

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

RSA No.868 of 2017 (O&M)

Date of decision: 26.09.2017

Brham Pal and another

... Appellants

Vs.

M/s Countrywide Promoters Pvt. Ltd.

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Adish Gupta, 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 suit for possession by way of specific performance of agreement to sell dated 13.02.2006 with consequential relief of permanent injunction filed by the plaintiff-respondent was decreed by the learned trial Court and first appeal of the defendants was also dismissed by the learned Additional District Judge vide impugned judgment and decree dated 21.11.2016, 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 2 of the impugned judgment, are that the plaintiff (respondent herein) had filed the suit before learned Civil Judge, seeking a decree of

specific performance on the ground that the defendants along with their brothers had agreed to sell their land mentioned in para No.2 of the plaint, to the plaintiff company, and had entered into an agreement to sell on 13.02.2006 @ Rs.One crore per acre for total sale consideration of Rs.4,31,87,500/-. The real brothers of defendants namely Dinesh Kumar and Mukesh Kumar had already transferred their share of land measuring 17 kanal 5 marla in favour of the nominee of plaintiff through sale deed dated 16.03.2006. Since the share of defendants comes to 17 kanal 6 marla, therefore, the defendants received Rs.21,59,376/- as a part sale consideration from the plaintiff through cheques as well as cash. The date for execution of sale deed was fixed on or before 12.08.2006. The plaintiff, after informing defendants to come present at the office of Sub-Registrar on 11.08.2006, marked presence before the Sub-Registrar as 12.08.2006 was holiday and waited for the defendants upto 5.00pm, but the defendants did not turn up. The plaintiff also issued legal notice to the defendant to execute the sale deed of the suit land, but in vain.

Defendants were put to notice. Both the defendants appeared and filed their joint written statement, taking more than one preliminary objections, with a view to contest the suit filed by the plaintiff. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the defendants entered into an agreement to sell dated 13.02.2006 and received Rs.21,59,376/- as part payment? OPP
2. Whether the plaintiff deserves for the relief of possession by way of specific performance? OPP
3. Whether the suit of the plaintiff is not maintainable in the present

form? OPD

4. Whether the plaintiff has no cause of action to file the present suit?

OPD

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

OPD

6. Whether the plaintiff has not come to the Court with clean hands?

OPD

7. 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. Plaintiff brought on record cogent and convincing evidence, so as to prove its case as per its pleadings. However, appellant-defendant No.1 examined himself as his own witness as DW1, making a self-serving statement and closed his evidence. Defendants-appellants did not examine any other witness nor they brought on record any other documentary evidence, proceeding on a casual approach.

After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that plaintiff has duly proved its case by bringing on record relevant and cogent evidence. Accordingly, suit for possession by way of specific performance of agreement to sell dated 13.02.2006 was decreed by the learned trial Court vide its impugned judgment and decree dated 20.05.2013. Defendants felt aggrieved and filed their first appeal, which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 21.11.2016.

Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the appellants.

It is a matter of record that the agreement to sell dated 13.02.2006 Ex.P1 was entered into between the plaintiff and four real brothers, including the present appellants. Sh. Dinesh Kumar and Sh. Mukesh Kumar, two real brothers of the appellants accepted the agreement to sell dated 13.02.2006 to be correct and genuine document and they executed the sale deed on 16.03.2006 in favour of the plaintiff, qua their share of land measuring 17 kanals 05 marlas. However, defendants-appellants although not denying the execution of agreement to sell between the parties and also the receipt of earnest money, but tried to back out from the agreement, taking the shelter of some oral assurance that the plaintiff would pay market rate to the defendants, which would be prevailing at the time of registration of sale deed. This is what has also been argued by learned counsel for the appellants before this Court.

In case, there was such an oral assurance, the appellants ought to have insisted to get the same reduced to writing at the time of agreement to sell itself. At a later point of time, defendants cannot be permitted to read into agreement to sell another condition, which goes in their favour and detrimental to interest of the plaintiff. It is so said because in the presence of written agreement to sell between the parties, there would be no scope of reading another condition into the said agreement, which would be favourable to one of the parties to the agreement to sell and goes against the interest of other party. 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.

Another argument raised by learned counsel for the appellants, which has also been found wholly misplaced and not worth acceptance, was that the target date was changed from 04 months to 06 months by carrying out an interpolation in the agreement to sell. However, when learned counsel for the appellants was confronted and asked to point out as to what kind of prejudice was caused to the defendants in this regard, he had no answer and rightly so, it being a matter of record. It is not even the pleaded or argued case on behalf of the appellants that they suffered any kind of loss because of changing the period from 04 months to 06 months for the purpose of getting the sale deed registered. Under these undisputed circumstances of the case, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

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 11 to 13 of the impugned judgment, which deserve to be noticed here, read as under: -

“The above main contention of appellant/defendant is regarding fabrication of agreement to sell by changing the period for execution of sale deed from four months to six months. However, the fact regarding date of execution of agreement to sell on

13.02.2006 in favour of plaintiff company, is not disputed by appellant/defendant. The material controversy between the parties is whether the last date for execution of sale deed was 12.06.2006 or 12.08.2006, or whether any material alteration is made by respondent/ plaintiff by changing the period of execution of sale deed from four to six months. The fact that there is nothing on record to show that appellant/defendant no. 1 ever gave any legal notice to the plaintiff company for execution of sale deed on or before 12.06.2006, nor any legal notice is sent by appellant/defendant No.1 after the expiry of the alleged date, for forfeiture of the earnest money, in case of not tendering the balance amount, clearly falsify the defence taken by defendant No.1. Moreover, appellant/ defendant No.1 Braham Pal failed to show that he ever appeared in the office of Sub-registrar on 12.06.2006, to show his willingness to execute the sale deed in favour of plaintiff company is an additional fact, which creates doubt on the defence taken by him. The fact that legal notice was given by plaintiff company on the defendants to execute the sale deed in its favour when defendants failed to appear before the office of Sub-registrar on 12.08.2006, and the fact that no reply to the said legal notice was ever given by the defendants, also falsify their defence, being after-thought. Moreover, appellant/ defendant No.1 has not examined his brothers including his brother defendant No.2 to corroborate his contention regarding the period

of execution of sale deed and the material cutting etc., which creates doubt in the defence taken by appellant/ defendant No.1. Moreover, the plea of fraud & fabrication even in civil cases has to be proved beyond reasonable doubt just like criminal charge as held by Hon'ble Punjab & Haryana High Court in case Santokh Singh and another Vs Sukhwinder Singh and others 2013 (2) RCR (Civil) 581. Even if it is presumed that period of execution of sale deed was four months, not six months, even then there is nothing on record to show that period of execution of sale deed was a necessary condition, which may otherwise result into abandonment or forfeiture of contract on the option of defendants.

Ld. Counsel for the appellants/defendants further submitted that plaintiff company was never in position to tender the sale consideration and thus sale deed of half suit land was got executed by them in favour of another company from the two brothers of defendants. He further submitted that Ld. Civil Judge ignored the important condition in the agreement to sell that if the land in question is not included in the residential zone till the execution of sale deed, then in that eventuality the plaintiff shall not be bound to purchase the land, and sellers (appellant/defendant) will have to refund the earnest money alongwith interest to the purchasers within 15 days of date of expiry of agreement to sell. He further submitted that as the land in question was never included in the residential zone till the date specified for execution of sale deed,

and thus, as such agreement to sell became unenforceable, and the plaintiff became entitled to only for the refund of earnest money along with interest thereon. He further submitted that under these circumstances, at the most the suit for recovery of earnest money could have been decreed by the Ld. Lower Court, instead of passing the decree for specific performance of contract.

I am not satisfied with the above contention of Ld. Counsel for appellants. Admittedly, the previously sale deed was got executed in favour of associate company of the plaintiff company. Secondly, the statement of account proved by PW3 clearly shows that plaintiff company was having sufficient balance to tender to the sellers for execution of the sale deed in its favour, coupled with the fact that they gave a legal notice to the defendants for execution of sale deed also shows their readiness & willingness to execute the part of contract on their part. Further, the fact that two brothers of defendants executed the sale deed in favour of plaintiff company on 16.03.2006, also falsify the defence of the appellant that declaration of residential zone was necessary condition for execution of sale deed. However, even if it is presumed that there was any such precondition, even then in that eventuality only plaintiff company have option to avoid the contract, as their interest was involved.”

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below will leave no room for doubt that

cogent and convincing evidence brought on record by the plaintiff was correctly appreciated by the learned Courts below, before recording their concurrent findings of facts. The agreement to sell was found to be a genuine document. Plaintiff also duly established on record its readiness and willingness to perform remaining part of the contract on its behalf. Defendants-appellants were trying to back out from the genuine agreement to sell without there being any justified factual or legal reason for it, particularly when two real brothers of the appellants, who were also party to this very agreement to sell in question, had already accepted it to be genuine document and executed the sale deed in favour of the plaintiff to the extent of their share for the land measuring 17 kanals 05 marlas. In such a situation, no fault can be found with the findings of facts recorded by both the learned Courts below and the impugned judgments and decrees deserve to be upheld, for this reason as well.

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.

26.09.2017
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE

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