

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 83 of 2016 (O&M)
Date of Decision : 12.01.2016

Naresh Kumar

....Appellant

Versus

Sohan Lal

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.K. Rattan, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal against judgment and decree dated 12.10.2015, passed by District Judge, Ambala whereby in suit seeking possession of suit land by way of specific performance of agreement dated 20.08.2007, alternate relief for recovery of earnest money with interest was allowed.

2. The parties will be referred as 'plaintiff' and 'defendant' as per civil suit.

3. Plaintiff-Sohan Lal (now respondent in this appeal) filed suit with averment that defendant-appellant vide agreement dated 20.08.2007 agreed to sell land measuring 22 *kanals* 12 *marlas* @ ₹4 lacs per acre and received an amount of ₹3,30,000/- as earnest money. The date for execution and registration of sale deed was fixed as 19.11.2007. On 18.11.2007, the defendant intimated plaintiff about his unavailability on 19.11.2007 and undertook to give new date for execution and registration of sale deed. Despite contacting him time and again, he did not pay any heed to the request of plaintiff to execute the sale deed and postponed the matter on

one pretext or the other. Thereafter, plaintiff served legal notice dated 19.08.2010 calling upon the defendant to execute the sale deed on 30.08.2010. Plaintiff remained present in the office of Sub-Registrar, Naraingarh on 30.08.2010 but the defendant did not turn up, hence this suit.

4. The defendant contested claim of plaintiff with the averments that he had borrowed an amount of ₹2 lacs from plaintiff and plaintiff had obtained his signatures for security purposes. The rate of land in village Gadhouli was about ₹20 lacs per acre and there was no necessity for defendant to agree to sell his land @ ₹4 lacs per acre. He denied execution of agreement dated 20.08.2007.

5. In replication, plaintiff clarified that on 20.12.2006, first agreement was written between the parties and earnest money of ₹3 lacs was given. In continuation of that agreement, the second agreement dated 20.08.2007 was written and another sum of ₹30,000/- was given to the defendant making the total earnest money paid as ₹3,30,000/-.

6. Learned Additional Civil Judge (Senior Division), Naraingarh on the basis of evidence on record held that execution of agreement dated 20.08.2007 (Ex. P-1) was duly proved. However, the relief of specific performance of agreement was declined keeping in view the vague pleadings in plaint regarding execution of first agreement dated 20.12.2006 and in the absence of proof of readiness and willingness on the part of plaintiff in performing his part of contract and delay in filing the suit.

7. Findings of Additional Civil Judge (Senior Division), Naraingarh that agreement dated 20.08.2007 was executed between the parties was not assailed by the defendant. However, plaintiff filed appeal before the District Judge, Ambala.

8. Learned District Judge, Ambala discarded the plea of defendant that he had borrowed a sum of ₹2 lacs and signed the documents as security for the reasons given in para 21 of the judgment, which reads as follows:-

- “(i) Signatures on Ex. P-1 and Ex. P-7 are admitted by the defendant, as already discussed above;*
- (ii) Defendant failed to examine the second attesting witness namely Ranjit Singh, who is of his own village Gadhouli, to controvert statements of PW-1 & PW-4;*
- (iii) Defendant admits that he had reached the Tehsil Office on 20.08.2007 in late hours and then, fresh agreement was executed, in which 19.11.2007 was agreed to be last date for executing the registry, which fully corroborates the version of the plaintiff;*
- (iv) Suggestion was given to the plaintiff Sohan Lal – PW-1 that writing was executed at the time of borrowing the amount on 20.12.2006. Denying this suggestion, PW-1-plaintiff deposed that he had not lent any amount and rather, had paid the earnest money. Defendant failed to produce any document to show that he had borrowed the*

amount;

- (v) *In case, defendant had borrowed the amount of ₹2 lacs on 20.12.2006, as is projected by him, there is nothing on record to suggest that he had repaid the said amount and if so, on what date. He has further failed to explain that in case, this was loan amount taken by him, why he went to Tehsil Office, Naraingarh on 20.08.2007. His admission in cross-examination to the effect that by way of document Ex. P-1, 19.11.2007 was agreed to be the date for registry, in itself, belies the entire stand of the defendant; and*
- (vi) *Ex. P-2 is the legal notice dated 19.08.2010 sent by the plaintiff to defendant through his counsel, calling upon him to execute the sale deed in terms of the agreement dated 20.08.2007 on 30.08.2010. Ex. P-4 is the postal envelope, revealing that defendant refused to accept the same. In his cross-examination, defendant Naresh admits that address mentioned on the envelope Ex. P-4 is his correct address and that he receives all his letters on the said address. It clearly indicates that defendant intentionally refused to receive notice Ex. P-4 and so, he is presumed to know the contents thereof.”*

9. Ist Appellate Court believed the version of plaintiff in replication treating the same as part of pleadings that the first

agreement to sell between the parties was executed on 20.12.2006 and the second agreement dated 20.08.2007 was in continuation of the first agreement. Both the agreements were duly proved on record. This plea of the defendant that price of land in his village was ₹20 lacs per acre was also proved. However, keeping in view the absence of any cogent explanation on behalf of plaintiff in not filing the suit after accrual of cause of action to file the suit on 19.11.2007 till 16.11.2010, he was allowed alternate relief for recovery of earnest money with interest.

10. I have heard learned counsel for the appellant and perused the paper-book with his assistance.

11. There is concurrent finding of both the Courts that the defendant had executed agreement to sell dated 20.08.2007. The defendant has also raised a plea of receipt of ₹2 lacs from plaintiff as loan. Even if his version is accepted that he has borrowed some money as loan from plaintiff and the agreement was executed as security for repayment of that loan, there is no evidence that he had ever returned the loan amount. Ist Appellate Court has rightly declined the relief of specific performance of agreement to plaintiff keeping in view the facts and circumstances of the case particularly of the delay of about three years in filing the suit after accrual of cause of action and committed no error of law and fact while allowing alternate relief for recovery of ₹3,30,000/- paid as earnest money to plaintiff.

12. On perusal of judgment of Ist Appellate Court, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

January 12, 2016
jk

(SURINDER GUPTA)
JUDGE