

RSA No. 1996 of 2015(O&M)

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

RSA No. 1996 of 2015(O&M)

Date of Decision: 28.8.2017

Manjit Raj

.....Appellant

Vs.

Hira Lal (deceased) through his LRs

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Ashish Aggarwal, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned judgment of reversal dated 12.12.2014 passed by the learned Additional District Judge, in a suit for possession by way of specific performance of the agreement to sell, thereby partly allowing first appeal of the plaintiff, denying him the primary relief of specific performance but granting him the alternative relief of recovery of earnest money along with interest, defendant has approached this Court by way of present regular second appeal.

Brief facts of the case, as recorded by the learned first appellate court in para No.2 of its impugned judgment, are that defendant being owner of the house, as detailed in the head note of the plaint, agreed to sell the

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same to the plaintiff of ₹13,00,000/- and received ₹1,60,000/- as earnest money. Agreement to sell was executed on 17.12.2009 between the parties. Sale deed was agreed to be executed on 17.3.2010. On the same day, defendant also agreed to purchase property measuring 140 square yards at the rate of ₹6500 per square yards, for total sale consideration of ₹9,10,000/- from Parkashwanti mother of plaintiff. Agreement to sell dated 17.12.2009 was executed between Parkashwanti and defendant. Sale deed of that agreement was also to be executed on 17.3.2010. On stipulated date i.e. 17.3.2010, plaintiff, along with his mother, appeared before Sub-Registrar, Amritsar, for execution and registration of sale deed. They remained there up to 5.00 PM but defendant did not turn up. Plaintiff was in possession of balance sale consideration amount and his mother was also present for execution of sale deed in favour of defendant and for adjustment of amount of ₹9,10,000/- as explained above. Plaintiff was also having money for other requisite expenses.

Plaintiff moved application before Sub-Registrar on 17.3.2010 along with affidavit and got attested the same from Executive Magistrate, Amritsar. Defendant did not turn up to execute sale deed in his favour. Similarly, mother of the plaintiff also got marked her presence by way of application and affidavit. Since then plaintiff had been requesting defendant to execute sale deed in his favour as per agreement. Plaintiff had been ready and willing to perform his part of agreement. Defendant, however, did not execute sale deed and refused and further threatened to alienate property in favour of third person and to raise construction over suit property. Defendant was not having any right to do so. It was prayed that a decree for possession by way of specific performance of agreement to sell dated

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17.12.2009, regarding house in dispute be passed or in alternative a decree for recovery of ₹3,20,000/- i.e. double of earnest money along with interest @ 24% be passed in favour of plaintiff and against defendant and further decree for injunction be passed restraining defendant from alienating suit property in favour of any other person except plaintiff and from making any construction therein.

Defendant-appellant was put to notice. Despite having been duly served in the suit, he did not appear before the learned trial court and he was proceeded against ex parte. Plaintiff led his ex parte evidence. However, the learned trial court, vide its judgment and decree dated 24.7.2012, came to the conclusion that the plaintiff failed to prove his case and accordingly, his suit for possession by way of specific performance of the agreement to sell dated 17.12.2009 was dismissed. Feeling aggrieved, plaintiff filed his first appeal which came to be partly allowed by the learned Additional District Judge, vide impugned judgment of reversal dated 12.12.2014, granting him alternative relief of recovery of earnest money along with interest. Hence this regular second appeal at the hands of defendant.

Heard learned counsel for the appellant.

It is not even pleaded or argued case on behalf of the defendant that he was not properly served before the learned trial court. Despite due service, defendant thought it appropriate not to contest the suit. This was the reason that he did not appear before the learned trial court and was proceeded against ex parte. Plaintiff produced on record his documentary as well as oral evidence. He brought on record the agreement to sell as Ex.P-1. PW-2 Rajesh Bedi corroborated the version of the plaintiff-respondent who examined himself as PW-1. After proving the agreement to sell in question

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(ExP1), plaintiff also proved his presence in the office of Sub-Registrar, so as to establish that he was ready and willing to perform his part of the contract.

Since the abovesaid facts and evidence, which have gone completely uncontroverted on record, was not properly appreciated by the learned trial court, the learned Additional District Judge was well within his jurisdiction to pass the impugned judgment of reversal, thereby partly allowing first appeal of the plaintiff, granting him alternative relief of recovery of earnest money along with interest. Having said that, this Court feels no hesitation to conclude that no fault can be found with the cogent findings recorded by the learned first appellate court and the impugned judgment deserves to be upheld.

In fact, the learned trial court discarded documentary as well as oral evidence brought on record by the plaintiff and that too, without recording any sound reason. A bare combined reading of both the judgments and decrees passed by the learned courts below, would show that plaintiff has not only proved the agreement to sell in question, but he has also proved on record his readiness and willingness to perform his part of the contract. There was cogent and sufficient evidence, so as to prove the pleaded case of the plaintiff.

However, the learned first appellate court still denied the primary relief of specific performance to the plaintiff because it was the residential house which was suit property and the plaintiff could not bring on record any such evidence to show that defendant-appellant was having another residential house. Thus, suit property being the only residential house of the defendant, his case would certainly fall within one of the

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exceptions carved out by the legislature itself in Section 20 of the Specific Relief Act.

It is so said, because it would be a clear case of undue hardship on the defendant-appellant. This was the undisputed fact and sound reason which rightly weighed with the learned first appellate court to grant the alternative relief to the plaintiff-respondent directing the defendant-appellant for returning the earnest money along with interest. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate court committed no error of law, while passing impugned judgment of reversal and the same deserves to be upheld, for this reason also.

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. Relevant and cogent findings recorded by the learned first appellate court in para 11 and 12 of its impugned judgment, which deserve to be noticed here, read as under:-

“ As noted, defendant did not appear in the trial court to contest suit of the plaintiff. So there is no pleading of the defendant regarding execution or not of the agreement to sell dated 17.12.2009. Even after appearance in the present appeal, defendant did not choose to seek appropriate remedy, so as to contest suit of plaintiff on merits by filing written statement. So far as question of execution of agreement dated 17.12.2009 (Ex.P1) is concerned, same was proved from the statement of plaintiff Hira Lal and attesting witness Rajesh Bedi. Both of them testified on oath that agreement dated 17.12.2009 was executed by defendant Manjit Singh after taking earnest money of Rs. 1,60,000/-. Application Ex.P2 and affidavit Ex.P3 were also proved by plaintiff Hira Lal, whereby he appeared before Sub

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Registrar on 17.3.2010, with requisite money, to get sale deed in his favour. Learned trial court has held agreement to be forged and fabricated without any basis. It has held the second witness of the agreement namely Jai Parkash was not examined. It was not at all required under law that plaintiff should have examined second witness of the agreement also. Agreement to sell was proved from the statement of plaintiff himself. Apart from it, he had examined Rajesh Bedi, attesting witness thereof. Statement of PW2 Rajesh Bedi was also discarded on equally flimsy ground that his signatures are below his name, which creates doubt. Signatures of Jai Parkash, other attesting witness, are also below his name. Putting of signatures below his name, by a witness, is hardly a ground to make the document itself forged and fabricated one. Learned trial court has held agreement to be forged and fabricated without any basis and without any evidence in that respect before it. It is rather found that execution of agreement dated 17.12.2009 is duly proved. Readiness and willingness on the part of plaintiff to perform his part of agreement is also proved from application and affidavit dated 17.3.2010 (Ex.P2 and Ex.P3) as he appeared before concerned Sub-Registrar to get sale deed executed in his favour on the basis of agreement dated 17.12.2009. Furthermore, plaintiff filed present suit on 2.4.2010 i.e. just after 15 days of the stipulated date, which is another circumstance showing readiness and willingness to perform his part of the agreement. Plaintiff, however, did not prove the original agreement dated 17.12.2009 and other documents in the trial court. The said defect stands cured by him in the present appeal. Original documents, as detailed above, have been proved as Ex.PW1/A to Ex.PX3/A and Ex.P5/A and Ex.P6/A. So from the unrebutted evidence of plaintiff, it stands proved that defendant Manjit Raj, executed agreement dated 17.12.2009 Ex.P1/A in favour of plaintiff and received Rs. 1,60,000/- as earnest money. It is further proved that plaintiff has been ready and willing to perform his part of the agreement.

Now coming to the question of grant of relief to plaintiff, it is

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worth considering that agreement EX.P1 was executed by defendant Manjit Raj for himself as well as attorney of Jagdish Raj, his brother. Power of attorney executed by Jagdish Raj in his favour, dated 20.12.2004, was also mentioned in the agreement. No reason has been assigned by the plaintiff as to why said Jagdish Raj co-vendor has not been arrayed as a party in the present suit. No reference of Jagdish Raj has at all been given in the suit by the plaintiff. Specific performance of half share of Manjit Raj has not been sought in the present suit. So, on this account, decree for specific performance of agreement cannot be granted to the plaintiff. However, it stands amply proved from unrebutted evidence that defendant Manjit Raj received Rs. 1,60,000/- from the plaintiff Hira Lal. It has been discussed above that plaintiff has been ready and willing to perform his part of agreement. So, in such circumstances, unjust enrichment of Manjit Raj cannot be allowed. He was not willing to perform his part of agreement. So he cannot be allowed to forfeit amount of Rs. 1,60,000/- of the plaintiff received by him as earnest money. Alternative relief of refund of earnest money, deserves to be granted to the plaintiff in the given circumstances and to balance the equities. Same is accordingly granted and defendant is directed to return/refund amount of Rs. 1,60,000/- with interest @ 12 % per annum from 17.12.20089 i.e. date of agreement, onwards till payment”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in abovesaid findings recorded by the learned first appellate court. 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.**

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**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.

28.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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