

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

RSA-1133-2015 (O&M)

Date of decision: 18.01.2016

Hari Krishan

...Appellant(s)

Versus

Hari Paul Gupta and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. K.R. Dhawan, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

The instant regular second appeal has been preferred against the judgment and decree dated 06.09.2010, passed by the learned Civil Judge (Junior Division), Chandigarh (for short, 'the trial Court'), whereby, the suit of the plaintiff-appellant has been partly decreed; and judgment and decree dated 07.07.2014, passed by the learned Additional District Judge, Chandigarh, (for short, the first Appellate Court), whereby, the appeal preferred by the plaintiff-appellant against the impugned judgment and decree dated 06.09.2010, of the trial Court, was dismissed.

The plaintiff filed suit for possession by way of specific performance of agreement to sell dated 06.06.2001, entered into by the parties, with respect to House No.373, Sector 20-A,

Chandigarh, measuring 222.94 Square Yards. The trial Court, vide impugned judgment and decree dated 06.09.2010, dismissed the suit, however, held that the plaintiff was entitled to the refund of the earnest money to the tune of Rs.2,20,000/-, to the defendants.

The learned first Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the oral as well as documentary evidence on record and dismissed the appeal vide impugned judgment and order dated 07.07.2014.

Hence, this appeal at the behest of the plaintiff.

Learned counsel for the appellant has submitted that as per the terms of the agreement to sell entered into between the parties, the defendant-seller were required to obtain No Objection Certificate from the Estate Office to get the house in question converted into a freehold property. The defendants have failed to obtain the necessary certificate, the time for execution of the sale deed has also expired and the defendants have been avoiding to perform their part of agreement.

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

In the present case, the execution of the agreement, Ex.PW3/1 dated 6.6.2001, between the plaintiff and the defendants is not denied. It is also not in dispute that the total sale

consideration of the house in question was fixed at Rs.32.45 lacs and sale deed was to be executed by 31.12.2001. However, vide writing dated 31.12.2001, Ex.PW3/3, Hari Paul Gupta extended the date of execution for sale deed to 05.04.2002 or issuance of No Objection Certificate from the concerned authorities and it was decided that the full and final payment would be made within fifteen days therefrom. However, the said certificate was not obtained by the respondent-defendant. On the contrary, it is the stand of the respondents that the plaintiff did not furnish the liability affidavit certificate and two photographs, thus, the NOC could not be obtained. The defendants firstly sent a notice Ex.PW3/4 dated 13.08.2002 to the plaintiff and a reply was submitted vide letter Ex.PW3/5 by the plaintiff to the counsel for the defendants vide which he mentioned that the balance payment of the sale consideration was to be made in the name of the seller. He inquired whether Surinder Singh was alive and asked to furnish the details of his address and to disclose the date of agreement in favour of the defendants as plaintiff wanted to verify the title of the property in favour of the sellers. Thus, vide this letter dated 02.09.2002, Ex.PW3/5 he questioned the very basis of the agreement. Furthermore, in Agreement Ex. PW3/A, it is clearly mentioned that sellers Hari Paul Gupta etc. were the agreement holders and Shri Rajesh Tayal was special lawful attorney of

Surinder Singh in respect of House No.373, Sector 20-A, Chandigarh. Thus, at the time of entering into agreement to sell, the plaintiff never questioned the authenticity of the agreement executed by Surinder Singh nor did he enquire whether said Surinder Singh was alive or not.

In view of the above facts and circumstances, this Court feels that the learned Courts below have rightly held that in the present case, it appears that the plaintiff was not ready with the money and by paying a meagre amount of Rs.2.20 lacs, he bound the defendants not to sell the property further. The facts on record suggest that the plaintiff wanted to sell the property further on the basis of agreement to sell, as per condition No.6 thereof. It is also come on record that the plaintiff was a financier and involved in a number of FIRs.

In ***Kashmir Singh Vs. Harnam Singh, 2008(2) R.C.R. (Civil) 688***, the Hon'ble Apex Court has held as under:-

“17. The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts

by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof.....”

The present case relates to the appreciation of evidence. No evidence is shown to have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial a question of law arises in the present appeal. Hence, no interference is called for.

Dismissed in limine.

18.01.2016
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(JITENDRA CHAUHAN)
JUDGE