IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.3519 of 2017 (O&M)
Date of Decision: 27.07.2017

Kanwar Manjit Singh

......Appellant

Versus

M/s Jiwan Milk & Allied Facilities and others

......Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms. Sonia G. Singh, Advocate,
for the appellant.

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RITU BAHRI, J.

Present second appeal has been filed against the judgments of concurrent findings of facts dated 27.11.2013 and 18.01.2017 passed by the Additional Civil Judge (Senior Division), Faridkot and the Additional District Judge, Faridkot respectively, whereby the suit filed by plaintiff-appellant for specific performance of agreement to sell dated 05.06.2003, has been partly decreed.

Plaintiff-appellant filed the aforesaid suit to the effect that on 05.06.2003, defendant-respondent No.1 agreed to sell 80 Kanals (10 acres) of land along with building, detailed in the head note of the plaint, for a sum of Rs.1,68,00,000/- to the plaintiffs and defendant Nos. 2 to 4 to the extent of 1/6th share each and received Rs.21,00,000/- as earnest money at the time of execution of the agreement to sell. The remaining amount was to be received by defendant No.1 from the plaintiffs and defendant Nos. 2 to 4 at the time of execution and registration of the sale deed. Possession was to be delivered at the time of execution and registration of the sale deed. Stipulated date for registration of the sale deed was 28.02.2004. It was also agreed that plaintiffs and defendant Nos.2 to 4 would have a right to get the regular sale deed executed and registered in their own name or in the name of any other person according to their wishes. Upto five or more than five sale deeds could be executed. After the aforesaid agreement to sell, in the month of July, 2003, defendant Nos.3 and 4 transferred their shares in favour of plaintiff No.1-appellant and they received their share contributed by them by way of earnest money to defendant No.1 from plaintiff No.1. As per plaintiffs, they always remained ready and willing to perform their part of the contract, but defendant No.1 intentionally and willfully committed the breach of contract and avoided to execute sale deed in favour of the plaintiffs. Hence the suit.

Upon notice defendant No.1 appeared and filed written statement taking preliminary objections with regard to maintainability and jurisdiction etc. On merits, execution of agreement to sell dated 05.06.2003 was admitted. It was stated that the plaintiffs and defendant Nos.2 to 4 did not have sufficient cash to get the sale deed executed and registered in their favour, therefore, they did not come forward to perform their part of contract. It was further stated that defendant No.1 had no knowledge regarding transfer of share of property by defendant Nos. 3 and 4 in favour of plaintiff No.1. It was alleged that the sale deed was executed by defendant No.1 with the consent of plaintiffs and defendant No.2, but same was not as per terms and conditions of agreement to sell dated 05.06.2003. It was denied that plaintiffs were ready and willing to perform their part of contract. Neither the plaintiffs were entitled to the relief of specific performance nor they were entitled to seek decree of recovery of Rs.37,80,000/-. Rest of the averments made in the plaint were denied and prayer for dismissal of the suit was made.

Along with the written statement, defendant No.1 also filed a counter claim to the effect that agreement to sell dated 05.06.2003 was liable to be rescinded/cancelled/revoked and amount of Rs.21,00,000/- paid as earnest money, stood forfeited, since the time was the essence of the contract regarding land measuring 28 Kanals along with the building. It was agreed that in case, plaintiffs did not get the sale deed executed and registered in their favour by 28.02.2004, then the said agreement would be revoked/cancelled and the amount of Rs.21,00,000/- would be forfeited. In fact, plaintiffs and defendant Nos. 2 to 4 did not have sufficient cash with them, therefore, some part of the land involved in the agreement to sell was sold vide three registered sale deeds. 28.02.2004 was Saturday and 29.02.2004 was Sunday, therefore, on 01.03.2004, defendant No.1/counter claimant kept on waiting the plaintiffs for execution and registration of the sale deed, but they did not come forward to perform their part of contract. Hence, the agreement to sell stood revoked/cancelled and amount of Rs.21,00,000/- paid as earnest money stood forfeited. It was further stated that the agreement to sell was executed about 08 years back and now the prices of the property have been increased manifolds

In the replication, the plaintiff-appellant reiterated the averments made in the plaint and controverted those of the written statement.

From the pleadings of the parties following issues were framed:-

1. Whether defendant No.1 entered into agreement to sell dated 05.06.2003 regarding land measuring 80 Kanals along with building for a sum of Rs.1,68,00,000/- with the plaintiffs and defendant Nos.2 to 4 to the extent of 1/6th share each? OPP
2. If issue No.1 is proved, whether plaintiff is entitled to get possession of land involved in the agreement to sell dated 05.06.2003? OPP
3. Whether plaintiffs remained always ready and willing and still ready and willing to perform their part of contract? OPP
4. Whether plaintiffs are entitled to the alternative relief of recovery to the tune of Rs.37,80,000? OPP
5. Whether suit is not maintainable? OPD
6. Whether defendant No.1/counter claimant is entitled for decree of declaration to the effect that agreement to sell dated 05.06.2003 is liable to be cancelled/rescinded/revoked? OPCC
7. Whether the counter claim is not maintainable? OPP
8. Relief.

Thereafter, additional issue No.7A was framed vide order dated 05.10.2013, which reads as under:-

7A. Whether the counter claim of the defendant/counter claimant is not properly valued for the purpose of court fee and jurisdiction? OPP

Issue Nos.1 to 4 and 6 were taken up together for disposal. After going through the evidence on record, trial Court had observed that agreement to sell dated 05.06.2003, Ex.P1, did not contain any condition that any permission from the Deputy Commissioner was a *sine qua non* before getting the sale deed executed. This ground has been taken up just to get excused for non appearance of plaintiffs (appellant) in order to get the sale deed executed on 28.02.2004. They did not bring any affidavit attested by the Sub Registrar/Executive Magistrate to prove that they were present on 28.02.2004 for getting the sale deed executed, but defendant No.1 did not turn up for the said purpose.

Another ground taken by the plaintiff(s) was that Kanwaldeep Singh-defendant No.3 and Jaswinderpal Kaur-defendant No.4, vide separate affidavits dated 06.02.2007, Ex.P3 & Ex.P4, had relinquished their claim in the suit property in favour of plaintiff No.1. Both these documents were executed on stamp paper of Rs.50/-, whereas, it was required to be compulsorily registered, as the value of the property was over and above Rs.100/-. In the absence of any registered document, even the deed of relinquishment cannot be given effect to and share of the plaintiffs against the share of defendant Nos.2 to 4 would become inexecutable. Ajit Singh-plaintiff No.2, in his cross-examination, has admitted that Jaswinderpal Kaur and Kanwaldeep Singh did not come forward to get the sale deed executed. Even, Kanwaldeep Singh (PW-3), in his cross-examination, admitted that he along with his aunt never appeared before the office of Sub Registrar to get the sale deed executed. He further admitted that he and his aunt (Jaswinderpal Kaur) were in need of money for meeting domestic expenses. Another important fact, which the trial Court has taken into account, is that vide sale deed dated 03.11.2004, Ex.P2, land measuring 36 Kanals was sold for a sum of Rs.25.5 lacs in favour of ten vendees and vide sale deed dated 07.04.2004, Ex.P7, areas measuring 08 Kanals was sold in favour of five vendees for a sale consideration of Rs.8 lacs. Further, vide sale deed dated 07.04.2004, Ex.P8, land measuring 08 Kanals was sold in favour of two vendees for a sale consideration of Rs.8 lacs. All these sale deeds were executed after 28.02.2004, i.e. the date fixed for execution and registration of the sale deed as per agreement, Ex.P1. As per agreement to sell, Ex.P1, it was agreed between the parties that total land would be sold by way of five or more registered sale deeds not only in favour of plaintiff Nos.1 to 3 and defendant Nos. 2 to 4, but also in favour of any other person. Since, plaintiffs could not prove that they were ready and willing to execute the sale deed on 28.02.2004 and as per terms of the agreement, Ex.P1, sale deeds, Ex.P2, Ex.P7 and Ex.P8, were executed, trial Court partly decreed the suit for recovery of earnest money. While partly decreeing the suit, it was observed that out of total earnest money of Rs.21 lacs (which was paid by plaintiffs along with defendant Nos. 2 to 4), the plaintiffs were collectively entitled to recover an amount of Rs.10,50,000/- only along with interest at the rate of 9% per annum from the date of payment till the date of decree and at the rate of 6% per annum from the date of decree till its actual realization.

On appeal, findings recovered by the trial Court have been affirmed by the first appellate Court.

Learned counsel for the appellant was not able to refer any evidence to show that on the stipulated date i.e. 28.02.2004, plaintiff Nos. 1 to 3 and defendant Nos. 2 to 4 had gone to the office of Sub Registrar for getting the sale deed executed. At the same time, Kanwaldeep Singh (PW-3) had stated that he could not get the sale deed executed as he and his aunt

(Jaswinderpal Kaur) were in need of money for meeting domestic expenses. He also admitted in his cross-examination that he and his aunt did not go to the office of Sub Registrar. In the absence of any proof or affidavit from the office of Sub Registrar, case of plaintiffs that they were ready and willing to perform their part of contract, has been rightly rejected by both the Courts below. Even transfer of share of defendant Nos.2 to 4 in favour of plaintiff No.1 had been rightly rejected, as the said transfer could not be executed on the stamp paper of Rs.50/-. Rather, it was compulsorily required to be registered.

Plaintiff No.1-appellant has made a feeble attempt to convince the Court that vide endorsement, Ex.PA and Ex.P1/B, at the backside of agreement to sell, Ex.P1, amount of Rs.14.85 lacs and Rs.12 lacs was passed to defendant No.1. However, this averment of passing of money was never made in the plaint. Moreover, PW-3, in his deposition, has stated that he had only paid Rs.21 lacs. He did not utter a single word regarding payment of aforesaid amount.

Having examined the impugned judgments, this Court is of the view that suit of the plaintiff-appellant has been rightly partly decreed by the Courts below and no illegality, much less perversity, has been found therein. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

27.07.2017
ajp

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