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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5393-2012 (O&M)
Date of decision : 05.12.2016

Buta and another

... Appellants

Versus

Jaswinder Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jai Bhagwan, Advocate
for the appellants.

Mr. Anil Kumar Garg, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the judgments and decrees rendered by both the Courts below particularly the lower Appellate Court, whereby the judgment and decree of the trial Court entitling the plaintiffs for refund of the earnest money along with interest, has been modified and the discretionary relief under Section 20 of the Specific Relief Act, 1963 has been granted.

Mr. Jai Bhagwan, learned counsel appearing on behalf of the appellants-defendants submits that the suit aforementioned was filed on 26.09.2006 as an outcome of the alleged execution of the agreement to sell 22.10.2005 in respect of land agreed to be sold @ ₹ 3,30,000/- per *Bigha* against the payment of earnest money of ₹ 30,000/-. No doubt the appellants-defendants were proceeded *ex parte* twice i.e. on 19.12.2006 and 29.08.2007, but the fact remains that she died on 10.09.2008, whereas the trial Court decreed the suit *ex parte* on 21.07.2010. When the appeal was

filed, the appellant-defendant, namely, Hazran, was already dead and no effort was made by the lower Appellate Court to serve the LR's of defendant by invoking the provisions of Order 41 Rule 14 of the Code of Civil Procedure, in that case, it would reveal that Hazran had already died. No appeal against the dead person was maintainable. All these factors are essential and necessary for the adjudication of the *lis*, but the lower Appellate Court abdicated, thus, urges this Court for setting aside the judgment and decree under challenge as there is gross illegality and perversity.

Mr. Anil Kumar Garg, learned counsel appearing on behalf of the respondents-plaintiffs submits that the appeal at the instance of LR's is not maintainable as the agreement to sell binds them for all the acts done by the vendor. They stepped into the shoes of vendor and have to honour and respect the agreement to sell. Once, the vendor did not step into the witness-box nor filed the written statement and intentionally proceeded *ex parte* twice, the lower Appellate court being the last Court of fact and law, rightly granted the discretionary relief as the agreement to sell has been proved to the hilt, on account of fact, that the suit was filed on 26.09.2006. The stipulated date was 31.01.2006. Even before the trial Court, there was a settlement between the parties i.e. Ex.P-4. The statutory provisions of law have been adhered to, thus, urges this Court for affirming the findings under challenge as there is no illegality and perversity.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the defendant(s) has not set up any defence and twice proceeded *ex parte*. In the absence of any application for seeking setting aside of the *ex parte* judgment and decree, though, remedy

of appeal has been availed, I am of the view that no purpose would be served by sending back the matter to the lower Appellate Court as it would be tantamounting to *de novo* trial. The approach and conduct of the appellant(s)-defendant(s) had been very casual and lackadaisical. It has been brought to the notice of this Court that in pursuance to the judgment and decree of the lower Appellate Court, remaining amount of ₹ 3 Lacs is already lying deposited. Since the agreement to sell is of 2006 and instead of going on hyper-technicality, I deem it appropriate to modify the judgment and decree of the lower Appellate Court by granting compensation to the appellants-defendants to the tune of ₹ 1,00,000/- to cut down the cost of litigation and as well as the prolongation/protraction. This Court cannot remain oblivious to the factum of settlement arrived between the parties i.e. Ex.P4. It was the duty of defendants to disclose the factum of death to the plaintiffs or the Court.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is hereby modified. On deposit of the remaining amount of ₹ 1,00,000/- within a period of three months from the receipt of the certified copy of the order, the appellants-defendants shall execute and register the sale deed, failing which, the respondents-plaintiffs shall be at liberty to seek the execution in accordance with law.

The appeal stands disposed of.

05.12.2016

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**