IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.907 of 1992 (O&M)
Date of Decision: September 20, 2018

Dalip Singh

...Appellant

Versus

Sher Singh alias Hari Kishan & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Gurnam Singh, Advocate,
for the appellant.

Mr. Y.P. Khullar, Advocate,
for the respondents.

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AMIT RAWAL, J.

Plaintiff is in Regular Second Appeal against the non-grant of relief under Section 20 of the Specific Relief Act, 1963 (for short “the Act”) and instead entitled to decretal amount of ₹ 13,500/- granted by the trial Court and failed to achieve findings in his favour in Lower Appellate Court.

Plaintiff claimed the specific relief of the agreement to sell dated 12.07.1982 in respect of land measuring 10 bighas 10 biswas (Kham) and received a sum of ₹ 12,000/-. It was averred that the sale deed with regard to part land measuring 4 bighas 13 biswas was to be executed within four months from the date of the agreement and of remaining land measuring 5 bighas 17 biswas on 15.06.1983. Plaintiff had been ready and willing to perform his part of the agreement. Defendant- Sher Singh, on 10.11.1982, received a sum of ₹ 1500/- and the period for execution and registration of the sale deed was extended to 31.12.1982 and thereafter to

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2018.10.05 11:45
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25.01.1983. Defendant No.1 did not come forward to perform his part of the agreement despite repeated requests. Plaintiff came to know that defendant No.1 in collusion with defendant Nos.2 to 5 had executed the sale deed of entire land.

The aforementioned suit was contested by defendant No.1 by averring that defendant Nos.2 to 5 were bonafide purchasers for consideration and without notice of the agreement to sell. It was the plaintiff who was not ready and willing to perform his part of the contract due to lack of sufficient funds and for that reason, the period was extended from time to time.

Defendant Nos.2 to 5 filed separate written statement raising the plea of bonafide purchasers and ignorance of agreement to sell.

On the preponderance of the evidence brought on record, the trial Court did not grant discretionary relief, but ordered for refund of the earnest money as noticed above. Plaintiff did not succeed before the Lower Appellate Court.

Mr. Gurnam Singh, learned counsel appearing on behalf of the appellant-plaintiff submitted that not only the agreement to sell was proved much less the receipt of the earnest money also. In such circumstances, the trial court was required to grant discretionary relief. It was defendant No.1, who was not ready and willing to perform part of the agreement, therefore, defendant Nos.2 to 5 cannot be said to be bonafide purchasers. The testimony of the subsequent purchasers is not trustworthy as they were not coherent with regard to the existence of the agreement to sell and, thus, urged this Court for setting-aside the findings under challenge.

Mr. Y.P. Khullar, learned counsel representing the respondents

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submitted that there is no illegality and perversity in the judgments and decrees under challenge and stated that the sale deed was to be executed in two blocks. The extension was at the behest of the plaintiff as he was not having sufficient funds. Both the courts below interpreted the terms and conditions of the agreement to sell, much less extension wherein it was clearly spelled out that in case the plaintiff failed to perform his part of the agreement, the earnest money would be forfeited.

It was next contended that the sale deed Ex.D6 is dated 10.02.1983, whereas the amount of ₹ 13,500/- was received by defendant No.1 from his brother Dalip Singh as amanat and, thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book, records of the courts below and of the view that there is no force and merit in the submissions of Mr. Gurnam Singh.

During the cross-examination, plaintiff spilled the beans by stating that the time for execution of the sale deed was extended not on account of paucity of funds but stay orders of the court in a civil suit instituted by Pritam Kaur against her husband Sher Singh defendant-vendor. It was a suit claiming maintenance allowance. The first extension was on 10.11.1982 (Ex.P1/A). However, there was stay order, as is evident from Ex.P17, i.e., certified copy of the order dated 05.11.1982. In such circumstances, agreement to sell was incapable of having been performed. In fact, the attempt was to fizzle out. Second extension was dated 30.12.1982. Even then, there was an interim order, but this fact has not been pleaded, thus, for all intents and purposes, Dalip Singh was aware of the existence of the stay order.

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It is a matter of record that Dalip Singh had appeared as a witness in a suit filed by Pritam Kaur, therefore, irresistible conclusion drawn is that Dalip Singh plaintiff did not have sufficient funds for execution and registration of the sale deed. On the other hand, Sher Singh was keen to sell the property as he was in need of money. In these circumstances, the sale deed Ex.D6 was executed in favour of defendant Nos.2 to 5. It is in the circumstance, the court has ordered for refund of the amount.

For the reasons stated above, I do not find any illegality or perversity in the judgments and decrees under challenge. No ground for interference is made out, much less any substantial question of law. Resultantly, the Regular Second Appeal is dismissed.

September 20, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**

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