IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No.3789 of 2014 (O&M)
Date of decision: 13.07.2015

Satya Devi and another

...........Appellants

Versus

Jatinder Kumar alias Jatinder Dutt Bali

...........Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Arun Takhi, Advocate,
for the appellants.

Ritu Bahri, J.

Defendants-appellants have come up in regular second appeal against the judgments of concurrent findings of facts dated 25.03.2010 and 01.02.2014 passed by the Additional Civil Judge (Senior Division), Garhshankar and the Additional District Judge (Adhoc) Fast Track Court, Hoshiarpur respectively, whereby suit filed by the plaintiff-respondent for specific performance of agreement to sell dated 25.09.2002, has been decreed.

Jatinder Kaur @ Jatinder Dutt Bali-plaintiff (respondent herein) filed a suit for specific performance alleging therein that Satya Devi and Ram Chand-defendants (appellants herein) had entered into an agreement to sell dated 25.09.2002 with her for sale of land measuring 10 Marlas along with flour mill, engine, two rooms and boundary wall, for a sum of Rs.1,05,000/-. They had received a sum of Rs.1,00,000/- as earnest money from the plaintiff by way of two separate cheques bearing Nos. 016081 and

016082 dated 25.09.2002 for the sum of Rs.50,000/- each. Balance sale consideration of Rs.5000/- was agreed to be paid at the time of execution of the sale deed on the stipulated date i.e. 20.01.2003. They had also agreed to get mutation of inheritance of the estate of Diwan Chand sanctioned in their favour before 20.01.2013. However, they had failed to get entered and sanctioned mutation regarding estate of Diwan Chand in their favour by the stipulated date. Therefore, the date for execution of the sale deed was extended for one year. As per plaintiff-respondent, the defendants had concealed the fact that they had another brother by the name of Amar Nath. On 21.02.2005, when the plaintiff obtained a copy of Jamabandi from the Halqa Patwari, then he came to know regarding sanctioning of the mutation of estate of Diwan Chand in favour of all his legal heirs, including his widow Swarni, defendants and their brother Amar Nath. Accordingly, the defendants-appellants had only 2/3 share in the suit land measuring 15 Marlas. Thereafter, the plaintiff approached the defendants to execute the sale deed, but they had failed to do so. Hence, this suit.

Upon notice, the defendants-appellants had appeared and filed written statement taking preliminary objections with regard to locus standi, concealment of material facts and maintainability of the suit. The execution of the agreement to sell dated 25.09.2002 was denied. It was stated that in fact, Ashok Kumar son of Ram Chand (defendant No.2) had borrowed a loan of Rs.20,000/- from Jaswant Singh son of Avtar Singh, resident of village Gurmiala, who was running a finance company in the name and style of M/s Khabra Finance Company at Mahilpur. The loan was taken for running an electrical shop. However, Ashok Kumar could not repay the loan amount, whereupon, the financier started harassing Ashok Kumar and demanded surety. Thereafter, the defendants-appellants purchased the stamp papers and gave the same to Jaswant Singh, who took their signatures on blank papers. As per defendants-appellants, they had paid the entire loan amount to Jaswant Singh, but he did not return the aforesaid blank papers to them.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the defendants have executed agreement to sell dated 25.09.2002 in favour of the plaintiff? OPP
2. Whether the plaintiff remained and is still redy and willing to perform his part of the contract? OPP
3. Whether the plaintiff is entitled to specific performance of the agreement to sell in question? OPP
4. Whether in the alternative the plaintiff is entitled to recovery of Rs.1,31,000/- along with interest? OPP

4-A. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP

5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Whether the suit is not maintainable in the present form? OPD
7. Whether the plaintiff has ben estopped from filing the present suit by his own act and conduct? OPD
8. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit of the plaintiff-respondent, directing the defendants-appellants to execute sale deed in favour of the plaintiff qua land measuring 7 Marlas 5 Sarsahis inherited by them from their father Diwan Chand, within two months of passing of the judgment. They were also directed to return the excess payment of Rs.21,250/-, received by them from the plaintiff. The lower appellate Court affirmed the findings of the trial Court and dismissed the appeal.

Facts not in dispute between the parties are that the defendants-appellants had executed an agreement to sell dated 25.09.2002 (Ex.P1) qua land measuring 10 Marlas out of land measuring 9 Kanals 10 Marlas bearing Khata No.378/433, Khasra No.1146, situated in the area of village Kalewal, Tehsil Garhshankar, for a total sum of Rs.1,05,000/-. At the time of execution of the agreement to sell, they had received a sum of Rs.1,00,000/- as earnest money vide two cheques bearing Nos. 016081 and 016082 dated 25.09.2002 for a sum of Rs.50,000/- each. Sale was to be executed on or before 20.01.2003. Thereafter, the time for execution of the sale deed was extended for a period of one year vide endorsement (Ex.P2), which bears the signatures of Satya Devi and Ram Chand-defendants (appellants).

Both the Courts below, after going through the agreement to sell dated 25.09.2002 (Ex.P1) and endorsement (Ex.P2), rejected the defence of the defendants-appellants that it was a loan transaction. It was held that the defendants were owners of 7 Marlas and 5 Sarsahis of land out of the total property measuring 15 Marlas and they had agreed to sell 10 Marlas of land, which was beyond their share. Accordingly, an amount of Rs.21,250/- was ordered to be refunded to the plaintiff-respondent. The sale consideration of remaining land measuring 7 Marlas 5 Sarsahis (share of the appellants) remained only Rs.78,750/-, which had already been paid by the plaintiff-respondent to the appellants.

Learned counsel for the appellants has not been able to dispute that as per inheritance, the appellant could only sell 7 Marlas 5 Sarsahis of land. Hence, the agreement to sell (Ex.P1) with regard to 10 Marlas of land could not be executed. Therefore, the direction given by the lower appellate Court to the appellants to execute sale deed in favour of the plaintiff-respondent qua land measuring 7 Marlas 5 Sarsahis and to return the excess amount of Rs.21,250/-, received by them from the plaintiff, does not call for any interference.

Accordingly, after going through the impugned judgments passed by the Courts below, this Court is of the view that the suit has been rightly decreed in favour of the plaintiff-respondent and no illegality, much less perversity, has been found therein, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
13.07.2015 **JUDGE**
ajp