

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

RSA No. 1522 of 2014

Date of decision : 09-07-2015

* * * * *

Chander Singh

.....Appellant

Versus

Vinod Kumar Jindal

.....Respondent

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Rahul Sharma, Advocate for the petitioner.

* * * * *

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The appellant-defendant (hereinafter referred to as `the defendant) has come up in this regular second appeal against the judgment dated 3.12.2013 passed by the Additional District Judge, Palwal, whereby the judgment and decree dated 4.5.2012 passed by the Civil Judge (Senior Division), Palwal dismissing the suit of the respondent-plaintiff (hereinafter referred to as `the plaintiff') was reversed and the plaintiff was held entitled to recovery of earnest

money worth Rs. 5,77,000/- from the defendant with interest @ 6% per annum from the date of filing of the suit till its actual realization.

The defendant entered into an agreement to sell the land measuring 1 kanal 16 marlas comprising in Khewat/Khatoni No. 547 min/627, Khasra No. 1089/1, 1091 & 1092 situated within the revenue estate of Palwal with the plaintiff at the rate of Rs. 5300/- per square yard on 2.1.2006 and received an amount to the tune of Rs. 5,77,000/- as earnest money from the plaintiff. The date for execution and registration of sale deed was fixed as 14.4.2006. As per the agreement, in case of non-performance of agreement by the plaintiff, the defendant had a right to forfeit the earnest money and in case of non-performance of agreement by the defendant, the plaintiff had a right to get it enforced. On account of breach of contract by the plaintiff, it would be treated as cancelled and in case of defect in the title of the defendant, the defendant was bound to pass a clear title.

The plaintiff and the defendant attended the office of Sub-Registrar on 13.4.2006 and 17.4.2006 as 14.4.2006 to 16.4.2006 were declared holidays. Both the plaintiff and defendant sworn their respective affidavits dated 13.4.2006 and 17.4.2006 to mark their presence in the office of Sub-Registrar. Thereafter, a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') had been issued on 15.6.2006 and published on 14.4.2007. Thereafter the present suit was filed on 17.12.2008 asking the defendant to return the earnest money along with interest to the plaintiff.

Trial Court framed the following issues:

1. *Whether the plaintiff is entitled to the decree for recovery of Rs.5,77,000/- along with interest; if so at what rate on the grounds mentioned in the plaint? OPP*
2. *Whether plaintiff is entitled to the decree for the permanent injunction , as prayed for, on the grounds mentioned in the plaint ? OPP*
3. *Whether suit is not maintainable in the present form ? OPD*
4. *Whether plaintiff has no locus standi and cause of action to file the present suit ? OPD*
5. *Whether plaintiff has not come to the Court with clean hands and has concealed true and material facts from the Court ?OPD*
6. *Whether suit is liable to be rejected under Order 7, Rule 11 C.P.C for want of proper Court fee ? OPD*

The trial Court dismissed the suit of the plaintiff as vide the agreement of sale deed dated 2.1.2006 (Ex. P1), ***it was agreed between the parties that in case the plaintiff fails to perform his part of the the agreement then agreement to sell would be deemed to be cancelled and the earnest money would be forfeited. In case of any defect in the title, the vendor would be responsible. The date for execution and registration of sale***

deed would be up to 14.4.2006. There was clear intention of the parties that payment of balance sales consideration would be made on the date and even a single day's delay was not acceptable. The defendant specifically stated that on 15.4.2006 he contacted the plaintiff to pay the balance sales consideration. As per the plaintiff's version, he sent a notice to the defendant on 26.4.2006, however, no such notice has been placed on record showing the constant readiness and willingness of the plaintiff to perform his part of the agreement. Suit for recovery of earnest money was filed on 17.12.2008. Even if the land acquisition proceedings had been initiated on 15.6.2006 by issuing notice under Section 4 of the Act, there was no ban by the Government that the sale deed of the suit property could not be executed. The plaintiff and the defendant were present in the office of the Sub-Registrar on 13.4.2006 and 17.4.2006 as per their affidavits (Ex. P-3 and Ex. P-4). The plaintiff gave notice dated 26.4.2006 to the defendant stating that he was ready and willing to perform his part of the contract, however, the suit property is not free from encumbrances and two cases, one relating to partition and another case titled 'Ramesh Versus Jawahar' is pending in the Court and this fact has been concealed by the defendant from the plaintiff. The defendant in his reply stated that he was ready and willing to perform his part of the contract and in case titled 'Ramesh vs. Jawahar', the defendant was not party and partition suit does not amount to any encumbrances. There was no concealment of material facts by the defendant. The amount

received by him stood forfeited. The plaintiff instead of filing a suit for specific performance or recovery of earnest money kept on waiting till 17.12.2008. Plaintiff kept on sending notice prolonging the matter on one pretext or another, meanwhile the acquisition proceedings of the suit property started. It was for the plaintiff to pay the balance sale consideration on 14.4.2006, however, the plaintiff neither purchased any stamp paper to execute the sale deed nor placed on record any documentary evidence showing that on 14.4.2006, the plaintiff possessed sufficient means to pay balance sales consideration or he actually tendered the same to the defendant.

The trial Court held that the plaintiff was not ready and willing to perform his part of the agreement and he did not pay the balance sales consideration as per the terms of the agreement Ex. P1. The agreement stood cancelled and the earnest money was forfeited. Issue no.1 was decided against the plaintiff and he was not held entitled to refund of earnest money. The suit was dismissed by the trial Court.

On appeal, the lower Appellate Court reversed the judgment of trial Court and observed that the notification under Section 4 of the Act was issued on 15.6.2006 which was ahead of the date of registration of sale deed in respect to the agreement to sell. The appellate Court referred to the judgment in the case of **Baldev Singh vs. Keshwa Nand and others, 2011 (1) RCR (Civil) 911**, wherein after the agreement to sell was executed, the Government started the process of acquiring the land and the contract was held to

have been frustrated. The purchaser was held entitled to refund of the earnest money. In this case, the agreement was executed on 17.5.1996 and Rs.40,000/- was received as earnest money. Thereafter on 20.8.1996, Rs.2,00,000/- and on 26.11.1996, Rs.1,00,000/- were received by the defendants. The date for execution of the sale deed was extended to 20.4.1997. A notification under Section 4 of the Act was published in the newspaper on 15.8.1997. An announcement was made on Baisakhi i.e on 13.4.1997 for development of Anandpur Sahib in view of forthcoming 300th birth anniversary of Khalsa at Anandpur Sahib. The execution of the sale deed was scheduled for 20.4.1997. With the initiation of acquisition proceedings, the agreement stood frustrated. Even if the acquisition proceedings started, the plaintiff was entitled to refund of earnest money with interest. The defendants in this case had received compensation from the State Government which was double the amount of the sales consideration agreed between the parties. The plaintiff was held entitled to refund of earnest money along with 6% interest.

In the facts of the present case, the agreement was executed on 2.1.2006 (Ex. P-1) and the date fixed for registration of the sale deed was 13.4.2006 and 17.4.2006. Notification under Section 4 of the Act was issued on 15.6.2006 i.e the date after the date fixed for execution of the sale deed and notification of land acquisition was published on 14.4.2007. The suit property was acquired by the Haryana Government and finally the compensation

was paid by the Government to the tune of Rs. 24,00,000/- per acre. The defendant has received the compensation as well as the earnest money of Rs. 5,77,000/- from the plaintiff. Lower appellate Court decreed the suit of the plaintiff and he was held entitled to recovery of earnest money worth Rs. 5,77,000/- from the defendant with interest @ 6% per annum from the date of filing of the suit till its actual realization.

Counsel for the defendant (appellant) has referred to judgments of Hon'ble the Supreme Court ***Veerayee Ammal vs. Seenii Ammal (SC) 2001 (4) RCR (Civil) 625, M/s Citadel Fine Pharmaceuticals vs. M/s Ramaniyam Real Estates P. Ltd. (SC) 2011 () RCR (Civil) 894, Bismillah Begum vs. Rahmatullah Khan (SC) 1998 (1) RCR (Civil) 583, Saradamani Kandappan vs. S. Rajalakshmi (SC) 2011 (4) RCR (Civil) 130, I.S Sikandar (D) By Lrs vs. K. Subramani (SC) 2014 (1) RCR (Civil) 236***, to contend that the time is the essence of the contract with regard to sale of immovable property. A notification under Section 4 of the Act had been issued on 15.6.2006. If the plaintiff did not have the requisite resources to make the payment of the balance sale consideration on 13.4.2006 and 17.4.2006 as per the agreement Ex. P-1, his earnest money was liable to be forfeited. There was no bar to execute the sale deed even if notification under Section 4 of the Act had been issued. The judgments cited by the counsel for the defendant (appellant) would not be helpful to him in the given set of circumstances where the acquisition proceedings were initiated on

15.6.2006. The defendant had already received the earnest amount of Rs. 5,77,000/-. After the acquisition proceedings, the agreement Ex. P-1 stood frustrated. The plaintiff was present in the office of the Sub Registrar as per the affidavits Ex. P-3 and P-4 on 13.4.2006 and 17.4.2006. The agreement was frustrated on account of land acquisition proceedings which were initiated after the issuance of notification under Section 4 of the Act. Hence neither the plaintiff nor the defendant can be held guilty of the breach of contract. The defendant has received the land acquisition compensation also.

In ***Baldev Singh's case (supra)***, in paragraph 12, it has been observed as under:

12. Even on principles of justice, equity and good conscience, the plaintiff-appellant is entitled to succeed. Under the impugned agreement, total sale consideration was Rs. 7,16,000/- only. However, as per affidavit of defendant no.1 filed today in Court, defendants have received Rs. 78,80,580/- as compensation for the suit land including interest and statutory benefits. The defendants have thus received more than ten times the sale consideration stipulated in the agreement. From the aforesaid

affidavit, it appears that this amount has been received pursuant to Award of the Reference Court under Section 18 of the Act awarding compensation @ Rs.20,000/- per marla. It appears that in First appeal in this Court, the compensation may further be enhanced. Be that as it may, defendants have already received more than ten times the sale consideration stipulated in the agreement. Thus, on principles of equity, justice and good conscience as well, the plaintiff-appellant is entitled to refund of Rs. 3,40,000/- with interest as awarded by the trial Court. It may be added that the trial Court has not awarded any interest to the plaintiff for three years preceding the filing of the suit. Even since the date of filing of the suit till recovery, interest has been awarded by the trial Court at a very modest rate of 6% per annum only.

The lower Appellate Court has rightly applied the judgment of to the facts of the present case. In **Baldev Singh's Case (Supra)**, with the initiation of acquisition proceedings, the agreement stood frustrated. The plaintiff was held entitled to refund of earnest money with interest in view of the fact that the defendants had received compensation from the State Government which was double the amount of the sales consideration agreed between the parties. In the present case, the suit of the plaintiff has been rightly decreed and the plaintiff has rightly been held entitled to recovery of earnest money worth Rs. 5,77,000/- from the defendant with interest @ 6% per annum from the date of filing of the suit till its actual realization.

In view of all, that has been discussed above, there is no illegality or infirmity in the judgment passed by the Appellate Court. Therefore it does not require any interference. No substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

09-07-2015
ritu

(RITU BAHRI)
JUDGE