

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

123

RSA-4385-2017 (O&M)

Date of Decision:13.09.2017

Nirmala Devi and others

.....Appellants

Versus

Munia Devi

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

**Present: Mr.Amandeep Singh Manaise, Advocate,
for the appellants.**

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful defendants are in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby denying the alternative relief of execution of the sale-deed in favour of the plaintiff, the learned trial court partly decreed the suit, granting the relief of refund of earnest money along with interest, vide its impugned judgment and decree dated 18.11.2014 and first appeal filed by the defendants was also dismissed by the learned District Judge, vide impugned judgment and decree dated 02.09.2016, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate court in para 3 of its impugned judgment, are that according to the plaintiff, her husband retired as a teacher in 2006 and got retiral benefits. Defendant no.2 having good relations with the husband of the plaintiff, asked him to invest the amount in some property and told him that defendant no.1 had

she was intending to sell the said property.

On 15.11.2006, defendant no.2 introduced the plaintiff's husband with defendant no.1. At that time also, defendant no.1 told that she had purchased land measuring 15 kanals 16 marlas situated in village Rau Majra, Hadbast No. 312, Tehsil Naraingarh, District Ambala, detailed in para no.2 of the plaint. After discussion, the deal was struck.

Defendant no.1 agreed to sell that land at the rate of ₹ 1,60,000/- per acre. An agreement dated 15.11.2006 was executed in this regard. An amount of ₹ 1,80,000/- was received by defendant no.1 as earnest money in the presence of the marginal witnesses. Last date for execution and registration of the sale deed was settled as 20.02.2007, because the date for execution and registration of the sale deed in favour of defendant no.1 from the owners was 25.02.2007.

Defendant no.2 assured that he will get the sale deed executed and registered in the name of the plaintiff on the date fixed and as a security, defendant no.2 and his wife-defendant no.3 agreed vide a separate agreement dated 16.11.2006 that in case, defendant no.1 failed to perform her part of the contract, then they i.e. defendants no.2 and 3 shall execute and register the sale deed of their plot measuring 05 marlas, as detailed in the head-note of the plaint, in favour of the plaintiff.

It was also agreed that if, defendant no.1 failed to fulfill her part of the contract, she will be liable to pay the double the earnest money and in case, plaintiff failed to comply with her part, then earnest money paid by her shall stand forfeited.

Plaintiff further pleaded that she had always been ready and willing to perform her part of the contract and that on 20.02.2007, the last

date fixed for execution and registration of the sale deed, she went to the office of Sub Registrar, Naraingarh along-with the balance sale consideration and other miscellaneous expenses and waited for the defendants but they did not turn up. She got her presence marked in the office of Sub Registrar, Naraingarh, by moving an application and also got an affidavit attested in this regard. Plaintiff then got served a legal notice dated 17.04.2017 upon the defendants but still they did not come forward to execute the sale deed. Plaintiff then moved a complaint before S.P. Ambala but in vain.

Plaintiff pleaded further that it was due to malafide intention of the defendants that the deal was not matured because defendant no.1 was neither the owner of the property, which was the subject matter of the agreement, nor she could get execute and register the sale deed in plaintiff's name from the previous owners directly and so, the plaintiff was left with no option but to seek alternative efficacious remedy.

With all these submissions, plaintiff prayed for a decree for recovery of ₹ 1,80,000/- along-with interest at the rate of 18% per annum till actual payment by defendant no.1; or in the alternative to direct defendants no. 2 and 3 to get the sale deed of their plot measuring 05 marlas detailed in the head-note of the plaint, in favour of the plaintiff, as was agreed by them vide agreement dated 16.11.2006.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

“1. Whether plaintiff is entitled to recovery of ₹ 1,80,000/- along-with interest @ 18% per annum

till its actual payment received by the defendant no.1 as earnest money, as alleged ? OPP.

2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.

3. Whether the plaintiff has no locus standi to file the present suit?OPD.

4. Whether plaintiff is estopped from filing the suit by her own acts and conduct? OPD.

5. Whether plaintiff has concealed the material facts from the Court? OPD.

6. Relief.”

In order to prove their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiff was entitled only for the relief of refund of earnest money along with interest. Accordingly, suit of the plaintiff was partly decreed. Defendants were directed to refund the amount of earnest money along with interest to the plaintiff, vide impugned judgment and decree dated 18.11.2014. Defendants felt aggrieved and filed their first appeal, but the same was also dismissed by the learned District Judge, vide impugned judgment and decree dated 02.09.2016. Hence, this regular second appeal, at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

Agreement to sell is not in dispute. Receipt of earnest money by the defendants-appellants has also gone undisputed on record. Further, when specifically asked by this Court as to whether the appellants are ready to execute the sale-deed in favour of the plaintiff-respondent by receiving

the remaining amount of sale consideration, learned counsel for the

appellants was not ready to accept the same. Once it is so, the appellants cannot be permitted to take undue benefit by not executing the sale-deed in favour of the plaintiff-respondent consequent upon the undisputed agreement to sell and also to retain the amount of earnest money, merely on account of technicalities and super-technicalities. Having said that, 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.

Before arriving at his judicious conclusion, the learned District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 21 to 25 of its impugned judgment, which deserve to be noticed here, read as under:-

“What is most important to notice is that neither in application Ex.D1 and affidavit Ex.D2 of Smt. Nirmala; nor in application Ex.D4 and affidavit Ex.D5 of Smt. Jannat, it is mentioned that they had brought Mast Ram etc.i.e. the real owners of the land to get the sale deed executed and registered in favour of the plaintiff.

The documents, as proved on record, reveal that though, plaintiff as well as defendants no.1&3 were present in the office of Sub Registrar, Naraingarh, on 20.02.2007, which was the last date agreed between the parties for execution of the sale deed, as per agreement dated 15.11.2006 Ex.P1, but it was for the defendants no.1 and 2 to ensure the presence of the real owners of the land in question i.e Mast Ram etc., so as to execute the sale deed in favour of the plaintiff. Plaintiff was present in the office of Sub Registrar, Naraingarh and she had the financial

capacity to pay the balance sale consideration and other miscellaneous expenses, as proved by document Ex. P7. Her readiness and willingness is well established on record. Fault clearly lies with the defendants, who failed to bring in the real owners of the land to the office of Sub Registrar, Naraingarh, to get the sale deed executed and registered in favour of the plaintiff.

In above circumstances, it does not lie in the mouth of defendants-appellants to contend that they were ready and willing to perform their part of the contract; or that plaintiff was at fault for not getting the sale deed executed or registered in her favour, Plaintiff was well within her rights to demand the execution and registration of the sale deed in her favour by the real owners Mast Ram etc., as had been agreed by defendant no.1 Smt. Nirmala Devi; and as had been assured by other defendants no.2 and 3, who even executed a separate agreement Ex.P2 in favour of the plaintiff, as security.

In the aforesaid circumstances, defendants had absolutely no right to forfeit the earnest money paid by the plaintiff. Rather, plaintiff is entitled to double the amount of earnest money as per agreement Ex.P1. However, she has confined her claim only to the earnest money along-with interest thereon or in the alternative, execution of the sale deed of plot of 05 marlas of defendant no.3, as had been agreed by her vide agreement Ex.P2.

The contention of the appellants that suit is barred by time, has absolutely no merit. As per the agreement Ex.P1 executed on 15.11.2006, the sale deed was to be executed on 20.02.2007, when defendant no.1 had to bring in the real owners so as to execute and register the sale deed in favour of the plaintiff and as such, it is on 20.02.2007 that cause of action first arose in favour of the plaintiff. Therefore, present suit having been filed on 11.02.2010 is held to be within limitation.”

When confronted with the abovesaid cogent and convincing findings of facts recorded by the learned first appellate court and to point out any patent illegality therein, learned counsel for the appellants had no answer and rightly so, it being a matter of record. In fact, close perusal of both the impugned judgments and decrees passed by the learned courts below will leave no room for doubt that each and every relevant aspect of the matter was rightly discussed and correctly appreciated before recording concurrent findings of facts. In this view of the matter, no fault can be found with the cogent and convincing findings of facts recorded by both the learned courts below and the impugned judgments and decrees deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in Coromandel Indag Products (P) Ltd. Versus Garuda Chit and Trading Co. P.Ltd. and another, 2011(8) SCC 601, P. D'Souza Versus Shondrilo Naidu, 2004(6) SCC 649, Pratibha Singh and another Versus Shanti Devi Prasad and another, 2003(2) SCC 330 (SC), H.K.K. Bail and another Versus M/s Cyma Exports Pvt. Ltd. and another, 2011 (15) SCC 370 (SC), Dr.K.P.Ranga Rao Versus K.V.Venkatesham and others, 2015(1) RCR (Civil) 301 (SC), Mehar Singh and another Versus Kasturi Ram and others, 1962 AIR (Punjab) 394 (P&H) and M/s Dashmesh Rice Mills and others Versus M/s Govind Ram Anil Kumar, 2003(3) RCR (Civil) 734 (P&H).

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 was also

unable to refer to 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 judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus 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 wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

September 13, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

**CM-11382-C-2017 in
RSA-4385-2017**

**Nirmala Devi and others
Versus
Munia Devi**

Present: Mr.Amandeep Singh Manaise, Advocate,
for the applicants-appellants.

Since the appeal has been dismissed on merits, no reasonable explanation is found in the application for condonation of delay in filing the appeal and the same is also dismissed.

September 13, 2017
seema

**(RAMESHWAR SINGH MALIK)
JUDGE**