

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 5608 of 2015
Date of decision : October 28, 2015

Sachin Kumar

..... Appellant

Versus

Sanjeev Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jagdish Manchanda, Advocate
for the appellant.

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?

Amit Rawal, J (oral).

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree of the lower appellate court whereby the suit for specific performance of the agreement to sell dated 28.7.2008 has been dismissed. In essence, the judgment and decree of the trial court, whereby the suit aforementioned was decreed, has been set aside.

Learned counsel appearing on behalf of the appellant submits that the agreement to sell dated 28.7.2008 was entered into with defendant Nos. 1 and 2 who had already entered into an agreement to sell dated 17.6.2008 in their favour with defendant Nos. 3 and 4. As far as the target date of agreement to sell dated 17.6.2008 was 16.9.2008 whereas the agreement to sell

dated 28.7.2008 was 15.9.2008 and therefore the trial court rightly decreed the suit as earnest money of ₹16,50,000/- had been paid in respect of land measuring 1500 sq.yards.

He further submits that the lower appellate court has committed illegality and perversity in reversing well reasoned judgment on the premise that there was no privity of contract plaintiff and defendant Nos. 3 and 4-owner of the plot. The legal notice dated 11.9.2008 yielded no result which necessitated the plaintiff to file the suit on 12.9.2011. At least the plaintiff was entitled to double the amount instead of 6% interest.

The alleged cancellation of agreement to sell dated 17.6.2008 on 17.2.2010 is an attempt of collusion between defendant Nos.1,2 and 3 and 4.

I have heard learned counsel for the appellant and appraised the paper book.

During the course of arguments the agreement to sell dated 17.6.2008 has been seen by this Court. It reveals that there is no assignment clause entitling defendant Nos. 1 and 2 to enter into an agreement to sell. In the absence of assignment clause, the plaintiff cannot take benefit of Section 15 of Specific Relief Act, 1963. Even otherwise, the target date for execution of the agreement to sell dated 28.7.2008 was 15.9.2008 whereas in respect of agreement to sell dated 17.6.2008 was 16.9.2008. Without acquiring any title and interest in the property the target date was fixed prior to the one as is mentioned in the agreement to sell dated 17.6.2008. Moreover on 17.2.2010 defendant Nos. 3 and 4 with the

consent of defendant Nos. 1 and 2 had cancelled the agreement to sell dated 17.6.2008 that defendant Nos. 1 and 2 did not have any right and title, much less interest in the property thus, were unable to pass on title.

In my view, the appellate court has rightly dismissed the suit and ordered for refund of amount of ₹16,50,000/- along with interest. Since it has not been proved on record that defendant Nos. 1 and 2 were ready and willing to perform their part of the agreement, therefore the appellate court did not order for refund of double of the earnest money as stipulated in the agreement to sell.

I do not intend to differ with the finding rendered by the appellate court being the last court of fact and law and which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

October 28 , 2015
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