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

RSA No.1364 of 2016 (O&M)
Date of Decision: 04.08.2016

Gurpreet Singh
......Appellant

Vs

Devinder Kaur and others
.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Manjeet Singh, Advocate for the appellant.

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RAJ MOHAN SINGH, J.

[1]. Defendant-appellant has filed this regular second appeal against the judgment and decree dated 06.11.2015 passed by Additional District Judge, Bathinda whereby judgment and decree dated 30.09.2013 passed by Civil Judge (Senior Division), Bathinda was upheld.

[2]. Plaintiffs filed a suit for recovery of Rs.6,80,000/- i.e. Rs.5,00,000/- being earnest money and Rs.1,80,000/- being interest @ 12 % per annum.

[3]. Brief facts of the case are that plaintiffs No.2 and 3 are daughters of Daljit Kaur widow of Jasjit Singh who died on 22.05.2008 leaving behind plaintiffs No.2 and 3 as her heirs. They have inherited the estate and other movable assets of

Daljit Kaur. Defendant entered into an agreement to sell dated 10.03.2005 in respect of plot measuring 222 sq. yard having specific nomenclature in the revenue record situated in Patti Mehna, Bathinda with plaintiff No.1 Davinder Kaur and Daljit Kaur (deceased) @ Rs.14,350/- per sq. yards. The agreement was executed on the terms and conditions in favour of plaintiff No.1 Davinder Kaur and Daljit Kaur. The original agreement was tendered in criminal case titled as State Vs. Gurpreet Singh which was pending before Chief Judicial Magistrate, Bathinda. Defendant agreed to sell the plot in question to plaintiff No.1 and deceased mother of plaintiffs No.2 and 3 @ Rs. 14,350/- per sq. yard. At the time of execution of agreement, an amount of Rs.5,00,000/- was paid to the defendant as earnest money in the presence of witnesses namely Jagga Singh and Inder Mohan Singh. The agreement was scribed by Gurpreet Singh, Advocate at the instance of the defendant. Remaining sale consideration was to be paid at the time of registration of sale deed. All the expenses of registration were to be borne by the vendees. Failure clause was also incorporated in the agreement on either side with consequence thereof. The target date for execution of sale deed was fixed for 16.06.2005. With the necessary default clauses, the agreement came to be executed.

[4]. Plaintiffs also alleged that despite several requests to

the defendant to execute and register the sale deed, he did not execute the sale deed. On 16.06.2005, there was holiday, therefore on 17.06.2005, plaintiffs attended the office of Sub Registrar for execution and registration of sale deed along with remaining amount of sale consideration and for other expenses towards stamp and registration etc., but the defendant did not turn up. Plaintiffs got their presence marked before the Sub Registrar on 17.06.2005 in order to show their readiness and willingness to perform their part of obligation. Even thereafter, plaintiff No.1 Davinder Kaur and Daljit Kaur approached the defendant for execution of sale deed, but that yielded no result. Later on, plaintiffs came to know that the defendant was not owner of the plot. FIR No.729 dated 16.12.2005 under Section 420 IPC was got registered against the defendant in Police Station, Kotwali, Bathinda. Since the defendant had received an amount of Rs.5,00,000/- fraudulently, therefore, instead of filing suit for specific performance of the agreement, the present suit for recovery of Rs.5,00,000/- along with interest came to be filed.

[5]. Defendant contested the suit on all counts alleging that it was very much disclosed to the plaintiffs that he was not the owner of the property, rather he would get the sale deed executed. Other pleas were also raised by the defendant.

Defendant also alleged that in the agreement itself, factum of defendant being not owner of the suit property was mentioned and the plaintiff despite that agreed to purchase the same, therefore no fault could be attributed to the defendant. Defendant further alleged that it was the duty of the plaintiffs to ascertain the title of the vendor as there was specific mention in the agreement itself that defendant would get the sale deed executed and registered from the original owner.

[6]. After completion of pleadings, both the parties went to trial on the following issues:-

> *"1. Whether plaintiff is entitled for the recovery of Rs.6,80,000/- along with interest from the date of institution of suit till its realisation? OPP*
>
> *2. Whether the defendant Gurpreet Singh entered into agreement of sale dated 10.03.2005 with plaintiff with regard to sale of plot measuring 222 sq. yards at the rate of Rs.14,350/- out of which he received a sum of Rs.5,00,000/- as earnest money from the defendant, in presence of witnesses?OPP*
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> *3. Whether the defendant committed breach of trust and failed to get sale deed executed and registered in favour of the plaintiffs within stipulated period? OPP*
>
> *4. Whether plaintiff has no locus standi and cause of action to file the suit? OPD*
>
> *5. Whether the suit is not within limitation?*

OPD

6. Whether the suit is bad for non joinder of necessary parties? OPD

7. Whether the suit has not been verified according to Order 6 Rule 15 CPC? OPD

8. Whether the defendant is entitled to special compensatory costs to the tune of Rs.5000/- under Section 35 A CPC? OPD

9. Relief."

[7]. Both the parties led their respective evidence to prove their case. Trial Court decreed the suit for recovery of Rs.5,00,000/- along with interest @ 12 % per annum on the principal amount from the date of agreement to sell dated 10.03.2005 till filing of the suit. Future interest @ 6 % per annum was awarded on the principal amount till actual realisation of the amount. The judgment and decree dated 30.09.2013 was assailed by the defendant before the lower Appellate Court. Lower Appellate Court vide judgment and decree dated 06.11.2015 dismissed the appeal. That is, how, the present appeal came to be filed in this Court.

[8]. I have heard learned counsel for the appellant and have also perused the pleadings and material placed on record.

[9]. Learned counsel for the appellant relied upon the following substantial questions of law as framed in para No.13 of grounds of appeal:-

> *"i. Whether the courts below did not properly appreciate the facts and circumstances of the case as well as documentary evidence on record?*
>
> *ii. Whether the impugned orders passed by the courts below are totally non-speaking and are contrary to law?*
>
> *iii. Whether the impugned orders are against the principles of natural justice?*
>
> *iv. Whether the courts below did not apply independent mind to the facts and circumstances of the present case while passing the impugned orders, which resulted in miscarriage of justice to him?*
>
> *v. Whether the findings of the learned lower court is based on mere conjectures, surmises and imaginations and is without going through the record of the present case?"*

[10]. Question No.1 is a question of appreciation based on facts of this case, therefore, the same cannot be treated to be question of law much less substantial question of law. Questions No.2 to 5 are not the substantial questions of law. Therefore, this Court proceeded to consider this case on factual premise.

[11]. Evidently, 16.06.2005 was the date fixed for registration of sale deed, but till 16.06.2005 it was not clear that who was the original owner of the suit land. Defendant in the legal notice stated that he came present with Teja Singh, but sale deed was

executed in favour of Kulwant Singh on 17.06.2005. When on the last date i.e 16.06.2005, the name of the original owner was not known even to the defendant, then how he could say that he had disclosed all the facts to the plaintiff. The defendant on his side contended that the plaintiff had not come present before the Sub Registrar for execution and registration of the sale deed due to recession in the market. Violation of terms and conditions of agreement to sell was alleged against the plaintiffs themselves and therefore, the amount was claimed to be forfeited. The owner was not known till 16.06.2016 and the plaintiffs got their presence marked before the Sub Registrar on 17.06.2005. Plaintiffs also examined PW 1 Gurpreet Singh, Advocate and attesting witnesses namely Inder Mohan Singh as PW 2 and Davinder Kaur herself as PW3 and corroborated their version.

[12]. A readiness and willingness was also proved. No evidence was led by the defendant that the application dated 17.06.2005 Ex.P2 was forged and fabricated and was not admitted by the defendant. Apparently, defendant was not the owner of the suit land. His stand was that he would get the sale deed executed and registered from the original owner. In the affidavit Ex.D5, defendant did not mention about the name of the original owner and whether the said person had come

present along with him or not. The record of FIR revealed that Teja Singh had made specific statement that on 16.06.2005, it was holiday and he had purchased the plot from Iqbal Singh on 17.06.2005. He had come present for execution and registration of sale deed in favour of Gurpreet Singh, but Gurpreet Singh did not come present. The stand of the defendant was falsified by way of documentary evidence.

[13]. In the legal notice, defendant stated that 16.06.2005 being holiday and he came present along with Teja Singh on 16.06.2005 and 17.06.2005. Evidently, this fact showed that Teja Singh was the owner of the suit land, but that was evident on 10.03.2005 or 16.06.2005 and 17.06.2005, Teja Singh was not the registered owner of the suit land. This fact was proved from the evidence of the defendant himself when he filed affidavit of Kulwant Singh on 20.07.2012 Ex.D6 and sale deed Ex.D1 in favour of said Kulwant Singh which was executed on 17.06.2005 that is the last date of execution of sale deed in the present case. Till 16.06.2005, who was the owner remained mystery because in the legal notice and in the affidavit dated 20.07.2005, the appearance of Teja Sing viz-a-viz Kulwant Singh made all the difference to arrive at this conclusion that the name of true owner was not available at the time of target date for registration of sale deed.

[14]. Both the Courts have recorded the findings on factual matrix and the same cannot be termed to be the result of mis-appreciation of evidence by any stretch of imagination, nor the findings can be treated to be perverse in nature. Consequently finding no merit in the appeal, the same is dismissed.

04.08.2016 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No