

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.6368 of 2016 (O&M)

Date of Decision: December 15, 2016

Parveen Kumar Sharma

...Appellant

Versus

Baljit Sharma

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.C.B.Goel, Advocate,
for the appellant.

Mr.Sanjay Mittal, Advocate,
for the Caveators.

AMIT RAWAL, J.

Notice of motion.

Mr.Sanjay Mittal, Advocate, who is on the caveat, accepts
notice on behalf of the respondent-plaintiff.

Appellant-defendant is aggrieved of the concurrent findings of
fact and law, whereby the suit seeking specific performance of the
agreement to sell dated 19.5.2008 in respect of land measuring 22 kanals 0
marla, i.e., 440/8702 shares out of total land measuring 435 kanals 2 marlas,
agreed to be sold for a total sale consideration of Rs.9,90,000/- against the
payment of earnest money of Rs.9,50,000/-, has been decreed.

Mr.C.B.Goel, learned counsel for the appellant-defendant
submits that in Para No.6 of the plaint, the respondent-plaintiff asserted that
he asked the appellant-defendant either to pay the amount as per the

agreement to sell or to execute the sale deed after receiving the balance sale consideration of Rs.40,000/-. He alleged to have served legal notice dated 16.6.2009. In fact, the stand of the appellant-defendant was that land measuring 105 kanals was on lease with the respondent-plaintiff for a sum of Rs.6,70,000/- for the period from 1.5.2007 to 1.5.2013. After taking the land on lease, the other shareholders, in an illegal manner, took the land of the father of the appellant-defendant and his brother and sold the same in favour of Smt.Om Patti and possession of land measuring 88 kanals given on patta to the plaintiff, who, in collusion with the persons in whose favour the sale deed was executed by the other share-holders handed over the possession after taking a sum of Rs.2,00,000/-. The father of the respondent-plaintiff objected to the act of the plaintiff of giving possession and there was a settlement dated 21.5.2008 (Ex.DC), whereby the plaintiff is stated to have received a sum of Rs.9,50,000/-. The Courts below have failed to take into consideration the fact that there is a candid admission of the plaintiff for execution of the settlement Ex.DC, but there is no reference to the same in the impugned judgments and decrees. The Lower Appellate Court has also committed perversity and illegality, being the last Court of fact and law, in not advertng to the aforementioned documents. The Lower Appellate Court did not even examine/noticed the statements of PW-1, PW-2 and PW-5. Though the case of the plaintiff is that he was given possession at the time of the alleged agreement to sell, but he has not been able to prove the possession. If at all it was so, Ex.DC reflected handing over of the possession. It is itself a clincher that there was an implied cancellation of the agreement to sell. All these factors if have been taken inconjunction, discretionary relief was not liable to be granted and thus, urges this Court

for allowing the appeal.

Mr.Sanjay Mittal, learned counsel for the respondent-plaintiff submits that both the transactions of lease agreement and agreement to sell were different. There was no privity or connectivity with them. The appellant-defendant has failed to examine any expert to belie the signatures on the agreement to sell. Heavy reliance on Ex.DC is neither here nor there. Had there been so, there would have a reflection of cancellation of the agreement to sell. All these factors have been taken care of. There is no illegality and perversity in the concurrent findings and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Goel, for, assuming for the sake of argument that this Court has an occasion to examine Ex.DC, which reflects the receipt of the money of Rs.9,50,000/-, but there is no reference or whisper with regard to the fact that the amount had been received by the plaintiff in lieu of the agreement to sell dated 19.5.2008. In fact, it was a receipt of the transaction of the lease referred to above as there was a dispute with regard to handing over the possession to the third person. Nothing prevented the appellant-defendant to lead direct, cogent or corroborative evidence to belie the contents of the agreement to sell. In fact, there is an admission of the same. Readiness and willingness on the part of the respondent-plaintiff has been proved as the target date was 31.12.2008, whereas the suit has been filed on 2.9.2009.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below, which are based on the

preponderance of the evidence. No ground for interference is made out.

Resultantly, the appeal is dismissed.

December 15, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No