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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2572-2011 [O&M]

Date of Decision : February 12th, 2016

Beant Singh and others

.... Appellant

Versus

Karnail Singh and others

.. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present Mr. K.P.Singh, Advocate,
for the appellants.

Mr. C.L.Verma, Advocate, for
Mr. Aditya Darshan, Advocate,
for respondents No.1 and 2.

Mr.Arjun Takhi, Advocate,
for respondent No.3.

SHEKHER DHAWAN, J.

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby suit for possession by way of specific performance of agreement of sale dated 12.12.2005 filed by the plaintiffs was decreed by the Court of first Instance vide judgment and decree dated 22.09.2009 and a money decree of Rs.11.00 lacs along with interest at the rate of 6% per annum with costs was passed. The appeal filed by the plaintiffs was allowed by learned District Judge,

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Shaheed Bhagat Singh Nagar, vide judgment and decree dated 7.5.2011 and the suit for possession by way of specific performance of the agreement was decreed.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that parties to the litigation agreed for sale of suit-land on the basis of agreement of sale dated 12.12.2005 for a total consideration of Rs.49,50,000/-. A sum of Rs.11,00,000/- was paid as earnest money and the balance payment was to be made till 15.6.2006. As per the plaintiffs, on the target date, i.e., 15.6.2006, both the parties visited the office of Sub Registrar, Balachaur and got executed and attested their respective affidavits in token of their presence. However, the sale deed could not be executed on the said date. As per the plaintiffs, the defendants insisted for payment of balance amount only through bank draft and the banking hours had already come to close by that time. With mutual consent of both the parties, next date for execution of sale deed was fixed as 19.6.2006. Sale deed was scribed on stamp papers worth Rs.2,56,000/-. As per the plaintiffs, sufficient funds were available with them and the plaintiffs filed suit for specific performance of agreement of sale.

4. Defendants contested the suit taking the plea that the plaintiffs failed to perform their part of agreement. On 15.6.2006, the defendants were present but the plaintiffs did not turn up. The plaintiffs failed to make payment before the Sub Registrar, Balachaur and thereafter, the defendants got their presence marked through affidavits on 15.6.2006 and the suit is liable to be dismissed. Defendants also took the plea that the

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plaintiffs got implicated the defendants in false case under Sections 406 and 420 IPC on 16.7.2006. Defendants filed a civil suit against the plaintiffs for permanent injunction and prayed that the present suit be dismissed.

5. On the pleadings of the parties, issues were framed. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance decreed the suit of the plaintiffs but in stead of passing decree for specific performance of agreement by way of sale deed, only money decree was passed for refund of Rs.11,00,000/- [earnest money] alongwith interest. The appeal filed before the Court of first Appeal was allowed by the Court of first Appeal and the suit for specific performance of agreement of sale was decreed. As such, the present Regular Second Appeal.

6. Learned counsel for the appellants submitted that most of the facts are not disputed. However, the real controversy is that on 15.6.2006, plaintiffs were not ready with the balance sale consideration and that is why, sale deed could not be executed on the target date. Thereafter, the plaintiffs issued a legal notice on 21.06.2006 and in the reply to the said legal notice, dated 30.6.2006, the defendants rescinded the agreement.

7. Learned counsel for the appellants further submitted that as the defendants had rescinded the agreement lawfully, the plaintiffs were required to file a suit for declaration only and not suit for specific performance. On this point, reliance was placed on the decision from Hon`ble Supreme Court in **I.S.Sikandar [D] By Lrs Vs. K. Subramani and others, 2014(1) R.C.R. [Civil] 236**, wherein it was held that in case of seller terminating the agreement of sale of property, suit for specific

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performance by purchaser is not maintainable because the purchaser has first to seek declaratory relief to declare the termination of agreement of sale as bad in law. According to him, as the same has not been done by the plaintiffs, suit for specific performance without filing suit for declaration seeking declaration to declare the termination of agreement of sale to be bad, is not maintainable.

8. Learned counsel for the appellants further submitted that in fact, the plaintiffs were not having the required money and they were having a sum of Rs.17.00 lacs only in their account. The present appellants had filed suit for permanent injunction and the same was decreed and at that time, plea was taken that brother of the plaintiff s was having Rs.17.00 lacs only and this fact has been so observed by the Court of first instance also. Learned counsel for the appellants further submitted that present suit for specific performance without seeking declaration that rescission of agreement is illegal, is not maintainable. More so, the plaintiffs were not willing and ready to perform their part of agreement on the target date and as such, they are not entitled to seek specific performance of agreement and both the Courts below have not duly appreciated the facts and material available on file and the impugned judgment and decree be set-aside.

9. Learned counsel for the respondents submitted that the plea for rescission of agreement dated 12.12.2005 on the basis of reply to the notice dated 30.6.2006 [Ex.D3] has never been taken before the Courts below and the appellants are trying to set-up a completely new case by way of said argument. This plea was not raised before either of the Courts below and even this is not the ground of appeal in the present Regular

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Second Appeal. More so, the reply to the notice, dated 30.6.2006 is after the target date and that has no value in the eyes of law. As regard to availability of funds, vide sale deed dated 13.6.2006 [Ex. P1/A], the plaintiffs were having a sum of Rs.38.00 lacs. As regard to readiness and willingness on the part of the plaintiffs, they had come present in the office of Sub Registrar on 15.6.2006 and got their affidavits executed and attested from the Sub Registrar in token of their presence. More so, the plaintiffs had purchased stamp-papers worth Rs.2,56,000/- and same were duly got typed. That makes all the facts clear that the plaintiffs were always willing and ready to perform their part of the agreement. On the target date, the sale deed could not be executed simply because the defendants insisted that in lieu of cash payment, payment be made through bank draft. Since the banking hours were over by that time, the next date was fixed to be 19.6.2006. More so, it had come in the statement of brother of the plaintiffs that funds were available which were more than the required amount. The Court of first Appeal has rightly appreciated the entire controversy and the said findings do not call for any interference by this Court.

10. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that there are concurrent findings of fact recorded by both the Courts below that agreement of sale was duly executed and the agreement dated 12.12.2005 was duly proved on the file. As regards to availability of funds, it has come on the file, by way of statement of brother of the plaintiffs that they were having more than the required funds at their end. They had executed sale deed dated 13.6.2006 for a total sale consideration of Rs.38.00 lakhs. More so, on

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the target date, the plaintiffs had purchased stamp papers worth Rs.2,56,000/- and got typed the sale deed. The plea taken by the plaintiffs has rightly been appreciated by the Court of first Appeal that on the target date, sale deed could not be executed simply because the defendants insisted that the payment be made in the shape of bank draft, whereas the plaintiffs were ready to make the payment in cash and with mutual consent, the target date was rescheduled to be 19.6.2006. There was no question of plaintiffs being not ready and willing to perform their part of agreement, rather all the attending circumstances establish that the plaintiffs were willing and ready to perform their part of the agreement. The plaintiffs were simply required to show that they had sufficient cash and financial capacity to execute the sale deed to prove their readiness and willingness. Such a view was taken by Hon`ble Supreme Court in **M/s J.P. Builders and another Vs. A. Ramadas Rao and another, 2011 (1) RCR [Civil] 604 Sargunam [Dead] by LR Vs. Chidambaram, 2004[4] RCR [Civil] 721** and by this Court in **Dalip Singh Vs. Jagdish Singh, 2007 [4] RCR [Civil] 120** and **Jora Singh Vs. Lakhwinder Kumar and others, 2011 [1] RCR [Civil] 130.**

11. In **Sargunam's case [supra]**, Hon`ble Supreme Court has held that in case one of the three circumstances mentioned in Section 20(2) of the Specific Relief Act, 1963 is established, no question of discrimination arises and suit for specific performance of agreement of sale is to be decreed.

12. The plea taken by learned counsel for the appellants that the suit for specific performance is not maintainable as the agreement was rescinded on 30.6.2006 on the basis of reply to the legal notice is not

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tenable because the target date fixed for execution of sale deed was 15.6.2006 and this plea was taken in the notice [Ex.D3] for the first time after the target date i.e. On 30.6.2006. More so, it is not the case of the defendants right from the beginning. No such plea was ever taken by the defendants either in the written statement or at the time of arguments before the Court of first instance and thereafter before the Court of first Appeal and now, this plea is being taken just to avoid their liability having been arisen out of the agreement of sale, which was duly executed by the present appellants.

13. In the considered opinion of this Court, the findings recorded by the Court of first Appeal are based on the evidence available on the record and correct appreciation of the law. The said findings do not call for any interference and the same are hereby affirmed. There is no substantial question of law involved in the present appeal and hence, the same is not maintainable under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs., JT 2001(2) SC 407.**

14. In view of the above, the present Regular Second Appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

February 12th, 2016
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