

RSA No. 3889 of 2015 (O&M)

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

RSA No. 3889 of 2015 (O&M)

Date of Decision: 25.9.2017

Jai Kishan

.....Appellant

Vs.

Raj Bala

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Rajinder Goyal, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful defendant is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for recovery filed by the plaintiff, was decreed by the learned trial Court vide its impugned judgment and decree dated 25.10.2012 and first appeal filed by the defendant was also dismissed by the learned first appellate Court vide its impugned judgment and decree dated 16.1.2015, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that respondent-plaintiff Raj Bala instituted a suit for recovery of ₹4,86,200/- against the appellant-defendant Jai Kishan averring, inter alia, that the land measuring 24 K 15 M in village Patti Chaudhary was represented by appellant-defendant to her as his ownership on the basis of agreement dated 11.7.2008. He also showed his intention to sell some of the land after getting the sale deed executed and registered in his favour on the basis of agreement to sell dated 11.7.2008.

RSA No. 3889 of 2015 (O&M)

She believed his representation and agreed to purchase 120 square yards of the land for a total consideration of ₹22,50,000/- and executed an agreement to sell in this regard on 5.9.2008 after making payment of ₹4,40,000/-. The sale deed in pursuance thereof was to be executed and registered up to 30.3.2009. The appellant-defendant failed to get the sale deed executed and registered in his favour under agreement dated 11.7.2008. Hence, he was not in a position to perform his part of contract under agreement to sell dated 5.9.2008, as he had no title of the said land. Thus, the respondent-plaintiff was entitled to recovery ₹4,40,000/- along with interest @ 18% per annum from him. It was also stated that on 30.3.2009, she had waited sufficiently for the appellant-defendant and on his non appearance, got an affidavit of her present attested by appearing before Joint Sub Registrar, Kaithal.

Defendant-appellant was put to notice. He appeared and filed his contesting written statement, raising more than one preliminary objections. Replication was filed by the plaintiff-respondent. On completion of pleadings of the parties, learned trial Court framed the following issues: -

- 1) Whether the plaintiff is entitled or recovery of Rs. 4,86,200/- along with interest?OPP
- 2) Whether the suit is not maintainable?OPD
- 3). Whether the plaintiff has concealed the material facts from the court?OPD
4. Relief.

In order to prove their respective stands taken in their pleadings, both the parties brought on record 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 has proved her case by leading cogent and convincing evidence.

RSA No. 3889 of 2015 (O&M)

3

Accordingly, her suit for recovery was decreed by the learned trial Court vide its judgment and decree dated 25.10.2012. Feeling aggrieved, defendant filed his first appeal, which also came to be dismissed by the learned first appellate Court, vide its impugned judgment and decree dated 16.1.2015. Hence this regular second appeal at the hands of unsuccessful defendant.

Heard learned counsel for the appellant-defendant.

It has gone undisputed on record that when the appellant-defendant entered into an agreement to sell with his vendors-original owner Yashpal etc. on 11.7.2008, they were not owners of the land. It is a matter of record that when the appellant entered into an agreement to sell with the respondent on 5.9.2008, he was also not owner. Knowing fully well that being not owners of the suit land and for that reason not competent to enter into an agreement to sell, appellant-defendant entered into an agreement to sell with the plaintiff-respondent and received an amount of ₹4,40,000/- as earnest money.

In such a situation, collusion between the appellant and his vendors cannot be ruled out for the reason that both were trying to play smart to trap the people-prospective buyers, while entering into different agreements to sell despite being not owners of the property proposed to be sold. In this view of the matter, plaintiff-respondent was well justified to insist upon the defendant only to get the sale deed executed and not through his vendors-Yashpal etc., because there was no agreement to sell between plaintiff and Yashpal etc. Having said that, this Court feels no hesitation to conclude that the learned courts below were well justified and within their jurisdiction to pass their respective impugned judgments and decrees which deserve to be upheld.

RSA No. 3889 of 2015 (O&M)

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:-

- 1) Keshavlal Lallubhai Patel Vs. Lalbhai Trikumal Mills Ltd.
1958 AIR (SC) 512
2. Kishore Samrite Vs. State of U.P. and others, 2013 (2) SCC 398 (SC).
- 2) Harjit Kaur (D) through LRs Vs. Jangir Singh (deceased) through LRS., 2015 (52) RCR (civil) 368 (P&H)
- 3) Inderpal Singh Vs. Jugal Kishore and another, (RSA No. 3796 of 2015 decided on 13.7.2017) (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. Relevant and cogent findings recorded by the learned first appellate court in para 19 to 23 of its impugned judgment, which deserve to be noticed here, read as under:-

“In view of the above discussion and after careful perusal of the record, this court is of the considered opinion that so far as the judgment and decree passed by the learned trial court are concerned, there is no illegality either of law or of facts in the same. This contention of learned courts for the appellant-defendant cannot be accepted that the provisions of Section 55 of Transfer of Property Act are not applicable in this case. It cannot be accepted that the appellant-defendant can transfer the better title in favour of respondents-plaintiff than his title. Even if it is taken as true, though it is denied by respondent-plaintiff, that he had disclosed that he had entered into agreement to purchase the suit land from the owners

Yashpal etc. to the respondent-plaintiff, then also it does not make any difference because it is proved on the case file from the side of respondent-plaintiff that till date the appellant-defendant has no saleable title in his favour. Not only this, even the respondent-plaintiff has proved this fact that owners Yashpal etc., with whom the appellant-defendant had allegedly entered into agreement to purchase on 11.7.1008, were not the owners on that day, rather on the basis of some release deed from their father, they became the owners of the land in question much thereafter.

It cannot be said that the respondent-plaintiff was not having balance sale consideration or was not ready and willing to perform her part of contract because not only she obtained leave on 30.3.2009 from her officer, rather she got her presence marked before the Sub Registrar on that day. However, when afterwards she found that the appellant-defendant was not even owner of the land in question and even the alleged owners with whom he had entered with some agreement to purchase on 11.7.2008 were also not owners on that day and this alleged agreement, rather it was oral agreement, then, these facts were sufficient for her to shake her confidence and to wriggle out of this agreement to sell. She was quite justified in demanding her earnest money back from the appellant-defendant.

Even if the alleged owners are ready to sell the land to her then also neither they can compel her to purchase their land nor she could have compelled them to sell their land because there was no privity of contract between them. The rulings as relied upon by the learned counsel for the appellant-defendant have no applicability on the peculiar facts and circumstances of the present case. In such circumstances, marking of the present by the appellant-defendant on 30.3.2009, serving of notice upon the respondent-plaintiff thereafter and offering execution of sale deed even in the written statement are of no consequence.

So far as the application under Order 41 Rule 27 CPC filed by the respondent-filed is concerned, through this application she wants to show that on the basis of that alleged agreement dated 11.7.2008, the appellant-defend had trapped other persons also and they had also claimed their earnest money back from him. The contention of learned counsel for the appellant-defendant against this application cannot be taken into consideration because though this judgment passed by learned Addl. District Judge, Kaithal On 6.10.2014 in case titled Bhagwan Dass Vs. Jai Kishan is not between the present parties, yet, it reflects on the conduct of appellant-defendant who was party in that litigation and in respect of which, other person had also approached the court against him wherein also he had set up the agreement to purchase dated 11.7.2008. The judgment of Sh. Jasbir Singh Sidhu, learned ADJ, Kaithal, came in existence during the pendency of present appeal and as such application under Order 41 Rule 27 CPC is allowed and documents sought to be adduced by way of additional evidence are taken on record.

When the plea of appellant-defendant is not acceptable as he is not the owners of the suit property i.e. he has no saleable title of suit property, then his appeal cannot be accepted. There is evidence of the appellant-defendant wherein he has denied even entering into the agreement, as DW3. The appellant-defendant cannot be treated as nominee of the original owners of the property. In such circumstances, the learned trial court rightly arrived at a conclusion that the appellant-defendant is not entitle to retain the earnest money of the respondent-plaintiff and is liable to return the same along with interest.”

When confronted with the abovesaid factual as well as legal aspect of the matter, particularly abovesaid cogent findings recorded by the learned Additional District Judge, learned counsel for the appellant had no

RSA No. 3889 of 2015 (O&M)

answer and rightly so, it being a matter of record. Once the appellant-defendant was not true owner of the land intended to be sold by him to the plaintiff-respondent and the appellant was unable to execute the sale deed, as he was not having any title to the land, it was the misconduct of the appellant himself which forced the plaintiff to file the present suit for recovery of the amount which she paid to the appellant by way of earnest money.

Under these circumstances, appellant could not have been permitted to draw any benefit out of his own wrong. That is what has been held by both the learned courts below. In fact, appellant was proceeding on a malafide approach right from day one. In such a situation, he was bound to fail. Appellant-defendant was rightly not allowed by the learned courts below to misuse the process of law. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

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

RSA No. 3889 of 2015 (O&M)

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.

25.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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