

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

(1)

RSA No.4245 of 2015 (O&M)

Date of Order: 13.11.2017

Harjit Singh

..Appellant

Versus

Rajinder Bains and others

..Respondents

(2)

RSA No.5204 of 2015 (O&M)

Harjit Singh

...Appellant

Versus

Sukhbir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Veneet Sharma, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

By this judgment, I shall be disposing of RSA No.4245 of 2015 and RSA No.5204 of 2015 as both the appeals arise out of a civil suit filed by the plaintiffs-appellant.

Plaintiff filed a suit for possession by way of specific performance of alleged agreement to sell, dated 25.03.2007. It was pleaded that defendant no.1 had entered into an agreement to sell, the property bearing No.38-A, Rani Ka Bagh, Amritsar, measuring 523 sq. yds built over land bearing khasra no.2804/653/9 min as per jamabandi for the year 2005-2006. It was pleaded that originally it was agreed that the land shall be sold

@ Rs.22700/- per sq. yard and defendant no.1 received a sum of Rs.50,000/-

on behalf of the defendants as earnest money. The defendants further pleaded that remaining amount of earnest money was to be received on 07.04.2007 i.e. Rs.19,50,000/- and another agreement in writing was to be executed on that day. Plaintiff pleaded that he issued a notice to the defendants on 16.04.2007 calling upon them to come forward to execute the sale deed but they did not perform their part of the contract. Thereafter the plaintiff further issued a notice on 03.05.2007 and then remained present in the office of Sub-Registrar but the defendants did not come forward to execute the sale deed.

Defendants on the other hand, denied any agreement to sell. It was pleaded that the receipt dated 25.02.2007, is a forged, fabricated and collusive document.

Learned trial Court after appreciating the evidence available on record decreed the suit filed by the plaintiff. Two appeals were preferred before the first appellate Court. Learned first appellate Court after re-appreciation of the evidence available on the file, dismissed the suit filed by the plaintiff while setting aside the judgment passed by the learned trial Court.

I have heard counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below.

The alleged agreement to sell on the basis whereof the suit has been filed, has been reproduced by the learned first appellate Court, which is extracted as under:-

“Received 50,000/- (fifty thousand) from Harjeet Singh against #38-A, Rani Ka Bagh, 513 Sq. Yds. at the rate of 22,700/-. Mr. Harjeet Singh will pay Nineteen Lakhs fifty

thousand on 7.4.07 on Saturday”.

It is not disputed before me that it is correct reproduction of receipt/alleged agreement to sell. It is further not in dispute before me that the plaintiff served a notice on defendant no.1, wherein it was pleaded that the final agreement to sell was to be executed on 07.04.2007 after receiving amount of Rs.19,50,000/-. A relevant paragraph of the notice dated 16.04.2007 have been extracted in the judgment passed by the learned first appellate Court, correctness whereof is again not disputed before me. Those paragraphs are extracted as under:-

*“**Para no.3.** That as 25.3.2007 was Sunday and it was agreed that my client will pay a sum of Rs.50,000/- on 30.3.2007 to you and Mr. Rajinder Bains will collect/receive the said amount of 50,000/- on proper receipt. It was also agreed that after receiving Rs.50,000/- on 30.3.2007, you all will come at Amritsar on 7.4.2007 on Saturday and you will execute the final agreement to sell on the said day after receiving more Rs.19,50,000/- from my client out of the total sale price as earnest money.*

***Para No.5.** That on the stipulated date i.e. 7.4.2007, you did not turn up to execute the final agreement to sell as per the terms and conditions settled and also mentioned in the receipt dated 30.3.2007.*

***Para no.7.** So I call upon you through this legal notice to execute the agreement to sell of the said property after receiving the amount of Rs.19,50,000/- from my client in his favour within the period of 15 days, failing which my*

client shall be constrained to file civil as well as criminal proceeding against you in competent Court of law at Amritsar holding you liable for all the consequences arising thereon.”

Thereafter, the plaintiff changed his stand and while sending another notice dated 03.05.2007, he tried to introduce a new story that execution of the agreement to sell was just a formality and a contract had already been finalised and settled on 25.03.2007.

It is admitted position on the record that neither any agreement to sell was executed nor Rs.19,50,000/- was paid. Learned first appellate Court has held that there was no concluded contract between the parties.

Learned first appellate Court has discussed the evidence of Sukhnandan Singh, who is a marginal witness of the receipt, Ex.P1. The Court has found that the plaintiff has not come to the Court with clean hands. It has been stated by Sukhnandan Singh that Rajinder Bains, defendant no.1 was insisting the sale of the property @ Rs.25,000/- per sq. yds. Since the rate was not settled, therefore, there was no transaction between the parties.

Even evidence of the plaintiff has been discussed, who has appeared as PW6. The Court has found that the evidence of the plaintiff is contradictory to the notices sent by the plaintiff, Ex.P3 and Ex.P4. Learned first appellate Court has also found that there is a cutting on the date allegedly written by Rajinder Bains, under his signatures. The signatures of Rajinder Bains do not match/tally with the specimen signatures.

Although learned counsel for the appellate has tried to convince this Court that there was a concluded contract between the parties.

However, looking into the facts that the alleged agreement to sell, which is styled as receipt clearly provide that the plaintiff was to pay earnest money of Rs.19,50,000/- on 07.04.2007 and the plaintiff himself had sent a notice calling upon defendant no.1 to come and execute the written agreement to sell on receipt of further amount of Rs.19,50,000/-, it is not possible for this Court to conclude that there was a concluded contract between the parties. In the absence of any concluded contract between the parties, specific performance of the agreement to sell cannot be ordered.

Learned counsel for the appellant has further submitted that the agreement to sell is not required to be in writing and it can be oral. Therefore, once the terms of the agreement to sell were orally settled, the suit for specific performance of the agreement to sell could be maintained.

I have considered the submission of learned counsel for the appellant.

In this case, the plaintiff before filing the suit had sent a notice dated 16.04.2007. In the notice, it was not the case of the plaintiff that there was an oral agreement to sell between the parties. It was the case of the plaintiff that final agreement to sell was to be executed after receiving Rs.19,50,000/- on 07.04.2007. Therefore, the submission of learned counsel for the appellant that it was the case of oral agreement to sell cannot be accepted.

Learned counsel for the appellant has further argued that the learned first appellate court has even accepted the appeal filed by defendant no.6-Sukhbir Singh. He has submitted that he had no privity of contract between the plaintiff.

I have considered the submission of learned counsel for the appellant.

Defendant no.6 claims to be a subsequent agreement holder from defendant nos.1 to 5. The Court has not given any final opinion about the validity of the aforesaid agreement because that was not the issue in the present case. In the present case, the issue which arose for determination before the Court was whether there was any final agreement to sell between the parties, which could be specifically performed or not. Defendant no.6 being aggrieved of the judgment passed by the trial Court was entitled to file first appeal.

Taking into consideration that the learned first appellate court on appreciation of evidence available on the file, have recorded a finding of fact, which is neither shown to be result of misreading of evidence nor shown to be non consideration of any material evidence available on the file, this Court does not find any good ground to interfere with such findings of fact.

No other argument was addressed.

The regular second appeals are dismissed.

November 13, 2017
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(ANIL KSHETARPAL)
JUDGE

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