

In the High Court of Punjab and Haryana at Chandigarh

.....

Civil Misc. No.15460-C of 2014

and

R.S.A. No.6491 of 2014 (O&M)

.....

Date of decision:11.5.2015

Sadhu Singh

.....Appellant

v.

Mohinder Singh and another

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Vikram Anand, Advocate for the appellant.

.....

Inderjit Singh, J.

Civil Misc. No.15460-C of 2014:

For the reasons mentioned in the civil miscellaneous application, the delay of 182 days in re-filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. No.6491 of 2014 (O&M):

This regular second appeal has been filed by Sadhu Singh-appellant/plaintiff against Mohinder Singh and Sukhwinder Pal Singh-respondents/defendants challenging the impugned judgment and decree dated 15.2.2014 passed by the learned Additional District Judge (Ad hoc), Fast Track Court, Jalandhar in appeal, vide which the judgment and decree dated 31.1.2011 passed by the learned Additional Civil Judge (Senior

Division), Jalandhar has been modified and alternative relief for recovery of amount of ₹3,90,000/- along with interest @12% per annum on principal amount from the date of filing of the suit till date of decree was given.

The brief facts of the case are that defendant No.1-Mohinder Singh being owner of the property in dispute entered into agreement to sell dated 17.10.2002 with plaintiff-Sadhu Singh for a total sale consideration of ₹3,90,000/-, which was received by defendant No.1 from the plaintiff as full and final payment of the plot. Defendant No.1 also executed a General Power of Attorney in favour of the plaintiff in respect of the above said property with undertaking that at no point of time the defendant shall cancel or revoke the said power of attorney. It is also stated that if as per the terms and conditions the defendant did not perform his part of the agreement, then the plaintiff shall be at liberty to get the sale deed executed through the Court. In February 2005, the plaintiff came to know that defendant No.1 had executed the sale deed dated 9.2.2004 in favour of defendant No.2 deliberately and intentionally.

On the other hand, the case of defendant No.1 in the written statement was that he never entered into any alleged agreement to sell. The plaintiff has no cause of action to file the present suit. Defendant No.1 admitted the ownership of the property in dispute, but he denied that he ever entered into an agreement to sell and received sale consideration of ₹3,90,000/- from the plaintiff. It is also pleaded that if the plaintiff paid the entire sale consideration of ₹3,90,000/-, he would have executed the sale deed from Amarjit Singh or from Mohinder Singh. No such alleged

agreement to sell was ever executed by defendant No.1 in favour of the plaintiff on 17.10.2002. The plaintiff was in the knowledge regarding the sale of the property in dispute in favour of defendant No.2 which was executed with the consent of the plaintiff for the return of the loan amount taken by Amarjit Singh on behalf of defendant No.1. It is also stated that Amarjit Singh son-in-law of answering defendant took a loan of ₹70,000/- from the plaintiff, who is a financier, to raise the boundary wall on the plot in dispute. The plaintiff asked Amarjit Singh to get the sale deed executed in the name of some one, so that he can keep the sale deed as a security. Amarjit Singh executed a sale deed in favour of answering defendant on 17.10.2002, to which the plaintiff is a marginal witness. The plaintiff took the original sale deed from the office of Sub Registrar, Jalandhar and kept the same with him as a security of the above said loan amount. The original sale deed is still with the plaintiff. The plaintiff being financier got the signatures of the answering defendant on various papers and those papers might have been converted into agreement to sell. Defendant No.2 admitted the ownership of defendant No.1 and the execution of the sale deed dated 9.2.2004 and stated that the sale deed is legal and valid.

The learned Additional Civil Judge (Senior Division), Jalandhar, vide judgment and decree dated 31.1.2011 decreed the suit of the plaintiff for possession by way of specific performance of agreement to sell and it is also observed that if for unforeseen reasons sale deed cannot be executed, then the plaintiff is entitled for alternative relief of recovery of ₹7,80,000/- with interest @12% per annum on principal amount from the

date of filing of suit till the date of decree and @6% per annum on principal amount from the date of decree till the date of realization of amount.

The appeal was filed by defendant No.1, which was accepted partly and the learned Additional District Judge (Ad hoc), Fast Track Court, Jalandhar decreed the suit for the alternative relief of recovery of ₹3,90,000/- along with interest.

Learned counsel for the appellant at the time of arguments argued that the findings recorded by the learned Additional District Judge are not as per law. The suit filed for specific performance should have been decreed. The learned counsel for the appellant also argued that the learned Additional District Judge has not appreciated the evidence in right perspective. Agreement to sell has been duly proved by the plaintiff.

I have heard learned counsel for the appellant and have gone through the record.

First of all, I find that the learned Additional Civil Judge (Senior Division) has granted the main relief as well as the alternative relief. The findings of the Court should be clear. Certainly, if the suit for specific performance has been decreed, then alternative relief should not have been given. If the Court feels that alternative relief should be given, then the main relief should be declined. Further the learned Additional Civil Judge, (Senior Division), Jalandhar, has granted both the reliefs firstly decreed the suit for specific performance and then it was observed that if for any unforeseen reasons the sale deed could not be executed, then the plaintiff would certainly be entitled for alternative relief.

The learned Additional District Judge, Jalandhar, has discussed

the evidence in right perspective. In no way, the findings can be held as perverse nor it can also be held that the Additional District Judge has misread the evidence. It is admitted case of the appellant that on 17.10.2002 son-in-law of Mohinder Singh, namely, Amarjit Singh was the owner of the suit property. On that day, Amarjit Singh executed the sale deed in favour of Mohinder Singh-defendant No.1 and regarding that sale deed the plaintiff was a marginal witness. On that very day i.e. 17.10.2002, this agreement to sell had been executed between the plaintiff and Mohinder Singh. No reason or ground has been given as to why the sale deed was not got executed in the name of the plaintiff on that very day from Mohinder Singh or from Amarjit Singh directly. It is the case of the plaintiff that he paid ₹3,90,000/- to Mohinder Singh-defendant No.1, whereas the sale consideration regarding the sale deed executed by Amarjit Singh son-in-law of Mohinder Singh in favour of Mohinder Singh is ₹3,30,000/-. Secondly, when the total consideration had been paid, then as to why the possession had not been obtained by the plaintiff. There was no reason or ground as to why the sale deed was not got executed on the same very day. A perusal of the agreement to sell also shows that no date had been fixed for executing the sale deed. Further, I find that the power of attorney had been executed by Mohinder Singh in favour of the plaintiff in which he was also authorized to alienate the suit property etc. then why he had not executed the sale deed in view of that power of attorney. It looks that the version given by defendant No.1 is more probable. This also shows that the intention of the parties was not to execute the sale deed, but this agreement

was only a security for the amount paid by the plaintiff to defendant No.1, who required the money at that time. Therefore, the findings given by the learned Additional District Judge are correct and as per law and the learned Additional District Judge has correctly given the alternative relief in view of the evidence on record. The judgment and decree dated 15.2.2014 passed by the learned Additional District Judge, Jalandhar, are correct and as per law and do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in this regular second appeal, the same is dismissed.

May 11, 2015.

(Inderjit Singh)
Judge

hsp