

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

RSA No.502 of 2012 (O&M)

Date of decision: 17.12.2018

Kirpal Singh

..... Appellant

Versus

Manjit Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ashish Soi, Advocate
for the appellant.

Mr. O.P. Hoshiarpuri, Advocate
for respondent No.1(a).

ANIL KSHETARPAL, J. (ORAL)

CM-1431-C-2013

Application is allowed subject to just exceptions. The proposed legal heirs of respondent No.1-A as mentioned in the application are brought on record for the purpose of prosecuting the appeal only.

Main Case

Vide this judgment, RSA No.502-2012 and cross-objections No.9-C-2012 shall stand disposed of.

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while granting alternative relief of refund of double of the earnest money paid instead of decree for possession by way of specific performance of the agreement to sell.

The facts have already been noticed by the Courts below and therefore, need no repetition. The Courts have found the following three reasons for declining the relief of specific performance:-

1. The plaintiff was to carve out a colony and since the plaintiff did not find customers, therefore, the suit was filed at the fag end of the limitation period prescribed under the Limitation Act, 1963, i.e. approximately 3 years after the target date.
2. As per agreement to sell, the plaintiff was delivered possession, however, the plaintiff has claimed possession through the present suit.
3. Carving out a colony in an agriculture land without permission of the concerned Government is not permissible.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned senior counsel appearing for the appellant has submitted that once the defendant had denied execution of the agreement to sell, therefore, the plaintiff was not required to prove his readiness and willingness. He while elaborating has submitted that once the execution of the agreement to sell has been denied, the question of readiness and willingness takes a back seat and once the stand taken by the defendants is proved to be erroneous, the decree for specific performance ought to have been passed. He further submitted that the defendants have not pleaded any hardship.

This Court has carefully considered the argument of learned senior counsel for the appellant. Section 16(c) of the Specific Relief Act

makes it mandatory for the plaintiff to prove that he/they were always ready and willing to perform their part of the contract. Even if execution of the agreement is denied by the defendants, the requirement of the Act does not change. Hence, before a suit for specific performance can be decreed, the plaintiff has to prove that he was always ready and willing to perform his part of the contract. In the present case, the decree for specific performance has not been declined on the ground that it is harsh. As noticed above, three reasons as given by the Courts do not result in declining the relief of specific performance of the agreement to sell on the ground of harshness.

On the other hand, learned counsel appearing for the defendant-respondent has submitted that the trial Court as well as First Appellate Court erred in granting double of the earnest money paid as there was no evidence available on the record which may prove that the plaintiff suffered damages to the extent of Rs,1,00,000/-. Hence, he submitted that the decree to that extent is erroneous.

No doubt, it has been consistently held by the Hon'ble Supreme Court that before a decree for double of the earnest money is passed in favour of the plaintiff, he is required to prove that he has suffered damages to that extent and in absence of any evidence, the decree for the amount which is double of the earnest money cannot be passed although, it is provided in the agreement. To that extent, the argument of learned counsel for the cross-objector has force and therefore, accepted.

There are three reasons given by the Courts for declining the relief of specific performance of the agreement to sell. As regards third reason, this Court has some reservation. However, since first two reasons assigned are good enough, therefore, no further deliberations on this aspect

are required. In the present case, it has been proved that the plaintiff filed a suit although, it is with respect to urban property, almost at the fag end when the limitation for filing the suit was going to expire. Still further, the discretion exercised by the Courts is not shown to be perverse.

Keeping in view the aforesaid facts, the decree passed by the Courts below is substituted with a decree for refund of the earnest money i.e. Rs.1,00,000/- along with interest @ 12% from the date of agreement to sell i.e. 13.12.1996 till realization.

Regular second appeal is dismissed whereas cross-objections are partly allowed.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

17.12.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No