

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

**R.S.A No.4888 of 2013
Date of decision: 28.03.2016**

Joginder Pal

..... Appellant

Versus

Gurpreet Singh @ Sodhi

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Manoj Kumar Sood, Advocate
for the appellant.

DARSHAN SINGH,J

This Regular Second Appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 05.08.2013 passed by the learned Additional District Judge, Karnal, vide which the appeal filed by him against the judgment and decree dated 14.01.2011 passed by learned Civil Judge (Sr. Division), Karnal, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-appellant Joginder Pal has filed the suit for possession by way of specific performance of agreement to sell dated 31.03.2001.

4. As per averments in the plaint, defendant no.1 (now

deceased) had agreed to sell the property in dispute measuring 20 Kanals 0 Marla situated in the revenue estate of village Nissing, District Karnal for a sum of Rs. 12 lacs vide agreement to sell dated 31.03.2001 and received a sum of Rs. 11 lacs as earnest money. The sale deed was to be registered within one month of the decision of the case filed by the Bank of India against M/s Sikka Rice & General Mills, Nissing. Defendant no.1 had handed over the copy of the agreement to sell which was executed between him and Surinder Sikka qua the suit property. Defendant no.1 was the prospective vendee of the suit property from Surinder Sikka, the owner of the property. It is further pleaded that due to pendency of the civil suit, the date for execution of the sale deed was extended up to 24.06.2003. At that time, defendant no.1 received a sum of Rs. 50,000/- from the plaintiff and thus received a total sum of Rs. 11,50,000/-. It is further pleaded that defendant no.1 played fraud upon the plaintiff by fully knowing about the pendency of the civil suit and he intentionally and deliberately induced the plaintiff to pay a sum of Rs. 11,50,000/- as earnest money. Actually, the suit land was the subject matter of the auction in execution of the money decree passed in civil suit titled as 'Jangeshwar Choudhary Vs. Sikka Rice & General Mills'. Hence, this suit.

5. The defendants contested the suit by filing the separate written statement controverting the pleas raised in the plaint.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 31.07.2010:-

1. Whether the defendant no.1 agreed to sell the suit land to the

plaintiff on 31.03.2001 as prayed for?OPP

2. If issue no.1 is proved, whether the plaintiff is/was still ready and willing to perform his part of contract?OPP
3. Whether the plaintiff is entitled to possession of the suit land by way of specific performance of the contract as prayed for?OPP
4. Whether the suit is within limitation?OPD
5. Whether the suit is not maintainable in the present form?OPD
6. Whether the suit is barred under Order 2 Rule 2 and Section1 CPC?OPD
7. Whether the suit is bad for mis joinder and non joinder of necessary parties?OPD
8. Whether the plaintiff has concealed the true and material facts from the Court. If so, its effect?OPD
9. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court, vide impugned judgment and decree dated 14.01.2011 partly decreed the suit of the plaintiff-respondent for the recovery of Rs. 11.50 lacs along with interest @ 6 % per annum from the date of payment, till its actual realization.

8. Aggrieved with the aforesaid judgment and decree, the appellant-plaintiff preferred the appeal and the same was dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 05.08.2013. Hence this Regular Second Appeal.

9. I have heard Mr. Manoj Kumar Sood, Advocate and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the criminal proceedings are pending against the respondents for defrauding the plaintiff-appellant. He contended that in

order to defeat the rights of the appellant, the defendants colluded with each other. Due to this reason, no suit was filed by Avtar Singh against respondents no.2 and 3. Thus, he contended that appellant has been wrongly denied the relief of specific performance of the agreement to sell.

11. I have duly considered the aforesaid contentions.

12. It is an admitted case of the appellant-plaintiff that he was only a prospective vendee. He has got executed the agreement to sell dated 31.03.2001 from defendant no.1 simply on the basis of the agreement to sell dated 13.05.1998 executed in his favour by Surinder Sikka. It is also not disputed that the said property was subject to litigation. Appellant-plaintiff was also not privy of contract with defendants no.2 and 3. It is also not disputed that the suit property was put to auction for the satisfaction of the decree passed in favour of the Bank. Consequently, the sale deed of the suit property was never executed by Surinder Sikka or his legal heirs in favour of defendant no.1-Avtar Singh. Thus, defendant no.1 had no title to transfer the suit property in favour of the plaintiff. Thus, I do not find any illegality in the findings recorded by the learned Courts below that the appellant-plaintiff was not entitled to seek the relief of specific performance. The learned Courts below have rightly awarded the alternative relief of recovery of Rs. 11,50,000/- to the appellant-plaintiff against defendant no.1 in favour of the plaintiff. So, the concurrent findings recorded by the learned courts below does not call for any interference by this Court.

13. Thus, I have no reason to differ with the well reasoned

findings recorded by the learned Courts below which do not warrant any interference by this Court in the Regular Second Appeal.

14. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

March 28, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**