

RSA No. 1449 of 2016 (O&M)

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

RSA No. 1449 of 2016 (O&M)

Date of Decision: 27.2.2017

Puneet Jain

.....Appellant

Vs.

Dharampal

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ranjit Saini, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Plaintiff is in regular second appeal, against the concurrent findings recorded by both the learned courts below, whereby his suit for possession by way of specific performance with consequential relief of permanent injunction, was partly decreed granting alternative relief for recovery of earnest money.

Brief facts of the case, as recorded by learned first appellate court in para 2 of its impugned judgment, are that plaintiff filed a suit for possession by way of specific performance with consequential relief of permanent injunction against defendant, inter alia, on the allegations that defendant offered to sell his land measuring 5 Kanals i.e. 100/151 share out of total land measuring 7 Kanals and 11 Marlas, comprised in Khewat No.259/12-min, Khata no.334, Rect. and Killa Nos.54//3 (7-11), situated in

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the revenue estate of village Bari, Tehsil Ganaur, District Sonipat, to the plaintiff for a total sale consideration of ₹20.00 lacs. The offer was accepted by plaintiff and as a result thereof, transaction was reduced into writing by way of agreement to sell No.11 dated 02.04.2010 and same was registered in the office of Sub-Registrar, Ganaur. Again, it was claimed by plaintiff that as per terms and conditions of said agreement, sale consideration of the said land was agreed to be ₹20.00 lacs and on the day of agreement, ₹19,50,000/- was paid as earnest money and target date for execution and registration of the sale deed was agreed as 01.10.2010, but thereafter, on the request of defendant, the date for execution of sale deed was extended to 31.12.2010.

It was claimed that defendant again expressed his inability to get the sale deed executed and registered and thereafter, the target date was extended up to 31.01.2011 and later on, it was again extended up to 30.04.2011 and finally, the date for execution and registration of sale deed was extended to 31.05.2011 at the request of defendant. Again, it was claimed that receipt of earnest money was also executed by defendant in favour of the plaintiff on the same day in the presence of witnesses. It was claimed by plaintiff that on the target date i.e. 31.05.2011, plaintiff came present before Sub-Registrar, Ganaur along with balance sale consideration and registration charges for performance of the agreement to sell dated 02.04.2010, but defendant did not turn up and thereafter, plaintiff got his presence marked before Sub-Registrar, Ganaur, by way of executing an affidavit, attested by Executive Magistrate, Ganaur.

It was claimed by plaintiff that on 18.06.2011, he served a legal notice upon defendant requesting the defendant to execute and register the sale deed in respect of suit property in favour of plaintiff after receiving the

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balance sale consideration, but defendant refused to accept the said legal notice and again, legal notice dated 06.07.2011 was sent to defendant for the same purpose, but said notice was not responded to by defendant and repeated requests made by plaintiff to defendant to get the sale deed executed and registered in favour of plaintiff after receiving balance sale consideration, were not acceded to.

Having been served, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the defendant entered into agreement to sell dated 02.04.2010 regarding the land in question as mentioned in para No.1 of the plaint? OPP
2. Whether the decree for possession by way of specific performance of agreement is liable to be passed in favour of plaintiff against the defendant on the grounds mentioned in the plaint? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no cause of action to file the present suit? OPD
5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Relief.

With a view to prove their pleaded cases, 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, learned trial court came to the conclusion that plaintiff has failed to prove his case for decree of specific performance. However, suit was partly

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decreed, granting alternative relief for recovery of earnest money alongwith interest, vide impugned judgment and decree dated 10.8.2015. Feeling aggrieved, plaintiff filed his first appeal which came to be dismissed by learned first appellate court, vide impugned judgment and decree dated 7.11.2015. Hence this regular second appeal at the hands of the plaintiff.

Heard learned counsel for the appellant.

A combined reading of the both the impugned judgments and decrees would make it crystal clear that plaintiff-appellant has miserably failed to prove his case for decree of possession by way of specific performance of the agreement to sell. Both the learned courts below have recorded concurrent findings of facts in this regard, which call for no interference at the hands of this Court. It is so said, because it does not appeal to reason that plaintiff-appellant paid an amount of ₹19,50,000/- out of total sale consideration of ₹20 lakh and he did not insist for taking the possession of the suit land.

Similarly, appellant-plaintiff was not even aware about the location of the land sought to be purchased by him. He had admitted in his cross examination that he was not aware about the location of the suit land. No explanation, whatsoever, is forthcoming on behalf of the appellant on both these abovesaid material aspects of the matter. Having said that, this Court feels no hesitation to conclude that learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

Further, target date which was initially fixed as 1.10.2010 was first extended to 31.12.2010 and from 31.12.2010, it was further extended to 31.1.2011. It was yet again extended from 31.1.2011 to 30.4.2011 and

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finally, it was extended to 31.5.2011. These repeated extensions in the target date for execution of the sale deed were also not properly explained by the plaintiff, particularly when out of ₹20 lacs, being total sale consideration, plaintiff had already paid ₹19.5 lacs and remaining amount to be paid was only ₹50,000/-. Under these circumstances, it can be safely concluded that agreement to sell in question was not executed between the parties for the purpose of any sale transaction. In this view of the matter, it is unhesitatingly held that learned courts below have rightly declined the relief of possession by way of specific performance of the agreement to sell, granting alternative relief to plaintiff-appellant for recovery of amount of earnest money alongwith interest, thus, impugned judgments and decrees deserve to be upheld, for this reason also.

Before arriving at his judicious conclusion, learned District Judge re-considered and re-appreciated true facts of the case as well as evidence available on record. Cogent findings recorded by learned first appellate court in later half of para 15 to para 19 of its impugned judgment, which deserve to be noticed here, read as under:-

“Had there been the real transaction for sale and purchase of the property, plaintiff was supposed to have visited the office of Sub-Registrar on expiry of 15 days period from the receipt of notice Ex.P-5 and was again supposed to have visited the office of Sub-Registrar after expiry of 15 days period of the receipt of notice Ex.P-8, but surprisingly, no evidence is there on record to show that after expiry of 15 days period as contemplated in notices Ex.P-5 and Ex.P-8, plaintiff visited the office of

Sub-Registrar and according to PW-1 Puneet Jain, plaintiff visited the office of Sub-Registrar only on 31.05.2011, the date extended on 30.04.2011. In the plaint, in para No.3, it is being claimed that on 18.06.2011, notice was sent, but defendant refused to accept the same. However, again, it is claimed that another notice dated 06.07.2011 was not replied by defendant, then on expiry of 15 days period, as stipulated in notice dated 06.07.2011 Ex.P-8, plaintiff was supposed to have approached the office of Sub-Registrar with balance sale consideration plus charges for stamp and registration charges etc., but plaint is totally silent in this behalf and as such, plaintiff could not establish on record that he had been ready and willing to get the sale deed executed and registered, from coming into existence of agreement till the filing of suit and even thereafter, as not getting the appearance marked after expiry of 15 days period of the receipt of notice Ex.P-8, the plaintiff lost his stand that he had been ready and willing to perform his part of the contract throughout.

In addition to all this, a perusal of agreement Ex.P-1 reflects that stamp paper was purchased on 16.03.2010 and it was executed on 02.04.2010 and as such, agreement was not executed on that very day when the stamp paper was purchased on 16.03.2010, but again, there is no explanation why the agreement was not

got scribed on the day of purchase of the stamp paper and this circumstance, again speaks voluminous regarding conduct of plaintiff himself.

According to a judicial pronouncement of Hon'ble apex court reported as AIR 2009 1749 g. Jayashree and others Versus Bhagwamdas S. Patel and others, grant of specific performance is a discretionary jurisdiction and plaintiff is expected to approach the court with clean hands and his conduct plays an important role in the matter of exercise of discretionary jurisdiction by the court of law. Four consecutive extensions of time, issuance of two notices and not getting the presence marked after expiry of 15 days as stipulated in the last notice speaks voluminous of the conduct of plaintiff and this conduct is reflecting that stand taken by defendant that agreement came into existence as security of loan is probable.

Regarding passing of consideration in agreement Ex.P-1, it is mentioned that consideration of Rs.19,50,000/- was received as cash and so is the version in receipt Ex.P-2, but the testimony of witnesses is contradictory, as according to PW-2 Harmandeep Singh, an attesting witness to agreement Ex.P-1, amount of Rs.19,50,000/- was given to defendant in the presence of Tehsildar, whereas according to PW-3 Neeraj, the amount was paid before the Deed Writer and according to PW-5, Raj Kumar Verma, Deed Writer, no money

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transaction took place in his presence. Now, this different version regarding payment of consideration given by attesting witness and scribe again strengthens the stand of defendant that agreement was not for sale and purchase, rather it came into existence as a security of loan, which the defendant is admitting to have taken in his written statement. Otherwise also, the amount of Rs.19,50,000/- is not a small amount and neither the withdrawal of such a huge amount from bank is disclosed nor the payment is through cheque and for that reason again, document Ex.P-1 appears to have been brought into existence as security of the loan taken.

Even otherwise, considering the fact that agreement came into existence for the sale and purchase, then also, the conduct of plaintiff in not getting the sale deed executed on the original target date and in not getting the sale deed executed for subsequent four extensions and not visiting the office of Sub-Registrar on expiry of 15 days period as contemplated in the last notice is sufficient to hold that that conduct of plaintiff is not justifying the grant of relief of specific performance and in the totality of circumstances, plaintiff cannot be held entitled to grant of discretionary relief of specific performance.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the

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impugned judgments rendered by learned courts below. He also could not point out 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. Concurrent findings of facts recorded by both the learned courts below have been found factually correct, legally justified and based on sound reasons. In this regard, reliance can be placed on the judgments of 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.

(RAMESHWAR SINGH MALIK)
JUDGE

27.2.2017
Ak Sharma

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