

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

RSA No.3352 of 2015 (O & M)

Date of decision :03.08.2017

Jaswinder Kaur

...Appellant

Versus

Subhash Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

ANIL KSHETARPAL, J. (Oral)

Defendant is in Regular Second Appeal against judgments passed by the Courts below decreeing the suit filed by the plaintiff/respondent No.1 for possession by way of specific performance of agreement to sell dated 25.09.2004.

At the outset, it would be noticed that the execution of agreement to sell is not being disputed by any of the parties. The only dispute is with regard to payment of additional amount of Rs.1,90,000/- paid to one Amrik Singh.

The learned Ist Appellate Court has ordered that plaintiff shall recover the amount of Rs.1,90,000/- from Amrik Singh. Apart from earnest money, remaining payment shall be made to the appellant/defendant. In other words a sum of Rs.1,90,000/- as paid to Amrik Singh by the plaintiff would not be adjusted towards remaining sale consideration payable to the defendant/appellant.

Learned trial Court as well as learned Ist Appellate Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff for possession by way of specific performance of agreement to sell.

Learned counsel for the appellant has made the following

submissions:-

(i) In a Panchayat meeting, it was decided that defendants would be permitted to sell the property and, therefore, appellant had sold the property to defendant No.2 on 10.12.2004, hence specific performance of the agreement to sell could not be ordered.

(ii) plaintiff has not filed any replication and, therefore, the assertion of the plaintiff that there was a decision of the Panchayat remains un rebutted.

(iii) It is the case of the plaintiff that he was ready and willing to perform part of his contract of payment of Rs.9,75,625/- after adjusting Rs.1,90,000/- paid to Amrik Singh. Plaintiff had not pleaded that he was ready to pay Rs.11,65,625/- and, therefore, it is not proved that plaintiff was ready and willing to perform his part of contract.

Both the Courts on appreciation of evidence have found that the decision of the Panchayat is not proved on the file. There is no document placed on file bearing signatures of the parties. In any case decision of a Panchayat unless signed and proved would not bind the plaintiff as there was an agreement in writing between plaintiff and defendant No.1. The execution of the agreement and receipt of earnest money is not disputed. As per the written agreement to sell, the date for registration of sale deed was 31.12.2004 whereas defendant No.1 sold the property to defendant No.2 on 10.12.2004 i.e. 21 days before the target date. Defendant No.1 and defendant No.2 both are residents of same village and in these circumstances, the submission of learned counsel that defendant No.2 is bona fide purchaser cannot be accepted.

Second submission of learned counsel for the appellant that since

no replication was filed, the pleadings of defendant No.1 that there was a

Panchayat decision, had gone un rebutted.

I have considered the argument of the learned counsel for the appellant. Merely on account of non-filing of replication, the Court cannot draw a conclusion that the assertion made has remained unchallenged. After the pleadings, the parties are permitted to lead evidence. On the basis of evidence Court records a finding taking into consideration the pleadings of the parties and the evidence led. There was no issue on Panchayat decision, of course, there was a plea in the written statement. The Courts below have considered this aspect and discarded the same on the ground that the decision of the Panchayat is not proved and in any case is not binding upon the plaintiff.

Learned counsel for the appellant has further submitted that plaintiff was not proved to be ready and willing to perform his part of the contract for payment of Rs.11,65,625/- and, therefore, decree for specific performance could not be passed.

I have carefully considered the submission.

It was the case of the plaintiff that defendant No.1 had received Rs.1,00,000/- as earnest money, which is an admitted fact. It is further a case of the plaintiff that Amrik Singh had received another sum of Rs.1,90,000/- on behalf of Jaswinder Kaur. The Courts have ordered that this payment of Rs.1,90,000/- would not be adjusted towards the sale consideration and defendant No.1 shall be entitled to entire payment in cross objections. First Appellate Court passed a decree for recovery of Rs.1,90,000/- against Amrik Singh, who is defendant No.3.

It is not in dispute that Amrik Singh (defendant No.3) and Jaswinder Kaur (defendant No.1) are closely related. Plaintiff had positively

asserted in the plaint that plaintiff is ready and willing to perform his part of

the contract. Plaintiff even filed the suit with promptness as target date was 31.12.2004 for execution and registration of sale deed and the suit was filed on 25.01.2005. Plaintiff has not taken a stand that he would not pay Rs.1,90,000/- to defendant No.1. Learned trial Court passed a decree to that effect. In these circumstances, it cannot be held that plaintiff was ready and willing to make payment of Rs.9,75,625/- and not Rs.11,65,625/-.

For the reasons recorded above, I do not find any reason to interfere with the concurrent findings of fact arrived at by the Courts below.

Counsel for the appellant has failed to bring into notice any substantial question of law involved in the present appeal. Counsel for the appellant has further failed to point out any ground which may fall within the scope of Section 41 of the Punjab Courts Act, 1918.

Appeal dismissed.

03.08.2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking / reasoned : Yes

Whether Reportable : No