

In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 4326 of 2014 (O&M)
Date of Decision: January 27, 2016

Lt. Col. K.P. Sharma

... Appellant

Versus

Smt. Mandeep Kang

... Respondent

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the local papers may be allowed to see the judgments?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present: Mr. M.L. Saggar, Sr. Advocate with
Mr. Gaurav Grover, Advocate,
for the appellant.

Paramjeet Singh Dhaliwal, J.

This regular second appeal has been preferred by the appellant/plaintiff against the judgment and decree dated 29.02.2012 passed by learned Civil Judge (Senior Division), Panchkula whereby suit for possession and permanent injunction has been dismissed, as well as, against the judgment and decree dated 01.05.2014 passed by learned District Judge, Panchkula whereby appeal preferred by the appellant has also been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments

of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiff filed a suit for possession by way of specific performance on the basis of agreement to sell dated 15.09.2004 and permanent injunction on the ground that the defendant, who was owner of agricultural land comprising khasra No. 121, 122 and 146 situated in the revenue estate of village Nada, Tehsil and District Panchkula, entered into an agreement to sell with the plaintiff for purchasing 5 Bighas land from the aforesaid suit land for a total sale consideration of Rs. 20 lacs, out of which a sum of Rs. 2.50 lacs was paid to the defendant on 15.09.2004 as earnest money and a further sum of Rs. 10 lacs was paid to the defendant on 18.10.2004 as advance. As agreed, the defendant was required to execute the sale deed up to 31.12.2004. As plaintiff wanted to purchase the suit land for the purpose of developing a farm house, thus the time was the essence of the contract because the plaintiff had already purchased milch animals to start a dairy to be run by his wife. Earlier also the plaintiff had entered into an agreement to sell dated 30.07.2004 with defendant for purchasing land measuring 2 Bighas 2 Biswas from Khasra Nos. 114, 115 in village Nada, Tehsil and District Panchkula for a total sale consideration of Rs. 27,50,000/-, out of which 7 lacs were paid to the defendant on 30.07.2004 and the balance amount of Rs. 20,50,000/- was to be paid before the Sub Registrar, Panchkula at the time of execution of the sale deed for which the date fixed was 15.09.2004, which was later on extended up to 31.10.2004 with mutual consent. This land was sought to be purchased by the plaintiff for the purpose of installing a petrol pump for which the plaintiff had

already applied for permission from the competent authority and it was mutually agreed between the parties that in case requisite permission was not granted, the aforesaid agreement dated 30.07.2004 would lapse and amount of Rs. 7 lacs will be transferred towards purchase of agricultural land from the defendant as per subsequent agreement. Before 15.09.2004 the plaintiff informed the defendant that the requisite permission to install petrol pump is likely to take some more time and consequently the agreement dated 30.07.2004 be deemed to have lapsed. Since the plaintiff was willing to purchase the suit land, therefore, the agreement to sell dated 15.09.2004 was executed between the parties and it was agreed by the defendant that the amount of earnest/advance money of Rs. 7 lacs paid vide agreement to sell dated 30.07.2004 will be adjusted towards sale price of land at the time of execution and registration of the sale deed of the suit land. On 28.12.2004, the plaintiff sent a letter to the defendant requesting the defendant to get the exact demarcation of the suit land done and show the revenue record to him so that the sale deed can be executed on 31.12.2004. On 31.12.2004, the plaintiff appeared in the office of Sub Registrar, Panchkula alongwith the remaining payment and expenses for execution/registration of the sale deed but neither the defendant nor her attorney turned up. The plaintiff got his presence marked by way of getting attested his affidavit dated 31.12.2004. The plaintiff was and is always ready and willing to perform his part of the contract and get the sale deed executed in respect of the suit land as per agreement dated 15.09.2004 but the defendant has refused to execute the sale deed. Hence, suit was filed.

Upon notice, defendant appeared and filed written statement,

taking preliminary objections on the ground of maintainability; locus standi; estoppel and concealment of true and material facts from the Court.

On merits, it is averred that defendant is owner of Khasra Nos. 114, 115 and 121 situated at village Nada, Tehsil and District Panchkula. Smt. Rinkle Garg daughter of Shri Ram Gopal was the GPA holder of Khasra No. 122 and 146 and she gave rights to the defendant to sell the aforesaid khasra numbers and now she has purchased the aforesaid khasra numbers vide sale deeds dated 20.03.2006. In the month of October, 2004, the plaintiff met the defendant and requested that he is in a position to purchase only 2 Bighas 10 Biswas of the land of agreement dated 15.09.2004 at the rate of Rs. 4 lacs per bigha though the agreement was for 5 Bighas. The plaintiff also requested for the passage through khasra no. 111 and 117 and told that he has already paid Rs. 7 lacs up to 30.07.2004, Rs. 2.50 lacs on 15.09.2004 and he will further pay a sum of Rs.50,000/- more and requested to adjust the amount paid by him towards the sale consideration of sale deed for 2 Bighas 10 Biswas of land from khasra no.121 and also requested to get registered sale deed of 2 bighas 10 biswas by showing the sale amount of Rs.2,50,000/- as he was not having sufficient amount for purchase of stamp papers. The plaintiff also told that after execution of the sale deed of land measuring 2 Bighas 10 Biswas, both the earlier agreements dated 30.07.2004 and 15.09.2004 would stand cancelled. Considering the difficulty of the plaintiff, the defendant agreed to his proposal and accordingly sale deed dated 18.10.2004 was executed and got registered in favour of the plaintiff by the defendant after adjusting the earlier paid amounts of Rs.7 lacs and Rs. 2.50 lacs and on receiving the

balance amount of Rs. 50,000/- in cash from the plaintiff, showing the sale consideration as Rs. 2.50 lacs instead of Rs. 10 lacs. The defendant demanded back the original agreements dated 30.07.2004 and 15.09.2004 but the plaintiff told that the same were lying at home and promised to return the same but the plaintiff has filed the present suit on the basis of agreement to sell dated 15.09.2004, for which, the husband of the defendant has already filed a criminal complaint against the plaintiff for committing an offence under Section 420, 467, 468, 471 IPC. Thus it was pleaded that the amounts paid by the plaintiff under agreements dated 30.07.2004 and 15.09.2004 were adjusted in the sale deed dated 18.10.2004 and accordingly, both the aforesaid agreements to sell stood cancelled.

On the basis of the pleadings of the parties, the Court of first instance framed the following issues:-

- “i) Whether the plaintiff is entitled for possession over the suit property by way of specific performance of agreement to sell dated 15.09.2004? OPP*
- ii) Whether the suit is not maintainable in the present form nor the plaintiff has locus standi to file the same? OPD*
- iii) Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, dismissed the suit vide judgment and decree dated 29.02.2012. Against that, plaintiff preferred an appeal, which has also been dismissed by the lower appellate Court vide judgment and decree dated 01.05.2014. Hence, this second appeal.

I have heard learned counsel for the appellant.

Learned counsel for the appellant has submitted that the following substantial questions of law formulated in para no. 5 of the grounds of appeal, arise for consideration in this second appeal:-

- “i) Whether the judgments of the learned courts below based on misreading of documentary and oral evidence as well as the agreement to sell dated 30.07.2004 Ex.P3, the agreement to sell dated 15.09.2004 Ex.P2 and the sale deed Ex.P7?*
- ii) Whether the learned trial Court failed to frame correct issues arising out of the pleadings of the parties, which have resulted into miscarriage of justice?*
- iii) Whether the learned District Judge has merely repeated the paragraphs of the judgment of the learned trial Court and as such, the case should be remanded for decision of the appeal afresh?*
- iv) Whether the plaintiff/appellant is entitled to get the sale deed of 5 Bighas of land subject matter of the agreement to sell dated 15.9.2004 Ex.P2?”*

Learned counsel for the appellant contended that the findings recorded by both the Courts below are against law, without appreciation of facts and not sustainable in the eyes of law. Therefore, the impugned judgments and decrees are liable to be set aside.

I have considered the contentions raised by learned counsel for the appellant and perused the record.

There is categorical finding recorded by the Court of first

instance that there is no direct evidence to the effect that the amount which was paid in pursuance of the agreement to sell (Ex.P3) was allowed to be adjusted by the defendant in the amount of consideration in pursuance of agreement to sell (Ex.P2). Moreover, Ex.P3 cannot be said to be cancelled as the plaintiff has not placed on record any cancellation deed or document to this effect that Ex.P3 was ever cancelled. Furthermore, the plaintiff has stated that an amount of Rs.10 lacs was paid on 18.10.2004 by a self cheque, but in this regard no receipt etc. has been proved by the plaintiff. The Court of first instance also recorded a finding that plaintiff has filed an affidavit dated 31.12.2004 (Ex.P6) stating therein that he had appeared before the Sub Registrar along with the balance sale consideration, but Ex.P9 goes to show that on 31.12.2004, he was having balance in his account to the tune of Rs. 7974/- and as such, there is no evidence to the effect that he was ready with Rs.50,000/- as balance sale consideration. Furthermore, affidavit Ex.P6 also goes to show that the plaintiff had imposed certain conditions to the defendant for demarcation etc. and in this regard, he has also given a notice, but no condition was ever agreed upon between the parties at the time of execution of agreement. Findings of trial Court have been affirmed by the lower appellate Court by a detailed judgment.

Concurrent findings of fact have been recorded by both the Courts below. Findings recorded by the Courts below are based on documentary evidence. Learned counsel for the appellant could not show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

Consequently, said findings of fact do not warrant interference in second appeal. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed.

January 27, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge