

211

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3636-2011 (O&M)
Date of decision : 07.09.2016

Baldev Singh and Another

... Appellants

Versus

Karnail Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harsh Aggarwal, Advocate
for the appellants.

Mr. Naresh Kaushal, Advocate
for respondent No.1.

Mr. Sachin Mittal, Advocate
for respondent Nos.2 and 3.

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 appellants-plaintiffs are aggrieved of the decretal of the suit in part holding entitling him to receive the refund of the earnest money of ₹ 3,50,000/- along with interest @ 9% P.A.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the appellants-plaintiffs submits that the vendor-defendant No.1 had entered into an agreement to sell in respect of suit land on 16.12.1997 against the total sale consideration of ₹ 13,79,725/-. The target date for registration and execution of the sale deed was 25.05.1998. Prior to that, much less, during the currency of the agreement, the vendor sold the land to the

subsequent vendees vide two sale deeds dated 30.04.1998 and 01.05.1998, on the basis of the agreement to sell alleged to have been executed one with Dina Nath Sharma dated 20.05.1997. The suit, aforementioned, was filed on 24.05.2001. The appellants-plaintiffs had always been ready and willing to perform his part, but the Courts below failed to exercise the discretion under Section 20 of the Specific Relief Act, 1963 (hereinafter called 'the 1963 Act'). The agreement to sell has been duly proved through the testimony of the attesting witnesses. In fact, the agreement to sell dated 20.05.1997 was an antedated document and it was not with the vendees of the sale deed of 1998 as Dina Nath Sharma is not the beneficiary of the sale deed. All these factors have escaped the notice of both the Courts below, thus, there is a illegality and perversity and urges this Court for exercising the discretion under Section 20 of the 1963 Act by setting aside the judgment and decree under challenge.

Per contra, Mr. Naresh Kaushal and Mr. Sachin Mittal, learned counsel appearing on behalf of the respondent No.1 and respondent Nos.2 and 3, respectively, submits that the readiness and willingness on the part of the plaintiffs was conspicuously absent. Once, according to him the breach was in April 1998 before the target date, nothing prevented them to seek the vindication of grievance immediately, but slept over the matter as later as still May 2001, when the suit was filed. Even otherwise, the agreement to sell dated 20.05.1997 has been proved, much less, the sale deed, thus, the agreement to sell, in question, is not a first one, but second one, rightly so, refund of earnest money of ₹ 3,50,000/- along with interest @ 9% has been ordered, thus, urges this Court affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised

the paper book.

Shorn of the facts as noticed above, the fact remains that the filing of the suit in May 2001 shows that the plaintiffs were not ready and willing. The plaintiffs has to be ready and willing from the date of the execution of the agreement to sell, during the pendency of the suit, till passing of the decree. This view of the mine is fortified by the judgment culled out by the Hon'ble Supreme Court in “Sita Ram and others V/s Radhey Shyam” 2007 (4) RCR (Civil) 533.

There is another aspect of the matter that the previous agreement to sell has also been proved on record. Normally, in such cases, the agreement to sells are not produced on record, only sale seeds which do not reflect the execution of the agreement to sell. Basically such attempts are made to thwart the claim of the actual vendee, but here is the case where the *bona fides* of the subsequent vendees have proved to the hilt. Since, payment of earnest money has been proved, rightly so, the Courts below have ordered for refund of the earnest money. I concur with the findings rendered by both the Courts below.

For the foregoing reasons, no ground is made out for interference, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

07.09.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No