

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

**RSA No.3819 of 2014
Date of decision : April 06, 2015**

Jeewan and others

..... Appellants

Versus

Kiran Rai and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present : Mr. J.S. Saneta, Advocate,
for the appellants.

GURMIT RAM, J.

1. This appeal has been filed by the appellants/defendants against the judgment and decree dated 19.07.2012 passed by the learned Additional Civil Judge (Senior Division), Sonapat vide which suit of the respondents/plaintiffs for the recovery of ₹13,92,914/- was decreed with costs and the judgment and decree dated 15.04.2014 passed by the learned Additional District Judge, Sonapat vide which the appeal of the present appellants/defendants filed against the abovesaid judgment and decree of learned trial Court was dismissed.

2. The case of the respondents/plaintiffs before the learned trial

Court in brief was that the appellants/defendants being the co-owners in possession of the land in dispute measuring 38 Kanals 18 Marlas had agreed to sell this land vide an agreement to sell to the respondents/plaintiffs for a total sale consideration of Rs.1,24,00,000/-. A sum of Rs.13,92,914/- was received as the earnest money at that time. The date fixed for execution and registration of the sale deed was 08.08.2005. On the date fixed the respondents/plaintiffs remained present in the office of Sub-Registrar concerned along with demand drafts in respect of balance sale consideration and cash amount to meet out the registration charges etc. The appellants/defendants did not turn up on that day in the said office to perform their part of agreement. Later on it was revealed that notification under Sections 4 and 6 of the Land Acquisition Act in respect of suit land had already been issued and published prior to the execution of this agreement to sell. The respondents/plaintiffs made enquiry with regard to the suit land from the *Jamabandi* for the year 1998-99, but the factum of publication of notices under Sections 4 and 6 of the Land Acquisition Act did not come to their knowledge since this fact was not incorporated therein. Due to the publication of the abovesaid notification under Section 4 and 6 of the Land Acquisition Act, the specific performance of this agreement to sell qua the land in dispute became impossible. Respondents/plaintiffs requested the appellants/defendants many a times to return their earnest money but of no effect, hence the instant suit.

3. On appearance, appellants/defendants took preliminary objection regarding the maintainability of the suit, limitation, estoppel,

locus standi and suppression of real facts. But anyhow the execution of the alleged agreement to sell and receipt of earnest money to the extent of ₹13,92,914/- was admitted. It was their further case that there were some contractual obligations which were to be performed by the respondents/plaintiffs within a period of 6 months, which they did not perform and, as such, the amount of the earnest money stood forfeited.

4. After hearing learned counsel for both the parties and perusing the record, the learned trial Court recorded findings on all the issues in favour of the respondents/plaintiffs and decreed their suit with costs vide the impugned judgment and decree dated 19.07.2012.

5. Feeling aggrieved from this judgment and decree, the appellants/defendants filed an appeal which was dismissed by the learned Court of Additional District Judge, Sonapat vide impugned judgment and decree dated 15.04.2014.

6. Being not satisfied with the finding of both the Courts below the appellants/defendants have come up in the instant appeal before this Court.

7. I have heard the learned counsel for the appellants and have also perused the record as available on the file.

8. In the case in hand as abovesaid it is the admitted fact that the alleged agreement to sell was executed between the parties qua the land in dispute for a sale consideration of ₹1,24,00,000/- and that a sum of Rs.13,92,914/- was received by the appellants/defendants at that time as the earnest money. Then it is also admitted fact that Notification under

Sections 4 and 6 of the Land Acquisition Act for the acquisition of the land in dispute had already been issued before the execution of the abovesaid agreement to sell. It was the plea of the appellants/defendants that some contractual obligations were to be performed by the respondents/plaintiffs within a period of 6 months which they did not perform within the said stipulated period and consequently the said amount of earnest money stood forfeited. But they have not made it clear at any time as to what were those contractual obligations which the respondents/plaintiffs were to perform. Then it is the case of the respondents/plaintiffs that before entering into the agreement to sell qua the land in dispute they had verified the title of the appellants/defendants from the copy of Jamabandi for the year 1998-99 (Ex.P3) wherein the factum of publication of the Notification under Sections 4 and 6 of the Land Acquisition Act was not incorporated and consequently the factum of publication of these Notifications did not come to their notice prior to the execution of this agreement to sell. The specific performance of the agreement to sell in question as such qua the land in dispute becomes impossible being frustrated, as per the provisions of Section 56 of the Contract Act and as such the appellants/defendants are legally bound to return the amount to the respondents/plaintiffs, which they had received from them as earnest money at the time of entering into the agreement to sell qua the land in dispute along with interest. They have no right to retain this amount as it is a settled law that no one can be allowed to take benefit of his own wrong since they had charged a hefty amount from the respondents/plaintiffs in the shape of earnest money by concealing the

fact of the publication of Notifications under Section 4 and 6 of the Land Acquisition Act qua the land in dispute.

9. Some of the case laws relevant in order to adjudicate the point in controversy are as under:-

i. *Rozan Mian vs. Tahera Begum & Ors., 2007 AIR SC 2883.*

In this case the parties entered into an agreement to sell tenancy rights. The Government made amendment in the law thereby prohibiting the transfer of tenancy rights. It was held that under Section 56 of the Contract Act, 1872 an agreement to do an act impossible in itself is void, decree for specific performance cannot be passed. In these circumstances, the plaintiff is entitled only to the refund of the consideration together with interest and cost of the suit.

ii. *Baldev Singh vs. Keshwa Nand and others, 2011 (2) ICC 414.*

In this case law the parties entered an agreement to sell qua the land in dispute. The vendor got earnest money from the vendee. Thereafter the Government started process of acquiring the land in question. It was held that the contract being frustrated and, as such, the vendee is entitled for the refund of the earnest money.

iii. *Sri Ram Builders vs. State of M.P., 2015(1) SCC (Civil) 211.*

In this case law the State Transport Corporation took a plot on lease from development authority. It further entered into an agreement with

the appellant-builder for construction of bus-stand-cum-commercial complex. Period of lease expired by efflux of time. Subsequently the development authority cancelled the lease granted in favour of the Corporation as the plot in question was attached due to payment of certain dues. Relief of specific performance was declined on the principle of contract being frustrated. The Corporation was directed to handover the plot to the development authority and to return the amount received from the builder, i.e. Appellant.

10. The learned counsel for the appellants/defendants has also submitted that as per the receipt the date fixed for the execution and registration of the sale deed was 08.05.2005 and, as such, this suit was time barred. But, his, this contention is not tenable because as per the agreement to sell, the date fixed for the execution and registration of the sale deed was 08.08.2005 and the instant suit as per the record was filed on 16.07.2008.

11. In the light of the above discussion, no ground to make any kind of interference in the impugned judgments and decrees has been made out. Consequently, this appeal being devoid of merit stands dismissed and disposed of accordingly.

April 06, 2015

Gaurav Sorot

**(GURMIT RAM)
JUDGE**