead of getting one year time.

Further from the paragraph 14 of the judgment of the learned Lower Appellate Court, it is evident that in the jamabandi, Ex. P5, produced on record, there were two entries in the remarks column regarding mortgage of the suit property for ₹ 7,10,000/- with two banks i.e. ₹ 3,00,000/- and ₹

4,10,000/- with Punjab Land Mortgage Bank and Punjab Agricultural Development Bank, Muktsar, respectively. The mortgage in favour of Punjab Land Mortgage Bank is dated 18.7.2004 i.e. prior to the execution of the agreement to sell dated 27.10.2004. The second mortgage is dated 24.11.2004. The mere fact that two banks had advanced loan of ₹ 7,10,000/- on the land in question at the same time when the agreement to sell was executed itself establishes the fact that value of the land was much more than what was shown in agreement to sell.

For the reasons mentioned above, I do not find any reason to interfere with the findings of fact recorded by the learned Lower Appellate Court. No question of law much less a substantial question of law arises in the present appeal. The same is accordingly dismissed. Consequently, the accompanying applications are dismissed.

13.7.2015 (Rajesh Bindal)
vs Judge