

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 65 of 2015
Date of decision : September 21, 2015

Mansha Ram and others

..... Appellants/defendants
Versus

Sunil Kumar and others

..... Respondents/plaintiffs

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjay Jain, Advocate
for the appellants.

Mr. Y. S. Turka, Advocate
for respondent Nos. 2 to 5.

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 challenge in the present appeal is to the concurrent finding of fact whereby the trial court decreed the suit for recovery of earnest money of ₹13,50,000/- along with interest at the rate of 12% per annum from defendant Nos. 1 to 3 instead of exercising discretion under Section 20 of the Specific Relief Act, 1963. Against the aforementioned judgment and decree, both the plaintiffs and the defendants filed an appeal, which have been dismissed.

Learned counsel, for the appellants-defendants submits, that the agreement to sell dated 4.10.2005 was entered into between the appellants-defendant No.1 to 3 and respondent No.1-

plaintiff for sale of a land measuring 78 Kanals 7 Marlas at the rate of ₹5,50,000/- per acre and in lieu thereof a sum of ₹13,50,000/- as earnest money was received. The target date for execution and registration of the sale deed was 5.1.2006. Since the respondents-plaintiffs did not appear before the Sub Registrar, Sadhuaura and accordingly the earnest money was forfeited. Thus, the court below having not appreciated such facts, brought on record, therefore, committed illegality and perversity in decreeing the suit.

He further submits that preceding to the filing of the suit on 7.3.2006, a legal notice dated 23.2.2006 was sent by the respondents-plaintiffs which was replied on 7.3.2006 (Ex.D-4) indicating that the agreement in question had been cancelled and earnest money stood forfeited.

In support of his contentions, relied upon the judgment in **Satish Batra Vs. Sudhir Rawal 2012 (4) RCR (Civil) 890** to contend that in case the vendee does not perform his part of the agreement the vendor is well within his right to forfeit the money.

Learned counsel for the respondents-plaintiffs submits that the agreement to sell had been proved through the testimony of Ujagar Singh, its attesting witness. The appellant-defendant No. 1 sold part of the land measuring 64 Kanals 16 Marlas to defendant Nos. 4 to 6 and defendant Nos. 2 to 3 further sold land measuring 13 Kanals 10 Marlas to defendant No.7. Though, in the written statement, the appellants-defendants Nos. 1 to 3 admitted execution of the agreement.

He further submits that there is no illegality and

perversity in the impugned order, much less no substantial question of law arise for adjudication by this Court.

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

In reply to the legal notice, the appellants-defendants have not averred that the earnest money of ₹13,50,000/- has been forfeited. Inasmuch as, I am afraid that the aforementioned judgment does not have any bearing to the present case as there was no averment with regard to the forfeiture of the earnest money in the present case. The trial court on the basis of oral and documentary evidence found that the respondents-plaintiffs were present in the office of sub Registrar on 9.1.2006, much less even defendant Nos. 1 to 3. Whereas on the next working date i.e. on 12.1.2006 without any notice to the plaintiffs, the aforementioned land had been sold through two sale deeds to defendant Nos. 4 to 6 and 7. Finding that the valuable right and interest of the property accrued in favour of the aforementioned defendants, ordered for refund of earnest money along with 12% interest per annum.

DW-1 Rameshwar, Reader to the Sub Registrar admitted the fact that Ex.P-3 had been signed by the Executive Magistrate. Since the working day was 9.1.2006, both the parties were present in the office of Sub Registrar, it could not be said that no reason has been given by the defendants for not performing their part of the agreement, rather selling of the land on 12.1.2006 indicates that the appellants-defendants were expecting higher price than the one agreed to be sold.

Keeping in view the aforementioned finding, I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below.

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

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 21 , 2015
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