

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.466 of 2015 (O & M)

Date of Decision: *February 09, 2015*

Jai Kishan

..... APPELLANT(S)

VERSUS

Bhagwan Dass

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

1. Whether Reporters of local papers 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?

. . .

PRESENT: - Mr. Surender Singh Dalal, Advocate, for the
 appellant.

. . .

Jaspal Singh, J

1. This appeal has been preferred by appellant -
defendant feeling dis-satisfied against judgment and decree
dated October 6, 2014 passed by Additional District Judge,
Kaithal, in Civil Appeal No.484 of 2013 titled 'Bhagwan Dass
vs. Jai Kishan', whereby well reasoned judgment and decree
dated August 12, 2011 passed by Civil Judge (Senior Division),

Kaithal, dismissing suit of respondent – plaintiff has been reversed.

2. The facts necessary for disposal of instant appeal are that respondent – plaintiff filed a suit for recovery of ₹ 2,65,000/- against appellant – defendant on the ground that appellant – defendant had executed an agreement of sale dated September 5, 2008 with respondent – plaintiff in respect of two plots of shops measuring 100 square yards for total sale consideration of ₹ 12 lac on receipt of a sum of ₹ 2,40,000/- as earnest money. Said agreement was entered into by appellant – defendant on the basis of an agreement to sell dated July 11, 2008 executed by owners of property in question. Balance amount of sale consideration was payable at the time of execution of sale deed and date stipulated for execution of sale deed was fixed to be on or before March 20, 2009. Since appellant – defendant was not owner of property in suit, subject matter of agreement of sale dated September 5, 2008, instead of seeking specific performance of above referred agreement of sale, respondent – plaintiff felt satisfied with recovery of amount paid by him as earnest money alongwith interest. Accordingly, he filed suit for recovery which was dismissed by learned trial court holding that respondent – plaintiff was not

possessing balance sale consideration on stipulated date and, as such, was not ready and willing to perform his part of agreement.

3. In appeal, preferred by respondent – plaintiff before lower appellate court, judgment and decree rendered by trial court was reversed and suit filed by respondent – plaintiff for recovery of a sum of ₹ 2,65,000/- with future interest and pendente-lite interest @ 18% per annum from the date of its institution till the date of its realization was decreed with costs throughout.

4. Aggrieved against reversal of judgment of learned trial court by the lower appellate court, appellant – defendant has approached this Court by way of this appeal.

5. While assailing findings returned by learned lower appellate court, it has been ebulliently argued by learned counsel for appellant that lower appellate court has committed grave irregularity by over-looking basic flaw in suit filed by respondent – plaintiff. It is an undisputed fact that date stipulated in agreement for execution of sale deed in pursuance to agreement of sale dated September 5, 2008 was March 20, 2009, whereas, plaintiff, in para No.14 of plaint, contended that cause of action had arisen on March 19, 2009 when he

contacted appellant – defendant for performance of agreement. He showed his inability to perform his part of contract. Infact, on the date stipulated in agreement for execution and registration of sale deed i.e. March 20, 2009, actual owners, Yashpal and his other co-sharers were ready and willing to execute/register sale deed as per terms and conditions recited in agreement of sale dated September 5, 2008 in favour of respondent – plaintiff. But it was respondent – plaintiff who did not turn up. Suit property, admittedly, forms part of Khewat No.464/446 as per jamabandi for the year 2003-04 (Ex.D-10), according to which, Dharampal, Dayanand and Rekha Devi have been recorded to be co-owners. After demise of Dharampal, his share was inherited by his sons Yashpal and Narinder Kumar. Yashpal has also been examined by appellant – defendant as DW-3. So, once owner of property in suit were ready and willing to execute sale deed in terms of agreement of sale dated September 5, 2008, it can be safely inferred that it was respondent – plaintiff who committed breach of terms and conditions of agreement in question. Not only this, plaintiff was also served a notice to appear before Sub Registrar on April 20, 2009 but even on the said date, he did not opt to appear to perform his part of contract. All the evidence as well as factual

aspects have been ignored and disbelieved by learned lower appellate court while reversing a well reasoned judgment delivered by learned trial court. As such, impugned judgment and decree dated October 6, 2014 is not sustainable in the eyes of law and deserve to be set aside. There exists substantial question of law, for disposal of which, appeal deserves to be admitted.

6. Having heard learned counsel for appellant and meticulously gone through impugned award, this Court does not find any legal force in contentions advanced by learned counsel for appellant. Rather, there is no infirmity, illegality or impropriety in impugned judgment and decree dated October 6, 2014 delivered by lower appellate court.

7. It is an undisputed fact that agreement of sale dated September 5, 2008 was executed by appellant – defendant in favour of respondent – plaintiff on receipt of a sum of ₹ 2,40,000/- as earnest money out of total sale consideration of ₹ 12 lac and date stipulated for execution and registration of sale deed was targeted on or before March 20, 2009. Possession of property, subject matter of agreement of sale, was also to be delivered at the time of execution and registration of sale deed. It is also an admitted fact that appellant – defendant was not

owner of property, subject matter of agreement of sale, and agreement in question was executed by appellant – defendant on the basis of alleged agreement of sale dated July 11, 2008 in his favour by owners of property i.e. Yashpal, Narinder Kumar and Rekha Devi. No agreement of sale dated July 11, 2008, alleged to be executed by owners in favour of appellant – defendant, has seen the light of day. It has also not been proved and placed on record. Though, Yashpal, one of co-owners, has appeared in witness box as DW-3 and has stated about execution of agreement of sale dated July 11, 2008 but until and unless same is placed and proved on record, it has got no evidentiary value. At the most, it can be said that alleged agreement was oral one and on the basis of an oral agreement, appellant – defendant was not authorized to further enter into an agreement. Property cannot be alienated until and unless there is a written authority. Even, there is nothing on record as to what were the terms and conditions of oral agreement of sale dated July 11, 2008. There is also nothing on record to suggest as to how much amount was received as earnest money or what was total sale consideration and whether sale deed was to be firstly executed on the basis of agreement of sale dated July 11, 2008 in favour of appellant – defendant. There was no power of attorney also in favour of

appellant – defendant on behalf of owners of property in dispute, either to enter into an agreement or to execute sale deed on their behalf.

8. No doubt, appellant – defendant has deposed while appearing in witness box as DW-2 that he is ready and willing to perform his part of agreement and appeared in office of Sub Registrar on stipulated date i.e. March 20, 2009 accompanied by original owners who are also stated to be ready to execute sale deed. But, respondent – plaintiff did not come present as he was not possessing sufficient money required for execution and registration of sale deed as well as for making payment of balance sale consideration. Notice was also served upon him but he did not respond. He also did not appear in response to notice in the office of Sub Registrar on April 10, 2009.

9. On strength of these averments, appellant – defendant claimed that earnest money stood forfeited. Question of readiness and willingness on the part of appellant – defendant is a matter of concern as he was not owner of property in suit and was not competent or authorized to execute sale deed on the basis of alleged oral agreement. Infact, there was no privity of contract in between original owners and respondent – plaintiff.

10. Mere appearance of one of alleged co-sharers namely Yashpal in witness box showing his willingness to execute sale deed is not sufficient to forfeit earnest money paid by respondent – plaintiff to appellant – defendant. It appears that appellant – defendant and Yashpal have joined hands just to cause wrongful loss to respondent – plaintiff who have succeeded in obtaining a sum of ₹ 2,40,000/- as earnest money. Respondent – plaintiff has rightly claimed recovery of the amount of earnest money alongwith interest as appellant – defendant was not competent to execute sale deed. Impugned judgment and decree dated October 6, 2014 passed by learned appellate court does not call for any interference by this court. Suit of plaintiff has rightly been decreed by way of acceptance of appeal by lower appellate court. There is also no substantial question of law and case of respondent – plaintiff almost rests upon facts which have already been taken into consideration by learned lower appellate court.

11. As a net result of aforesaid discussion, this court does not find any merit in this appeal, and as such, same is dismissed with no order as to costs.

February 09, 2015
avin

(Jaspal Singh)
Judge