IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.230 of 2012(O&M)
Date of Decision: 11.7.2017

Manish Kumar

.....Appellant

Vs.

Sohan Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Rajesh Narang, Advocate for the appellant.

None for respondent No.1.

Mr. Ashish Gupta, Advocate for respondent No.2.

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<u>RAMESHWAR SINGH MALIK J. (ORAL)</u>

Plaintiff is in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby he was denied the relief of specific performance of the agreement to sell dated 17.5.2000, while granting him alternative relief of recovery of earnest money along with interest by the learned trial court and the judgment of the learned trial court was upheld by the learned first appellate court.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that Manish Kumar-plaintiff filed a suit for specific performance of an agreement to sell dated 17.5.2000, suit for permanent injunction or in alternative the suit for recovery of

₹5,96,020/- against defendants Sohan Singh and Labh Singh by alleging therein that on 17.5.2000, defendants entered into an agreement to sell their land measuring 23 kanals 19 marlas, as detailed in para No.1 of the plaint situated at village Bazidpur Bhoma, in favour of plaintiff @ ₹1,40,000/- per acre and out of the total sale consideration, defendants received ₹3,10,000/- as earnest money from the plaintiff and promised to execute sale deed in favour of plaintiff on 22.6.2000 and an agreement to this effect was duly reduced into writing and the defendants put their hands thereon in token of its correctness in the presence of marginal witnesses.

It was further mentioned that on 22.6.2000 the defendants again received ₹90,000/- from the plaintiff as more earnest money and the date of execution of sale deed was extended to 5.7.2000 and a writing to this effect was duly made overleaf the said agreement and the defendants put their hands thereon in token in its correctness in the presence of witnesses. Again on 5.7.2000, the date of execution of the sale deed was extended to 18.8.2000 and a writing to this effect was made overleaf the said agreement. Thereafter, on 18.8.2000 the date of execution and registration of the sale deed was again mutually extended to 5.2.2001 and a writing to this effect was made overleaf the said agreement. It was further mentioned that on 5.2.2001, the said agreement was executed afresh in favour of plaintiff and the defendants promised to execute the sale deed in favour of plaintiff on 5.2.2002 and on 5.2.2002, again the date was extended to 1.7.2002 mutually and writing was made in this regard on which the defendants put their hands in token of its correctness in the presence of witnesses.

On 1.7.2002, the plaintiff came present in the office of Sub Registrar, Abohar, with balance sale consideration and expenses and kept on waiting for defendants, but the defendants did not turn up and plaintiff got his presence marked by way of getting an affidavit of plaintiff attested on the same day and in this way, defendants were liable for breach of contract. Despite repeated requests of plaintiff, defendants did not perform their part of contract, rather now the defendants threatened to alienate the suit land to some other person at a higher price and the defendants also threatened to interfere and dispossessed the plaintiff from the suit land forcibly for which they had got no right to do so.

Having been put to notice, defendant No.1 put appearance and filed his contesting written statement, raising more than one preliminary objections whereas defendant No.2 filed his separate written statement on similar lines. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiffs are entitled for specific performance of agreement to sell dated 17.5.2000?OPP

2. Whether the plaintiff was ready and willing and is still ready and willing to perform his part of contract?OPP

3. Whether the plaintiff has no cause of action to file the present form? OPD

4. Whether the suit of the plaintiff is not maintainable? OPD

5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD

6. Whether the suit is within limitation?OPD

7. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff-appellant was not entitled for relief of specific performance in the peculiar facts and circumstances of the case. Accordingly, vide impugned judgment and decree dated 9.9.2009, learned trial court granted alternative relief of recovery of earnest money along with interest, thereby partly decreeing the suit of the plaintiff.

Both the parties felt aggrieved. Plaintiff filed his first appeal for decretal of his suit in toto, whereas defendant No.2 filed his first appeal challenging the abovesaid judgment and decree passed by the learned trial court granting alternative relief to the plaintiff. Both the appeals were dismissed by the learned Additional District Judge, vide common impugned judgment and decree dated 17.5.2011. Defendants did not approach this Court. Hence this regular second appeal at the hands of plaintiff.

Heard learned counsel for the parties.

It has gone undisputed before this Court that plaintiff-appellant was mortgagee with possession qua the suit land. Defendants-respondents had not redeemed the suit property. Amount of mortgage was ₹ 1,05,000/-. While deposing before the court to prove the agreement to sell dated 17.5.2000, plaintiff-PW2 contradicted himself to such an extent that he was rightly found not entitled for the relief of specific performance but for alternative relief only. Statements given before the court by plaintiff-appellant as PW2 and his other witnesses were not going hand in hand.

Plaintiff himself specifically deposed before the court that the amount of mortgage money had already been paid by him to the owner and it was also adjusted towards sale consideration at the time of agreement to sell Ex.P1. On the other hand, PW3-Bishnu deposed before the court that amount of ₹3,10,000/- was paid to the defendants at the time of execution of the agreement to sell whereas as per the testimony of appellant-plaintiff, only an amount of ₹2,05,000/- was paid at the time of execution of the agreement to sell.

A bare perusal of the statements suffered by different witnesses on behalf of the appellant-plaintiff would make it crystal clear that defendants never intended to sell the suit land. In fact, at the most, it could have been said to be some money transaction between the parties. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to grant only alternative relief to the plaintiff-appellant and the impugned judgments and decrees passed by the learned courts below deserve to be upheld.

It is the settled proposition of law that specific relief is discretionary relief. However, it is also true that such discretion is not to be exercised by the learned court of competent jurisdiction in an arbitrary or unreasonable manner. Merely, because it is lawful to grant specific relief, court is not bound to grant an order of specific relief. As and when, it is found that plaintiff was likely to get an undue advantage over the defendant, court may not exercise its discretion in favour of the plaintiff. The court can also deny the relief of specific performance of the agreement to sell if the defendant would face undue hardship, which he might not have foreseen at the time of agreement to sell.

Further, as and when, it is found, in a given fact situation, that granting specific relief would be inequitable, the court would be justified to deny such relief to the plaintiff. It goes without saying that each case is to be decided as per it own peculiar fact situation. So far as the fact situation obtaining on record in the present case is concerned, the learned courts below as well as this Court have found it to be a case of undue hardship against the defendants, because of which, plaintiff-appellant was not entitled for the relief of specific performance. Under these circumstances, it can be safely concluded that the learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld.

The principle of law enunciated in terms of the provisions contained in Section 20 of the Specific Relief, Act, 1963 (' The Act' for short), is based on equity, good conscience and fairness. Legislative intent behind Section 20 of the Act is to achieve the object of avoiding resultant undue hardship to the defendant, while avoiding undue gain to the plaintiff. In such a situation, the learned courts of competent jurisdiction would do well in granting alternative relief to the plaintiff.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below will make it crystal clear that it was a pleaded case of undue hardship by the defendants, because of which, plaintiff was rightly granted only the alternative relief of recovery of earnest money along with interest, therefore, impugned judgments and decrees deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court:-

Damacherla Anjaneyulu and another Vs. Damacherla Venkata Seshaiah and another, 1987 AIR (SC) 1641.

Mathew VS. Kuruvilla, 1987 AIR (SC) 2328 (SC)

Sardar Singh Vs. Krishna Devi, 1995 AIR (SC) 491 (SC)

A.C. Arulappan Vs. Smt. Ahalya Naik, 2001 (6) SCC 600 (SC)

Nirmala Anand Vs. Advent Corporation (P) Ltd., and another, 2002 (8) SCC 146 (SC)

Ram Dass Vs. Ram Lubhaya, 1998 (2) RCR (civil) 642 (P&H)

Mohinder Singh and others Vs. Guljit Singh, 2000 (2) RCR (civil) 403 (P&H)

Dalbir Singh alias Vir Singh Vs. Dalbir Singh, 2001 (2) RCR (Civil) 307 (P&H)

Sukhmander Singh and another Vs. Mandeep Singh and others, 2015 (2) RCR (civil) 781 (P&H)

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in later part of para 14 and 17 of its impugned judgment, which deserve to be noticed here, read as under:-

*" **......** However, the turning point of the case is the statement made by plaintiff Manish Kumar in his further cross-examination. During his cross-examination he has stated that previously the suit property was mortgaged prior to the execution of agreement in question. He has stated that they were cultivating the land as mortgagee and simple agreement was scribed between the parties for the mortgage of disputed land. It is stated by him that the abovesaid property was not redeemed between the parties. He has also stated that he had already paid Rs. 1,05,000/- of the suit property to the defendant at the time of mortgage. He has also stated*

that mortgage money of Rs. 1,05,000/- was adjusted at the time of scribing Ex.P!. He has further stated that at the time of scribing Ex.P1, he made the payment of Rs. 1,95,000/- only to the defendant as Rs. 1,05,000/- which was already paid by him regarding the taking the abovesaid suit property as a mortgagee was adjusted in the consideration of agreement Ex.P1. He has further stated that amount of Rs. 3,10,000/- was not paid at the time of scribing agreement Ex.P1 by him to the defendant as earnest money. He was volunteer to state it that Rs. 2,05,000/- was paid only at the time of agreement Ex.P1. In this manner, the said witnesses contradicted his entire case. His statement is also in contradiction with the statement of PW3 Bishnu, who was very sure about making the payment of Rs. 3,10,000/- to the defendants at the time of execution of agreement Ex.P1, whereas as per testimony of plaintiff Manish Kumar only Rs. 2,05,000/- was paid at that time. Thus, to my considered opinion there is material contradictions in the statement of these witnesses regarding the payment of earnest money at the time of execution of agreement Ex.P1. Further though the said stand taken by the plaintiff Manish Kumar regarding the previous mortgage of the suit land is alien to his pleadings. No such fact has been pleaded or stated by Manish Kumar in his testimony before the Court. Even no such fact is mentioned in the *agreement Ex.P1. It is further stated by PW2 Manish Kumar that the avermetns regarding the taking of suit property as mortgage earlier is not scribe in agreement Ex.P1. It is also stated by him during his cross-examination that an agreement was executed between the parties regarding the execution of mortgage. But no such agreement has been brought on record by the plaintiff.*

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Now, in view of above discussion of the evidence on record, I am of the considered opinion that the though there was some dealings between the parties, but there is dispute regarding their real intentions to enter any agreement to sell. From the pleadings of the parties in context with the evidence on record, there it can be said that there was some sort of dealing between the parties and at the most it can be said that there was money transaction between them and that too, without there being any real intentions to enter into any agreement to sell and as such, I am constraint to hold that the plaintiff Manish Kumar is entitled to money decree and as such, I uphold the findings of the learned trial court to the said effect upon issue No.1 and 2 and I accordingly, decided these issues to the said effect. Further, the interest awarded by the learned trial court upon the decretal amount @ 8% per annum from the date of agreement that is 17.5.2000 till filing of the suit till actual

> *realization is just and reasonable, which does not warrant any interference. No arguments are advanced upon issues No. 3, 4, 5, and 6 by the learned counsel for the parties in both the appeals and as such the said findings of the learned trial court upon these issues are also affirmed herein this appeal."*

In the cases under the Act, intention of the parties entering into an agreement to sell as well as their conduct are also the relevant factors for granting the relief of specific performance or alternative relief of recovery of earnest money. As noticed hereinabove, although transaction between the parties cannot be said to be only a money transaction yet the defendants never intended to enter into an agreement to sell. This was the reason that plaintiff-appellant failed to stand the acid test of cross examination. In fact, during his cross-examination, plaintiff himself demolished his case. Evidence led by the plaintiff was contradictory to such an extent that it could not have been re-reconciled and rightly so, it being a matter of record. In this view of the matter, no fault can be found with the impugned concurrent findings of facts recorded by both the learned courts below, because of which the impugned judgments and decrees deserve to be upheld.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in both the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the

Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

11.7.2017 **(RAMESHWAR SINGH MALIK)**
Ak Sharma **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No