

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

RSA-2771-2016 (O&M)

Date of decision: 01.06.2016

Ram Phal (since deceased) through LRs

...Appellant(s)

Versus

Manphool @ Harphool and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Naveen S. Bhardwaj, Advocate for the appellant(s).

JITENDRA CHAUHAN, J.

This appeal is directed against the judgment and decree dated 14.2.2012, passed by Additional Civil Judge (Senior Division), Narwana, vide which the suit filed by the plaintiff was partly decreed for alternate relief and; (ii) the judgment and decree dated 3.3.2016, passed by Additional District Judge, Jind whereby the appeal filed by the plaintiff was dismissed.

In brief, the plaintiff, Ramphal (since deceased and now represented by LRs) filed suit for specific performance of the agreement to sell dated 31.5.2002. It was the case of the plaintiff that Manphool @ Harphool, defendant-respondent No.1,

being owner-in-possession of the suit property, agreed to sell the same to the plaintiff at the rate of Rs.1,75,000/- per acre and an agreement to sell dated 31.05.2002 was entered into between the parties. The defendant received an amount of Rs.8,00,000/- as earnest money. The date of registration of the sale deed was agreed to be on 15.06.2004. On the agreed date, the plaintiff visited the house of defendant-respondent No.1 and asked him to execute the sale deed. Thereafter, he went to the office of Sub Registrar, Narwana, along with the balance sale consideration, registration charges etc. and remained present there from 9.00 am to 5.00 pm along with witnesses Balwan Singh, Lamberdar and Kabul Singh, but defendant No.1 did not turn up. The plaintiff got his presence marked before the Sub Registrar, Narwana by way of an affidavit. Consequently, a registered notice was served upon defendant-respondent No.1 for execution and registration of the sale deed but the same was returned with the endorsement that the addressee has gone from the village, but later on, he came to know that defendant No.1 was lodged in District Jail, Jind, in a criminal case. Thus, the notice was sent to him in jail. On 02.09.2005, the original plaintiff along with Kabul Singh went to District Jail, Jind to meet defendant-respondent No.1, who assured him of getting the

sale deed registered once he come out of the jail. However, even after his release from the jail, defendant-respondent No.1 did not execute the sale deed and finally refused to do so on 06.01.2006. In this background, the original plaintiff filed the instant suit.

Upon notice, the defendant-respondent No.1 appeared before the Court and made a statement before the Court on 18.09.2006 that he had entered into a compromise with the plaintiff and the matter be referred to the Lok Adalat. In the meanwhile, an application under Order 1 Rule 10 of the Code of Civil Procedure was moved by defendant No.2-Satpal on 07.10.2006 and vide order dated 17.07.2007, he was impleaded as a party. Defendant No.2 filed written statement averring that the suit land is situated at Village Ujhana and defendant No.1 is neither the owner, nor in possession of the suit land. Thus, he challenged the very basis of the agreement to sell entered into between the plaintiff and defendant No.1. It was further averred that the suit property is the subject matter in RSA No.1085 of 1990 titled as “Dalla Ram and others Vs. Manphool @ Harphool and others” pending adjudication before this Court, wherein, while granting status quo, Manphool@ Harphool had been restrained from alienating the property in any manner. The instant suit is a result of collusion

between the plaintiff and defendant No.1 to dispossess defendant No.2 from the suit property.

Thereafter, defendant No.1 sought permission of the Court to file written statement and he resiled from his earlier statement with regard to compromise. Vide order dated 15.10.2010, he was granted permission to file the written statement, wherein, defendant No.1 categorically denied the execution of agreement dated 31.05.2002. He even denied his signatures on the agreement and alleged that he is not known to the plaintiff. He also denied receiving the earnest money from the plaintiff.

After hearing the learned counsel for the parties and appreciating the evidence on record, learned trial Court, vide judgment and decree dated 14.02.2012, decreed the suit of the plaintiff for recovery of double the earnest money i.e. Rs.16,00,000/-, along with interest at the rate of 12% per annum from the date of passing the decree till actual realization.

Feeling aggrieved, the legal representatives of plaintiff as well as defendant No.1 preferred cross appeals, which were also dismissed vide common impugned judgment and decree dated 03.03.2016. Hence, this second appeal on behalf of the LRs of the

plaintiff.

Learned counsel for the appellant contends that once the agreement to sell is proved on record, he ought to have been granted the relief of specific performance. It is further contended that the order passed by this Court directing status quo as regards possession and restraining defendant No.1 from alienating the suit property was not incorporated in the revenue record. Even otherwise, the pendency of the said suit has no bearing upon the rights being claimed by the plaintiff/appellants as defendant No.1 would have been bound by the decree to the extent of his share to be finally assessed. In the alternate, it is prayed that the interest has been awarded by the learned Courts below from the date of passing of the decree, which ought to have been from the date of agreement to sell.

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

It is the admitted case of the parties that the agreement to sell dated 31.05.2002, was executed by Manphool defendant No.1, during the pendency of RSA No.1085 of 1990. Moreover, defendant No.1 was restrained from alienating the suit land. The agreement to sell in question is in violation of the restraint order

passed by this Court in the aforesaid RSA. Even if a party establishes the agreement, the grant of relief of specific performance is discretionary. Section 20 of the Specific Relief Act states that the Court is not bound to grant relief of specific performance of agreement merely because it is lawful to do so. In other words, the whole of the discretionary relief is based on equity. It is balancing of the rights and liabilities of both the parties. The mere establishment of the agreement does not entitle a party to specific performance of the agreement. The Court in the whole of the scenario is vested with the power to see that any injustice is not done to either of the parties. In the instant case, though, the plaintiff has established his agreement to sell with defendant No.1 but the fact remains that the agreement to sell was executed in violation of the restraint order passed by this Court in RSA No.1085 of 1990. Thus, this Court is of the opinion that the Courts below were right in ordering the refund of the amount. The appellants have been sufficiently compensated by granting double the amount of the agreement with interest. The approach of both the Courts below in awarding interest from the date of passing of the decree cannot be said to be erroneous. This Court does not find any reason to interfere in the judgments passed by the Courts

below. There is no question of law in the present regular second appeal. Consequently, the same is dismissed.

01.06.2016
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(JITENDRA CHAUHAN)
JUDGE