

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

RSA No.5276 of 2015 (O&M)

Date of decision: 10.10.2017

Rajiv Kumar and another

... Appellants

Vs.

Sudhir Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sudhir Aggarwal, Advocate
for the appellants.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful plaintiffs are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby their suit for possession by way of specific performance of agreement to sell dated 19.12.2005 was dismissed by the learned trial Court vide its impugned judgment and decree dated 18.05.2013 and their first appeal was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 18.05.2015.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that appellants/plaintiffs filed a suit for possession by way of specific performance of the agreement alleging therein that the defendant agreed to sell his land measuring 4 marlas, as detailed

and described in para No.1 of the plaint, situated within the abadi deh of village Patti Dharam, Hodal, District Palwal to the plaintiffs vide agreement to sell dated 19.12.2005 against a total sale consideration of Rs.3,72,000/-. The defendant received a sum of Rs.1,00,000/- as earnest money on 19.12.2005 and executed a receipt accordingly. The sale deed was agreed to be executed and registered on or about 30.06.2006 on receipt of balance sale consideration of Rs.2,72,000/-. As per terms and conditions of the agreement to sell dated 19.12.2005, the plaintiffs further paid a sum of Rs.1,00,000/- on 17.01.2006 against a duly executed receipt. On 28.06.2006, the defendant again approached the plaintiff for payment of the balance sale consideration of Rs.1,72,000/-. Consequently, the plaintiffs paid a sum of Rs.1,15,000/- vide cheque No.814991 drawn on Oriental Bank of Commerce, Hodal and a receipt to this effect was also executed on 28.06.2006. The execution and registration of the sale deed was extended upto 30.06.2006. The defendant again approached the plaintiffs on 17.07.2006 seeking payment of balance sale consideration of Rs.57,000/- which he needed for payment of house tax arrears, electricity charges and for obtaining "No due certificate" and the defendant paid a sum of Rs.50,000/- and the receipt was also executed in this respect. In this way plaintiffs paid the entire sale consideration of Rs.3,72,000/- to the defendant and the defendant delivered the actual physical possession of the suit property to them. On 30.06.2006, the plaintiffs waited for the defendant in the Office of Sub Registrar, Hodal, but the defendant knowingly and intentionally did not turn up to perform his part of the contract. He threatened to alienate the suit property to some one else. The plaintiff also served the defendant a legal notice through his

counsel on 05.05.2007, which was duly served upon him, but to no avail. The plaintiffs thus, finding no other option instituted the instant suit.

Having been put to notice, defendant appeared and filed his contesting written statement, raising more than one preliminary objections. Plaintiffs did not file any replication. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the defendant had entered into an agreement to sell the suit property with the plaintiff? OPP
2. Whether the plaintiff was/is still ready and willing to perform his part of the agreement? OPP
3. Whether the plaintiff is entitled to injunction as well as decree for possession by way of specific performance, as prayed for? OPP
4. Whether the suit of the plaintiff is not maintainable in the present form? OPP
5. Whether the plaintiff has no locus standi and cause of action to file the suit? OPD
6. Whether the plaintiff has concealed the material facts from the Court? OPD
7. Relief.

Both the parties brought on record their documentary as well as oral evidence, with a view to substantiate their respective stands taken in their pleadings. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiffs have failed to prove their case for want of sufficient and cogent

evidence. Accordingly, suit filed by the plaintiffs for possession by way of specific performance of agreement to sell dated 19.12.2005 was dismissed by the learned trial Court vide its impugned judgment and decree dated 18.05.2013. Plaintiffs felt aggrieved and filed their first appeal, which also came to be dismissed by the learned Additional District Judge vide impugned judgment and decree dated 18.05.2015. Hence this regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

Before proceeding further, writing dated 21.05.2007 reduced by the appellant Rajiv Kumar in his own handwriting, which was brought on record before the learned trial Court as Ex.D1 and has been placed on record of the present appeal by the appellants today by CM No.12373-C of 2017, deserves to be referred at the outset and the same reads as under: -

“Today on 21.05.2007 our compromise/decision has been taken place peacefully in Panchayat regarding the house of Adarsh Colony, in which there is no pressure upon me. In this house there will be given and take of money between us, upon which I got served the notice. Now this matter has been settled/sorted out completely. I had done the agreement of this house with Rekha Goyal, Hodal, if Sudhir Singh s/o Sh. Beg Raj Singh who is owner of the house does the sale deed in favour of Rekha w/o Sh. Subhash Goyal then I will have no objection. The responsibility of making agree to my partners Sh. Rohtash Kumar s/o Sh. Roshan Lal, r/o Mangolpuri will be mine. God will help me.

Sd/- Rajiv Kumar
21/5/2007

Rajiv Kumar s/o Sh. Radhe Shyam Village Sonhand

Ex.D1
Sd/-ACJ Hodal
31-10-11

True translation
Sd/-
Advocate”

Once the abovesaid compromise came to be arrived at, present suit for possession by way of specific performance was not even maintainable. Further, plaintiffs-appellants neither impleaded Smt. Rekha Goyal as plaintiff nor as defendant in their suit for possession by way of specific performance, for the reasons best known to them. It is also not in dispute that Smt. Rekha Goyal never came forward to claim anything against the defendant in this regard. In such a situation, it can be safely concluded that the appellants were not bonafide litigants right from day one and they have been rightly non-suited by both the learned Courts below, by recording their concurrent findings of facts, which deserve to be upheld.

Before arriving at his judicious conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned first appellate Court in paras 12 to 16 of the impugned judgment, which deserve to be noticed here, read as under: -

“After having heard both the sides, I find no merit in any of the contentions of counsel for the appellants/plaintiffs. Respondent/defendant Sudhir Singh appeared in the witness box as

DW1. In his entire cross-examination appellants/plaintiffs did not put even a single question to the effect that the agreement in question was not cancelled by the said writing Ex.D1 or the said writing was a conditional one. Therefore, by virtue of order 8 rules 3 and 5 of CPC, the facts not specifically denied shall be deemed to be admitted. Further under Section 138 of the Evidence Act, 1872 a witness not cross-examined on a particular point of his statement, that part of the statement will be deemed to have been admitted. Moreover, if the version of the appellants/plaintiffs is believed that the sale deed was to be executed and registered in the name of Rekha wife of Subhash Goyal, the appellants have not produced said Rekha in the witness box to prove that a sale deed was to be executed and registered in her favour on the basis of agreement to sell Ex.P1. One important factor is that in their plaint, appellants/plaintiffs have submitted that the respondent/defendant received the entire sale consideration and delivered the possession of the suit property to the plaintiff no.1, but PW1 Kuldeep has admitted in his cross-examination that he has seen the house in dispute and Sudhir (respondent/defendant) is in possession thereof, whereas earlier Rajiv Kumar (plaintiff no.1) was in possession of the same. Therefore, the statement of PW1 Kuldeep makes it clear that vide writing Ex.D1 the agreement was cancelled. Though, no plea has been raised in appeal that the description of the house has not been mentioned in writing Ex.D1

and writing does not pertain to the house in dispute, but still this plea was taken before the learned Trial Court. Thus, I would like to point out that PW2 Rajiv Kumar himself has admitted in his cross-examination that the house in dispute is situated in Dharam Patti, Adarsh Colony, Hodal.

A perusal of the writing Ex.D1 makes it clear that the dispute was settled between the parties once for all. This writing is admittedly made by the plaintiff no.1 in his own hand. It has been specifically stated in writing Ex.D1 that now the dispute has been settled completely and he executed the agreement to sell in the name of Rekha wife of Subhash Goyal and he will have no objection if Sudhir son of Begh Raj Singh, owner of the house get the sale deed registered in favour of Rekha wife of Subhash and he will persuade his other partner Rohtash Kumar plaintiff no.2. There is nothing in the said writing Ex.D1 that sale deed was to be executed and registered in favour of Rekha on the basis of the agreement to sell Ex.P1 executed by respondent/defendant in favour of the appellant/plaintiff no.1. Thus, the entire material on file leads to the conclusion that the parties had settled their dispute vide Ex.D1 and the agreement to sell Ex.P1 was no more in existence thereafter.

*I have gone through the authorities referred to by learned counsel for the appellants/plaintiffs in cases **Uma Rani and another and Narinderjit Singh (supra)**. There is no dispute with*

regard to the ratio of law laid down in these authorities. But in view of my above discussion the same are of no help to the appellants/plaintiffs.

As discussed above, I find no reason to differ with the learned Trial Court and the findings of learned Trial Court on issues no.1 to 3 and 6 stands affirmed.

The findings of learned Trial Court on Issues no.4 and 5 have not been assailed either during the course of arguments before learned Trial Court or in appeal. Thus, the findings of learned trial court on these issues also stands affirmed.”

It is also a matter of record that the plaintiffs conveniently kept silent in their plaint about the abovesaid material piece of evidence in the form of Ex.D1. No explanation, whatsoever, is forthcoming in this regard, which would clearly make out that plaintiffs were not only trying to play smart with the defendant alone, but with the Courts also, which have rendered them disentitled for any kind of relief at the hands of a Court of law, particularly the discretionary relief under the Specific Relief Act.

It goes without saying that every litigant is under legal obligation to come to the Court with clean hands. A litigant, who has no respect for the law and justice delivery system, would have no place before a Court of law. Such a litigant, as and when he/she is caught at the wrong foot, must be thrown out of the Court at any stage of the litigation. In this regard, reference can be made to more than one judgments of the Hon'ble Supreme Court, including in the cases of **S.P. Changalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LR,**

1994 (1) SCC 1, Commissioner of Customs, Kandla Vs. M/s Essar Oil Limited and others, 2004 (11) SCC 364, Bhaurao Dagdu Paralkar Vs. State of Maharashtra, 2005 (7) SCC 605, State of Punjab and others Vs. Khushwinder Singh, 2011 (5) SLR 55, Preetpal and others Vs. State of Haryana and others, 2013 (2) PLR 387 and Bhuru Ram Vs. Dharampal and others, 2015 (2) PLJ 572.

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below will make it crystal clear that each and every relevant aspect of the matter was rightly considered and correctly appreciated before recording their concurrent findings of facts. The learned trial Court has also placed reliance on the statement suffered by appellant No.1 Rajiv Kumar as PW2 before the Court, in para 39 of the impugned judgment of the learned trial Court. In view of the abovesaid undisputed and glaring factual as well as legal aspect of the matter, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also failed to raise 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 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 since no illegality has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. Present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, 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

10.10.2017
vishnu

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