

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

RSA No. 4414 of 2015 (O&M)

Date of Decision: 11.12.2015

Anand Kumar Bansal

....Appellant

vs.

Nirmal Singh(now deceased) through LRs

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Aman Bansal, Advocate
for the appellant.

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?*

Kuldip Singh J.(Oral)

Impugned in the present Regular Second Appeal is the judgment and decree dated 24.12.2014 passed by learned Additional District Judge, Mohali affirming the judgment and decree dated 02.08.2013 passed by Additional Civil Judge(Sr. Divn.), Kharar vide which the suit of the plaintiff for recovery of Rs. 2, 50, 000/- on the basis of agreement to sell dated 16.03.2009 regarding suit land measuring 0-3 marla i.e. ½ share comprising of kh/khata No.345/379 khasra No.67/227(0-6) was dismissed.

The case of the plaintiff is that he entered into an agreement to sell dated 16.03.2009 with the defendant, now

succeeded by his LRs, whereby defendant agreed to sell one half share of land measuring 0-3 marlas comprising khasra No. 67/227(0-6), situated in the area of Kurali HB No.121, Tehsil Kharar, District Mohali to the plaintiff for Rs. 7,15,000/-. Rs.2,50,000/- were paid earnest money. The date of execution of sale was fixed for 18.05.2009.

The case of the plaintiff is that disputed property is meant for shop and is situated at Morinda-Baddi Highway near Kurali. Defendant did not disclose that area measuring 30' in the length has been acquired for the purpose of widening of the road and that on account of notification qua acquisition of the area to the extent of 30 feet, the sale deed cannot be executed. Plaintiff informed the defendant about the notification. Plaintiff also inquired from the Municipal Committee and he was intimated that site plan regarding property could not be sanctioned. Hence, requested for refund of earnest money.

Defendant in the written statement admitted the agreement. His plea is that defendant was always ready and willing to perform his part of the contract but plaintiff did not turn up on the date fixed before the Sub-registrar, therefore, earnest money stood forfeited. It was denied that the land has been acquired for extension of widening the road. It was stated that plaintiff had failed to perform the agreement as he was not in possession of sufficient financial resources. The earnest money paid by him has been forfeited, therefore no question to return the same arises.

The lower Court came to the conclusion that plaintiff has

failed to prove that the area in dispute is acquired for widening of the road. No notification was produced. The reliance placed by the plaintiff on another judgment title Anand Kumar versus Sajjan Singh between present plaintiff and Sajjan Singh was not believed by the lower Court and consequently the suit was dismissed. The findings were upheld in appeal.

I have heard learned counsel for the parties and gone through the case file very carefully.

The case of the plaintiff is that the agreement has become impossible of performance therefore the earnest money is required to be refunded. The plea of the plaintiff is that the area which is a subject matter of the agreement is on Kurali-Baddi road and has been notified for acquisition for widening of the road. The agreement as pleaded in the plaint shows that specific area was not purchased and only one half share of Khasra No.67/227(0-6) was purchased. Therefore, it cannot be said that the said area abuts any road. No site plan was produced before the lower Court to show as to what is the location of the entire Khasra number to enable the Court to conclude that area abuts the Kurali-Baddi road. Further no notification of the Government was produced to show that said area has been acquired by the Government for widening of the road. Further no order of the Municipal Committee or PWD Department has been produced to show that the area, subject matter of the agreement, will be utilized for the purpose of extension of the road so as to prove the impossibility of the contract.

The learned counsel for the appellant has heavily relied

upon the judgment of Civil Court in another case between the plaintiff and one Sajjan Singh stated to be uncle of the defendant wherein a similar suit was decreed.

I am of the considered view that said judgment is not binding upon this Court. In this case, plaintiff was required to prove that the performance of the agreement has become impossible due to operation of law. However, such impossibility has not been proved. It being so, it cannot be said that agreement has become impossible of performance. Therefore, the earnest money cannot be ordered to be refunded. There are concurrent findings of two Courts below in this regard which do not call for any interference.

Appeal is dismissed.

11.12.2015
gk

(Kuldip Singh)
Judge