

RSA No. 4404 of 2015 (O&M)

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

**RSA No. 4404 of 2015 (O&M)
Date of Decision: 17.8.2017**

Balihar Singh

.....Appellant

Vs.

Yash Pal Sharma alias Bobby and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

RAMESHWAR SINGH MALIK J. (ORAL)

Instant regular second appeal, at the hands of plaintiff, is directed against the impugned judgment and decree dated 4.2.2015 passed by the learned Additional District Judge, whereby first appeal of the defendants in a suit for possession by way of specific performance of the agreement to sell was partly allowed, ordering refund of earnest money but without interest. Plaintiff has approached this Court seeking refund of earnest money along with interest.

Brief facts of the case, as noticed by the learned first appellate court in para 3 of its impugned judgment, are that plaintiff/respondent entered into an agreement to sell with Baljit Rai Sharma, father of the appellants/defendants on 1.6.2004 with regard to one property having khasra No. 82//14/2, total area measuring 359 square yards situated at village

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Vallah, Tehsil and District, Amritsar outside canal, Amritsar and at the time of execution of said agreement to sell, father of the defendants received a sum of ₹60,000/- from the plaintiff and stipulated date of execution of the sale deed was fixed for 1.9.2004. On 12.7.2004, Baljit Rai Sharma, father of defendants received part payment amounting to ₹27,500/- from the plaintiff. Thereafter, on date fixed, i.e. 1.9.2014, the plaintiff asked Baljit Rai Sharma to show him the exact location of the plot in question and then father of defendants told the plaintiff that he did not take Nishandahi of the plot/property till date and he assured the plaintiff that he would get the demarcation of the plot in question and as such, he further requested the plaintiff for extension of time for execution of sale deed which was extended from 1.9.2004 to 1.10.2004 by mutual consent. At that time, Baljit Rai Sharma also received part payment out of the total sale prices, i.e. ₹45,000/- from the plaintiff.

On 1.10.2004, Baljit Rai Sharma, father of the defendant, approached the plaintiff and showed his inability to demarcate the plot in question properly and he further received ₹50,000/- from the plaintiff and assured plaintiff that he would execute the sale deed in favour of plaintiff as early as possible when he would succeed in taking proper demarcation/Nishandahi of the property/plot in question and would install Burjis at its proper place and also give the complete area as agreed after taking proper measurement. The father of the defendant received ₹1,82,500/- in total as earnest money out of the total consideration of ₹4,30,000/- and on 1.10.2004, it was agreed between the parties that balance sale consideration amount shall be paid by the plaintiff when the father of the defendants will execute the sale deed in favour of plaintiff. Thereafter,

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plaintiff approached said Baljit Rai Sharma on various occasions and requested him to demarcate the property in question and execute the sale deed in favour of plaintiff after receiving of entire balance sale consideration amount, but father of defendant delayed the matter on one pretext or other. Said Baljit Rai Sharma, father of the defendants expired on 22.4.2005 and the defendants being legal heirs of deceased Baljit Rai Sharma, became owners of all the movable or immovable properties/estate of the deceased Baljit Rai Sharma.

Thereafter, in the month of July, 2005, plaintiff approached defendant No.1 and disclosed the factum of execution of agreement in question dated 1.6.2004 by their father in favour of plaintiff and showed him agreement in question. But defendant No.1 denied the execution of the said agreement to sell and plaintiff filed suit for declaration against the defendant for obtaining declaration regarding legality and validity of the agreement dated 1.6.2004. But in that suit, defendant No.1 admitted the execution of agreement to sell dated 1.6.2004 and plaintiff withdrew said suit with permission to file fresh suit and same was allowed by the court of Ld. Civil Judge (SD), Amritsar, vide order dated 11.1.2008. Plaintiff also served legal notice to defendants on 29.1.2008 to appear in the office of Sub-Registrar, Amritsar, on 19.2.2008, for execution of sale deed in favour of plaintiff as per agreement to sell in question on receipt of balance sale consideration amount. But the defendants did not turn up there. At that time, the plaintiff was in possession of draft bearing No. 952686 dated 19.2.2008 drawn on Punjab National Bank for ₹2,48,300/- and he was also in possession of money to be spent for the purchase of stamp, scribe charges etc. The plaintiff also got his presence marked in the office of Sub-Registrar,

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Amritsar. The plaintiff was ready and willing to perform his part of the contract and approached the defendants to comply with the terms and conditions of the agreement to sell in question. But the defendants were not performing their part of contract. The cause of action accrued to the plaintiff on 26.7.2005 when defendants refused to execute the sale deed of the suit land in favour of plaintiff.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication reiterating his stand taken in the plaint. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled for possession as prayed for? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is hopelessly time barred and is liable to be dismissed? OPD
4. Whether the suit of the plaintiff is barred U/o 2 Rule 2 CPC? OPD
5. Whether the suit of the plaintiff is not maintainable? OPD
6. Whether the plaintiff has no cause of action to file the present suit?OPD
7. Whether the suit of plaintiff is not properly valued for the purpose of court fee and jurisdiction?OPD
8. Whether the plaintiff has concealed the material facts from the court?OPD
9. Whether the plaintiff has no right, title or interest in the suit property?OPD
10. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD

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11. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff was not entitled for primary relief of specific performance. Consequently, alternative relief of refund of earnest money along with interest was granted by the learned trial court and suit of the plaintiff was partly decreed, vide judgment dated 16.4.2014. Defendants filed their first appeal, which came to be partly accepted by the learned Additional District Judge, modifying the decree of the learned trial court to the extent that amount of earnest money was ordered to be refunded without interest. Hence this regular second appeal at the hands of dissatisfied plaintiff.

Heard learned counsel for the appellant.

A bare combined reading of both the judgments and decrees passed by the learned courts below will make it crystal clear that amount of earnest money paid by the appellant was ₹1,82,500/-, which has been ordered to be refunded by both the learned courts below and said finding is not in dispute before this Court. The learned trial court also granted an amount of ₹1,82,500/- in favour of the plaintiff-appellant on account of damages. This part of the decree passed by the learned trial court was set aside by the learned Additional District Judge and rightly so, because plaintiff-appellant was not found entitled for any kind of damages.

Once the plaintiff was not found entitled for primary relief of specific performance, he was at the most entitled for refund of earnest

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money and no amount on account of alleged damages. Having said that, this Court feels no hesitation to conclude that the learned first appellate court was well within its jurisdiction to deny the relief on account of alleged damages to the plaintiff-appellant and the impugned judgment and decree passed by it, deserve to be upheld.

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. Cogent findings recorded by the learned first appellate court in para 14 and 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“DW3 Yashpal Singh, while appearing as a witness in the court has admitted it correct and plaintiff paid Rs. 2,75,000/-. It is stated as correct that in Ex.P1, no date was fixed for sale deed. Perusal of the agreement Ex.P1 shows that it is mentioned that if the vendee does not get the sale deed by that date or does not pay the balance amount the earnest money will be forfeited. However, subsequently the terms have been changed by the parties between themselves. The appellants/defendants have admitted the terms which provided that the sale deed will be executed after taking proper demarcation of the property and DW3 has admitted in his cross-examination that his father did not serve any notice that he has demarcated the property before taking proper measurement from the Halqa Patwari. One of the writing

on the back of the agreement Ex.P1 reads as under.

“Today through this writing I being vendor received Rs. 50,000/- more. In this way, I, Baljit Rai Sharma son of Shanti Saroop, have received Rs. 1,82,500/- out of total amount from the vendee Balhiar Singh son of Shingara Singh. The balance amount and the sale deed will be executed only when the demarcation of the plot in question is made by installing the Burjies at the right places. Remaining terms and conditions already settled shall remain the same.” No report regarding measurement is on record. Balihar Singh PW1 in his cross examination stated that although the vendor got his presence market on 2.9.2004 on 1.10.2004 vide Ex.D1 and D2 but simultaneously he used to extend the time. The application under Oder 23 Rule 1 Ex.P6 of which reply Ex.P7 was filed and it was decided vide order Ex.P8 was allowed subject to law of limitation. The law of limitation has been barred the claim on account of the fact that at the last instance the parties have agreed that the sale deed will be executed as and when the property is properly demarcated. In the view of this, there is not force in the argument of the Ld. Counsel for the appellant that the damages should have never been granted by the Ld. Trial court. The agreement Ex.P1 has provide for damages also. However, the argument of the Ld. Counsel for the appellant that interest should not

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have been granted for damages agreed upon between the parties as it was the maximum amount agreed between them, has force in it. The judgment cited by the Ld. Counsel for the appellant also lay down the ratio of law in this regard. In this way, the Ld. Trial court should not have awarded interest on the amount which was agreed between the parties as damages in case of breach of contract.

In view of the above, discussion the judgment and decree passed by the Ld,. Trial Court is modified and the interest part on the amount of Rs. 3,65,00/- is set aside. The appeal is partly allowed in the above terms.”

When confronted with the abovesaid peculiar facts and circumstances of the case, to point as to how the plaintiff-appellant would be entitled for an amount of ₹1,82,500/- on account of damages, learned counsel for the appellant had no answer and rightly so, it being a matter of record. In fact, appellant being plaintiff, onus was on him to prove his pleaded case. However, he failed to do so, for the reasons best known to him.

Once there was no sufficient and cogent evidence available on record in favour of the appellant, so as to justify granting of an amount of ₹1,82,500/- to him on account of damages, learned Additional District Judge committed no error of law, while modifying the decree of the learned trial court to this extent. Under these undisputed facts and circumstances of the case, no fault can be found with the cogent findings recorded by the learned Additional District Judge and the impugned judgment and decree passed by

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him deserve to be upheld, for this reason also.

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

17.8.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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