

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

RSA No.365 of 2016 (O&M)

Date of decision: 06.03.2017

Kewal Singh

... Appellant

Vs.

Iqbal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S. Rangi, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Having failed in both the learned Courts below, in his suit for possession by way of specific performance of agreement to sell dated 30.04.2003, plaintiff has approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by learned trial Court in para 1 of its impugned judgment, are that the plaintiff averred that defendant No.1 was owner and in possession of the land measuring 40 kanal 0 marla as detailed in the head note of the plaint. Defendant No.1 entered into an agreement to sell dated 30.04.2003 for the sale of his abovesaid property in favour of the plaintiff for a total sale consideration of Rs.12,50,000/-. At the time of execution of the agreement, defendant No.1 received Rs.6,50,000/- in cash as advance/earnest money from the plaintiff in the presence of marginal witnesses and the scribe. It

was further the claim of the plaintiff that defendant No.1 also gave a note in his own handwriting regarding receipt of Rs.6,50,000/- on the agreement to sell dated 30.04.2003. Defendant No.1 agreed to execute and get the sale deed registered in favour of the plaintiff regarding the property in question on or before 31.10.2003 after receiving the balance sale consideration. Defendant No.1 further agreed that on failure on his part to get the sale deed executed and registered on or before 31.10.2003, the plaintiff could get the sale deed executed and registered through Court or could get the double of advance/earnest money. The plaintiff had further submitted that he always remained ready and willing and was still ready and willing to perform his part of the contract and the balance sale consideration along with other necessary/incidental expenses which might be incurred at the time of execution and registration of sale deed were ready with the plaintiff. As per the plaintiff, on 23.10.2003, defendant No.1 requested the plaintiff to postpone the date for the execution and registration of the sale deed from 31.10.2003 to 10.11.2003 and the plaintiff agreed to the said requests of defendant No.1. Consequently, an endorsement was made by deed writer Rajan Kumar Sharma on 23.10.2003 whereby the parties postponed the date of execution of sale deed from 31.10.2003 to 10.11.2013. Thereafter, in accordance with the conditions of the agreement to sell dated 30.04.2003 and as per endorsement dated 23.10.2003, the plaintiff came present in the office of Sub Registrar, Samrala on 10.11.2003 along with balance sale consideration and other necessary/incidental expenses for the execution and registration of sale deed in his favour but defendant No.1 did not turn up for the execution and registration of sale deed. The plaintiff remained present from 9.00 am to 5.00 pm on 10.11.2003 for getting the sale

deed executed and registered. The plaintiff got marked his presence by getting the affidavit attested from the Executive Magistrate, Samrala. As such, defendant No.1 failed to perform his part of the contract. The plaintiff requested defendant No.1 several times to execute and get registered the sale deed in accordance with the terms and conditions of agreement to sell dated 30.04.2003. Some time prior to filing of the suit, the plaintiff came to know that defendant No.1 with malafide intention and in order to cheat and defraud the plaintiff, got entered and sanctioned the mutation No.1654 regarding the suit property and his other properties in favour of his sons i.e. defendants No.2 to 4 on the basis of collusive decree dated 04.03.1991 which was obtained from the Court by defendant No.1 in favour of defendants No.2 to 4 regarding the suit property and his other properties. As per the plaintiff, the malafide intention of defendant No.1 was clear from the fact that the collusive decree is dated 04.03.1991 but defendant No.1 intentionally did not took into account the abovesaid collusive decree in order to play fraud with the plaintiff. Defendant No.1 got the mutation entered and sanctioned in favour of his sons i.e. defendants No.2 to 4. Defendants No.2 to 4 in collusion and in connivance with defendant No.1, by taking undue advantage of abovementioned collusive decree and mutation No.1654, sold land measuring 57K-18M vide sale deed dated 28.07.2004 registered on 29.07.2004 in favour of defendants No.5 and 6. The abovesaid sale deed is also illegal, null and void. Now, the defendants were threatening to further alienate the suit property to some other person and had started negotiations for the sale of suit property with the interested purchasers.

Having been served, defendant No.1 contested the suit by filing the written statement, taking more than one preliminary objections. Defendants

No.2 to 4 filed their separate but joint written statement. Similarly, defendants No.5 and 6 filed their separate joint written statement. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether defendant No.1 executed an agreement to sell dated 30.04.2003 in favour of plaintiff and received Rs.6,50,000/- as earnest money? OPP
2. Whether plaintiff remained ready and willing and still ready and willing to perform his part of the contract? OPP
3. Whether plaintiff is entitled to possession by way of specific performance of agreement to sell? OPP
4. Whether plaintiff is entitled to declaration as prayed for? OPP
5. Whether plaintiff is entitled to permanent injunction as prayed for? OPP
6. Whether suit is not maintainable in the present form? OPD
7. Whether suit is not properly valued for the purpose of Court fee and jurisdiction? OPD
8. Whether plaintiff has no locus standi to file the present suit? OPD
9. Whether the agreement to sell dated 30.04.2003 is forged and fabricated document? OPD
10. Whether suit is bad for mis-joinder of defendants No.5 and 6? OPD
11. Whether plaintiff has no cause of action to file the present suit? OPD
12. Relief.

In order to prove their respective stands taken, both the parties

produced their 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 the plaintiff was unable to make out a case for decree of specific performance. However, the suit was partly decreed, granting alternative relief in faovur of the plaintiff and against defendant No.1 for recovery of earnest money along with interest vide impugned judgment and decree dated 10.05.2013. Both the parties felt aggrieved. Two appeals came to be filed. Plaintiff was seeking that his suit ought to have been decreed in toto, whereas defendant No.1 filed the appeal, contending that plaintiff was not entitled even for grant of alternative relief. Both these appeals came to be dismissed vide common judgment dated 08.05.2014 passed by the learned first appellate Court. Hence this regular second appeal at the hands of unsuccessful plaintiff.

Heard learned counsel for the plaintiff-appellant.

It has gone undisputed before this Court that on the date of agreement to sell i.e. 30.04.2003, defendant Iqbal Singh-vendor of the plaintiff-appellant was no more owner of the suit land, as he had already suffered Civil Court decree in favour of defendants No.2 to 4-his sons, way back on 04.03.1991. It is also not in dispute that defendants No.2 to 4 had further sold the suit land to defendants No.5 and 6. Under these circumstances, defendants No.5 and 6 were justified to claim themselves to be bonafide purchasers.

In view of the abovesaid undisputed facts and circumstances of the case and with a view to strike a balance between the parties, the learned trial Court thought it appropriate to grant only the alternative relief to the plaintiff-appellant, directing defendant No.1 to repay the amount of earnest money to the

plaintiff with interest @10% per annum from the date of execution of agreement to sell dated 30.04.2003 Ex.P3 till the date of passing of the decree in favour of the plaintiff, along with future interest @ 6% per annum till the actual realization of the amount. Accordingly, suit of the plaintiff was partly decreed, vide impugned judgment and decree dated 10.05.2013 passed by the learned trial Court. A bare perusal of the impugned judgment passed by the learned trial Court would show that the findings recorded by the learned trial Court were based on true facts and circumstances of the case as well as supported by sound reasons, which were rightly upheld by the learned first appellate Court.

Similarly, before arriving at its just conclusion, learned first appellate Court reconsidered each and every relevant aspect of the matter in minute details. Cogent findings recorded by the learned Additional District Judge in paras 16 and 17 as well as para 24 of the impugned judgment, which deserve to be noticed here, read as under: -

“Admittedly, defendant Iqbal suffered a decree in favour of his sons defendants No.2 to 4 of land owned by him which included the suit land and judgment and decree in question Ex.D5 and Ex.D6. Thereafter, defendants No.2 to 4 having become owners by way of said judgment and decree further alienated the land owned by them to defendants No.5 and 6 vide sale deed dated 28.07.2004.

The plaintiff having no interest in the land owned by defendant No.1, otherwise than that in the present suit had no right to question judgment and decree dated 14.03.1991 to be collusive or to have been suffered by Iqbal Singh anticipating an agreement

to be executed by him on 30.04.2003, i.e. after about 12 to 13 years.

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Where agreement in question was admitted to have been signed defendant Iqbal Singh and Sant Ram, witness of the agreement, no plausible explanation given by them of having signed the agreement in question, there is no reason to hold or believe that defendant had signed any document while executing documents in favour of Jasbir Singh and no reason given by Sant Ram of signing any document at the instance of any other person whereas to prove the agreement and endorsement Raj Kumar who is scribe of the agreement to sell Ex.P3 and endorsement Ex.P2 specifically deposing with regard to agreement in question to have been executed by Iqbal Singh defendant and passing of consideration in his presence. In these set of circumstances, learned trial Court rightly came to the conclusion of the defendant Iqbal Singh to have executed agreement Ex.P3 dated 30.04.2003 in favour of plaintiff and subsequent endorsement dated 23.10.2003 Ex.P2 extending date of performance to 10.11.2003 but as already discussed above, defendant No.1 on the date of when he executed the agreement to sell in favour of the plaintiff already having relinquished his rights in the suit property in favour of his sons vide judgment and decree dated 04.03.1991 and in his evidence, i.e. plaintiff in his cross-examination stating that at that time he was aware of defendant Iqbal Singh not to be the owner of the land

in suit, question of enforcement of the agreement not arising and there being no reason to hold judgment and decree dated 04.03.1991 and sale deeds executed by defendants No.2 to 4 in favour of defendants No.5 and 6 to be illegal, null and void, learned trial Court committed no error in deciding issues No.1 to 3 in favour of the plaintiff holding him entitled to relief in the alternative and deciding issues No.4 and 5 against the plaintiff, with regard to issues No.6 to 8, 10 and 11, present suit filed by the plaintiff for adjudicating his rights and having filed the suit at the refusal of defendants to accede to his request and suit properly valued in accordance with relief claimed, findings on issues No.6, 7, 8, 10 and 11 are also affirmed whereas findings on issue No.9 calling for no interference and appeals in question being devoid of any merits are ordered to be dismissed. Decree sheets be prepared accordingly.”

It is the settled proposition of law that even if an agreement to sell is duly proved, it is not always necessary that a decree of specific performance has to follow automatically. The legislature has itself provided exceptions, granting discretion to the Court under Section 20 of the Specific Relief Act, 1963. In the present case, the agreement to sell between the plaintiff-appellant and defendant-respondent No.1 was not enforceable against defendants No.2 to 4 as well as against defendants No.5 and 6. It is so said because suit land already stood transferred in the names of defendants No.2 to 4 by a Civil Court decree dated 04.03.1991, whereas the agreement to sell came to be executed between plaintiff and defendant No.1 as late as on 30.04.2003.

Similarly, defendants No.2 to 4, before filing the present suit, had already sold suit land in favour of defendants No.5 and 6 by way of registered sale deed dated 29.07.2004. In this view of the matter, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

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

- 1. *Punjab Urban Planning and Dev. Authority Vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills, 1998 AIR (SC) 2352. (SC)***
- 2. *Motilal Jain Vs. Ramdasi Devi, 2000 (6) SCC 420. (SC)***
- 3. *Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85 (SC).***
- 4. *Zarina Siddiqui Vs. A. Ramalingam alias R. Amarnathan, 2015 (1) SCC 705 (SC).***
- 5. *Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others, 2015 (2) SCC (Civil) 350 (SC).***
- 6. *Swarn Singh Vs. Swarn Kaur and others, 2004 (2) RCR (Civil) 505 (P&H).***
- 7. *Mohini Kapoor Vs. Deepak Uppal and others, 2006 (1) RCR (Civil) 807.***
- 8. *Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520 (P&H)***
- 9. *Harphool Singh Vs. Subhash Chander, 2013 (6) RCR (Civil) 693.***
- 10. *M/s Machhi Ram Kishan Singh Sidhana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506 (P&H)***
- 11. *Birmati Vs. Naseeb Singh, decided vide order dated 16.02.2017 passed in RSA No.341 of 2016.***

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by the learned Courts below. He was also unable to refer to

any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In the circumstances of the case, the learned Courts below were well justified in granting alternative relief of recovery of earnest money to the plaintiff-appellant. There is no scope of interference in the concurrent findings of facts recorded by both the learned Courts below. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground 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

06.03.2017
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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No