

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3486 of 2007 (O&M)

Date of Decision: September 11, 2018

Ajmer Singh

...Appellant

Versus

Paramjit Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Sushant Kareer, Advocate,
for the appellant.

Mr. Manish Kumar Singla, Advocate,
for respondent Nos.1 & 2.

AMIT RAWAL, J.

Appellant- defendant No.1, who remained unsuccessful in defending the claim of the plaintiff for specific performance with alternative prayer of recovery of double of the earnest money along with interest granted by the trial Court and modified by the Lower Appellate Court by confining it to only return of the earnest money along with interest, has approached this Court through the instant Regular Second Appeal.

Respondent-plaintiff instituted the suit for specific performance of the agreement to sell dated 24.09.1996 in respect of land measuring 13 kanals 11 marlas agreed to be sold for a total sale consideration of ₹4,06,500/- against the alleged receipt of earnest money of ₹ 3,20,000/-. The date for execution and registration of the sale deed as per the agreement was fixed as 03.07.1997. As per the averments, plaintiff went to the office of Sub Registrar, Khamanon but the defendants did not turn up. After

waiting, the plaintiff got marked his presence by swearing an affidavit. Later on, it transpired that defendant No.1 in collusion with defendant No.2, vide sale deed dated 18.06.1998, transferred land measuring 2 kanals 10 marlas out of the suit land.

The aforementioned suit was contested by denying the execution of the agreement to sell, much less maintainability and locus standi. It was contended that, in fact, defendant No.1 had taken a loan from the plaintiff to send his son abroad through agent Ranjit Singh alias Billa. Plaintiff had paid a sum of ₹ 2,00,000/- instead of agreed amount of ₹2,50,000/-. Defendant No.1 executed an agreement in favour of Paramjit Singh, who is the son of plaintiff, on 02.04.1996 as a security for repayment but not with an intention to sell the land. The agent committed fraud with the defendants. The matter was referred to the police and ultimately, a compromise was effected which was reduced into writing on 22.05.1997.

Defendant No.2 filed a separate written statement and raised the defence of bonafide purchaser for a valuable sale consideration.

On the basis of the evidence brought on record, the trial Court did not grant the discretionary relief but ordered defendant No.1 to return the earnest money of ₹ 6,40,000/-, i.e., the double the amount of the earnest money along with interest @ 6% per annum. As noticed above, the Lower Appellate Court modified the judgment and decree and confined the decree to earnest money of ₹ 3,20,000/- along with interest @ 9% per annum.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr.Sushant Kareer, Advocate, representing the appellant submitted that both the Courts below abdicated in granting the relief, for, the amount taken from the plaintiff was actually returned. It was not possible that a person,

who had paid almost major part of the amount out of ₹ 4,06,500/- and only a sum of ₹ 86,500/- was to be paid, would not take the possession of the land. Parties never intended to enter into an agreement for sale of the land in dispute. Prior to the agreement in question, there was another agreement dated 02.04.1996, but there is no reference of the same. Defendant No.1 had to sell the land in order to arrange money to return to the plaintiff, but the plaintiff forged the agreement to sell in question.

On the other hand, Mr. Manish Kumar Singla, learned counsel appearing on behalf of respondent Nos.1 and 2 submitted that there is no illegality and perversity, for, the defendant miserably failed to prove the discharge of the alleged liability of loan or execution of an agreement as security. The agreement to sell had been signed/thumb marked by the defendant acknowledging the receipt of earnest money of ₹ 3,20,000/-. The trial Court decreed the suit as per the terms and conditions of the agreement, but the plaintiff did not assail the findings by filing an appeal before the Lower Appellate Court and even no cross objections have been filed in this Court against the modification of the judgment and decree rendered by the Appellate Court 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 am of the view that there is no force and merit in the submissions of Mr. Bhan, for, defendant miserably failed to prove the discharge/return of amount of ₹ 2,00,000/- other than the amount referred to in the agreement. No direct and cogent evidence has been placed on record. Neither the agent nor the passport or the air tickets of the son for whom he had allegedly taken loan examined or seen the light of the day. No independent witness has been examined to belie the contents of

the agreement containing element of refund of earnest money. Both the courts below, by noticing the fact that no purpose would be served in granting discretionary relief, confined the relief to the alternative relief and that too with interest @ 9% per annum.

As an upshot of the aforementioned observations, I do not find any illegality or perversity in the impugned judgment and decree of Lower Appellate Court. The argument of Mr. Bhan is not sustainable and is hereby rejected. No ground for interference is made out, much less any substantial question of law. Resultantly, the appeal is dismissed.

September 11, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No