

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3983 of 2017 (O&M)
Date of decision: 08.09.2017

Amrik Singh

... Appellant

Vs.

Binder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ashish Grover, Advocate
for the appellant.

Mr. H.S. Jalal, Advocate
for the caveator-respondent No.1.

RAMESHWAR SINGH MALIK, J. (ORAL)

Dissatisfied plaintiff is in regular second appeal, whereby his suit for specific performance was partly decreed by the learned trial Court, granting him the alternative relief of recovery of earnest money along with interest vide impugned judgment and decree dated 11.12.2014 and his first appeal was dismissed by the learned Additional District Judge vide impugned judgment and decree dated 11.04.2017, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in paras 2 to 8 of the impugned judgment, are that the plaintiff Amrik Singh had brought a civil suit for specific performance of an agreement to sell dated

16.01.2006, in the alternative suit for recovery to the tune of Rs.8,72,000/- and for permanent injunction restraining the defendants from alienating the suit land on the allegations that Gursharan Singh and Harkaran Singh, minor sons of defendant Binder Singh were owner in possession of suit land measuring 25 kanals 3 marlas i.e. $2/3^{\text{rd}}$ share out of land measuring 37 kanals 14 marlas, situated at Village Raike Khurd @ Chak Dana, Tehsil and District Bathinda.

It was further alleged that defendant Binder Singh vide agreement to sell dated 16.01.2006 agreed to sell the suit land at the rate of Rs.3,25,000/- per acre and on receipt of Rs.2 lacs as earnest money agreed to execute the sale deed in favour of the plaintiff, after having necessary permission from the concerned Court.

It was further alleged that the defendant failed to get the necessary permission from the Court concerned for the execution of sale deed. Consequently, the date for execution of the sale deed was extended to 15.11.2006, vide writing on the endorsement of agreement. Again the defendant failed to get the necessary permission, so the date for execution of sale deed was extended upto 15.03.2007 at the back of agreement dated 16.01.2006. Again, the defendant was failed to get the necessary permission, so the date for execution of sale deed was extended upto 31.10.2007, vide separate writing on the back of agreement dated 16.01.2006.

It was further alleged that the defendant failed to take any step to get the necessary permission for the execution of sale deed in favour of the plaintiff, as such, the date was again extended to 30.06.2008 vide separate writing on the back of agreement.

It was further alleged that since the date for execution of sale deed

was extended many a times on the agreement dated 16.01.2006, so fresh agreement to sell was executed on 15.02.2008, whereby the defendant agreed to sell the suit land of the share of his minor sons, in favour of the plaintiff after confirming having received a sum of Rs.2 lacs as earnest money previously. The defendant received a sum of Rs.50,000/- more from the plaintiff as earnest money and agreed to execute the sale deed after having necessary permission on or before 31.12.2008, but since the defendant failed to get the necessary permission, as such the date for execution of sale deed was again extended from 31.12.2008 to 25.09.2009 with mutual consent and was again extended from 25.09.2009 to 25.09.2010 with mutual consent on receipt of further amount of Rs.80,000/- from the plaintiff and in this manner, the defendant received a total amount of Rs.3,30,000/- as earnest money.

It was further alleged that defendant failed to bring the necessary permission from the Court for the execution of sale deed, so plaintiff requested the defendant to execute the sale deed in favour of plaintiff on 27.09.2010 being 25.09.2010 and 26.09.2010 holiday, but the defendant remained mum, whereas plaintiff remained present at the office of Sub Registrar on 27.09.2010 with the balance sale consideration and expenses of sale deed, but the defendant did not turn to perform his part of agreement.

It was further alleged that plaintiff always remained ready and willing to perform his part of agreement, but the defendant failed to perform his part of agreement.

Defendants were put to notice. Since defendants No.2 and 3 were minor sons of defendant No.1, it was defendant No.1 who appeared and filed the contesting written statement raising more than one preliminary objections.

No separate written statement was filed on behalf of defendants No.2 and 3. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled to the specific performance of agreement to sell on the basis of agreement dated 16.01.2006 again renewed vide agreement dated 15.02.2008?
2. Whether the plaintiff is entitled to recovery of Rs.8,72,000/- in the alternative as prayed for? OPP.
3. Whether plaintiff is entitled to the relief of perpetual injunction as prayed for? OPP.
4. Whether the plaintiff has concealed the material facts from the Court? OPD.
5. Relief.

Both the parties brought on record their documentary as well as oral evidence before the learned trial, so as 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 the plaintiff was not entitled for the relief of specific performance. Accordingly, his suit for possession by way of specific performance of agreement to sell was partly decreed by the learned trial Court vide impugned judgment and decree dated 11.12.2014. Relief of specific performance was declined but the plaintiff was granted the alternative relief of recovery of earnest money along with interest. Feeling aggrieved, plaintiff filed his first appeal, which came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 11.04.2017. Hence this regular

second appeal at the hands of unsatisfied plaintiff.

Heard learned counsel for the appellant.

It is a matter of record that the suit land was owned by minors-defendants No.2 and 3. Defendant No.1 was not the owner of the suit land. This fact was very well known to the plaintiff as well. In spite of the fact that defendant No.1 was not the owner of the suit land and was not competent to sell it by executing the sale deed in favour of the plaintiff without prior permission of the Court of competent jurisdiction, plaintiff and defendant No.1 entered into an agreement to sell dated 16.01.2006. Thereafter, defendant No.1 applied for permission of the Court to execute the sale deed in favour of the plaintiff-appellant. However, it is also not in dispute that said permission sought by defendant No.1 was declined by the learned Court of competent jurisdiction, because of which the agreement to sell became redundant and could not have been acted upon by defendant No.1.

Once the order passed by the learned Court of competent jurisdiction rendered defendant No.1 incompetent to execute the sale deed in favour of the plaintiff pursuant to the agreement to sell dated 16.01.2006, plaintiff was bound to fail, so far as the primary relief of specific performance was concerned. That is what has been held by both the learned Courts below. Having said that, this Court feels no hesitation to conclude that both the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Before arriving at its judicious conclusion, learned first appellate Court 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 Additional District Judge in paras 23 to 27 of the impugned judgment, which deserve to be noticed here, read as under: -

“After considering the arguments of both the sides in the light of record available on file, I am of the considered opinion that instant appeal carries no weight and deserves dismissal. It has already come on record the sale deed was to be executed by defendant being guardian of his minor sons namely Gursharan Singh and Harkaran Singh after having necessary permission from the Court and on being applied, vide application Ex.P11 by defendant, the said application was dismissed by the learned Guardian Judge, vide its judgment dated 31.08.2009 proved on record as Ex.P12/Ex.D4. Meaning thereby, there was no willful default on the part of defendant to execute the sale deed on behalf of his minor sons. The defendant could not execute the sale deed for want of permission from the Guardian Court and in the absence of same, defendant was not competent to execute the sale deed on behalf of his minor sons.

In the present set of circumstances, the demand of equity was that the earnest money received by defendant was required to be returned along with reasonable interest thereon and the learned Civil Court while exercising its judicial discretion accorded the refund of earnest money of Rs.3,30,000/- received by defendant on behalf of his minor sons from plaintiff along with interest @9% per annum from the date of agreement dated 16.01.2006 till the

filing of the present suit and with future interest @6% per annum from the date of filing till its realization. No fault can be found with the said finding arrived at by the learned lower Court.

The arguments of learned counsel for appellant that the plaintiff was required to be awarded double the amount of earnest money as damages along with interest, hold no substance because firstly plaintiff has not been able to prove on record that he has sustained any special damages on account of non-execution of the sale deed by the defendant on behalf of his minor sons; plaintiff while aware of the minority of the sons of plaintiff, entered into an agreement, so it was beyond the control of the defendant to execute the sale deed in favour of the plaintiff as permission to execute the sale deed by the defendant on behalf of his minor sons was declined by the learned Guardian Judge.

Admittedly by PW1 Amrik Singh, he was given possession of the suit land by defendant after two months of agreement and still he is in possession of the same, which implies the fact that plaintiff was reaping the income from the suit land. So, in that eventuality, there was no reason to grant separate damages equal to the amount of earnest money.

With these observations, I am of the considered opinion that since the plaintiff has been reasonably compensated by refund of earnest money to the tune of Rs.3,30,000/- along with interest @9% per annum and future interest @6% per annum. So, lower Court judgment and decree suffers no illegality or perverse and as

such the same is upheld.”

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 discussed in detail and rightly appreciated, leaving hardly any scope to interfere at the hands of this Court. Once the learned Court of competent jurisdiction declined the permission sought by defendant No.1 to execute the sale deed in favour of the plaintiff, no fault can be found with defendant No.1 as well because no malafide intention can be attributed to him, in the given fact situation of the case.

Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial Court rightly granted the alternative relief to the plaintiff-appellant for recovery of earnest money along with interest. Similarly, cogent and convincing findings recorded by the learned trial Court were rightly affirmed by the learned Additional District Judge, while passing the impugned judgment and decree. In this view of the matter, no fault can be found with either of the impugned judgments and decrees passed by the learned Courts below and the same deserve to be upheld, for this reason also.

During the course of hearing, learned counsel for the appellant 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

08.09.2017
vishnu

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