

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.641 of 2012 (O&M)

Date of Decision: April 23, 2018

Navneet Singh @ Navreet Singh

...Appellant

Versus

Balwinder Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Dhirinder Chopra, Advocate,
for the appellant.

Mr.Abhinav Jain, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Appellant (legal representative of Dalip Singh-defendant No.1)
is in Regular Second Appeal against the judgment and decree dated
25.11.2011 rendered by the Lower Appellate Court, whereby the appeal
preferred by the respondent-plaintiff against the judgment and decree dated
24.11.2009 passed by the trial Court, has been partly allowed directing the
appellant to return the amount of ₹3.00 lacs along with interest @ 6% per
annum from the date of the agreement to sell dated 1.12.1999 till actual
realisation with proportionate costs.

Respondent-plaintiff Balwinder Kaur instituted the suit
claiming specific performance of the agreement to sell for directing Dalip
Singh (since deceased) to transfer 1/3rd share in Bus bearing No.PB-12A-
4519, Model 1992 along with the permit in her favour or in the alternative
for recovery of ₹3,66,600/- along with interest @ 24% per annum from the
date of the agreement till the payment of the amount on the premise that a

contract dated 1.12.2009 was entered into by Dalip Singh for transferring 1/3rd share of the bus in favour of the plaintiff on receipt of consideration of ₹3,66,600/-, whereby ₹3,00,000/- was paid as earnest money and remaining amount of ₹66,600/- was to be paid on or before 1.2.2000. Defendant No.2 received ₹60,000/- on 28.1.2000.

The defendants contested the suit by admitting the agreement and came out with a plea that the plaintiff did not perform her part of the agreement. The amount of ₹66,000/- had not been paid, whereas defendant No.2 had no authority to receive the aforementioned amount. The amount was to be paid to Dalip Singh.

In view of the aforementioned pleadings of the parties and a separate written statement of defendant No.2, the trial Court framed the following issues:-

- 1) *Whether plaintiff is entitled to specific performance of the agreement dated 1.12.1999? OPP*
- 2) *Whether in the alternative plaintiff is entitled to recover a sum of Rs.3,66,600/- alongwith interest @ 24% p.a.? OPP*
- 3) *Whether plaintiff is entitled to permanent injunction? OPP*
- 4) *Whether the suit is not maintainable in the present form? OPD*
- 5) *Whether plaintiff got no locus standi to file this suit? OPD*
- 6) *Whether agreement propounded by plaintiff is forged and fabricated? OPD*
- 6-A) *Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
- 7) *Relief.”*

Both the parties examined their respective evidence. The trial

Court dismissed the suit holding that the receipt of ₹66,000/- had not been

proved and, therefore, plaintiff was not entitled to recover the entire amount. The Lower Appellate Court in appeal preferred by the plaintiff partly decreed the suit as indicated above holding that receipt Ex.P8 dated 9.3.2000 of ₹60,000/- had not been proved, but observed that since there was no forfeiture clause in the agreement, ordered for refund of ₹3,00,000/-, which had not been disputed by both the parties.

Mr.Dhirinder Chopra, learned counsel representing the appellant submitted that no doubt the agreement did not contain forfeiture clause, but the respondent-plaintiff did not perform her part of the agreement and the legal representatives of Dalip Singh are still willing to transfer the share in case ₹66,000/- is paid. The receipt of ₹60,000/- has been concurrently found to be not genuine. In the written statement, the defendants did not deny the receipt of ₹3,00,000/-. Even in the absence of the forfeiture clause, the party cannot be permitted to seek refund in the manner and mode for non-performing of the part. There is a gross illegality and perversity in the judgment and decree of the Lower Appellate Court partly decreeing the suit. In fact, the agreement conferred a right upon the respondent-plaintiff, but she did not come forward to perform her part of the agreement.

On the contrary, Mr.Abhinav Jain, learned counsel for the respondent-plaintiff submitted that the receipt specifically contained payment of interest on the amount of earnest money. Even if the Court had disagreed with the contention of the plaintiff with regard to payment of ₹66,000/-, the finding qua returning of the amount of ₹3,00,000/-, which has been admitted, is fair, legal and justified. There is no illegality or perversity.

Over a period of time, the value of the bus deprecated and, therefore, in that

background, alternative relief was sought.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Chopra, for, the agreement dated 1.12.1999 has not been denied. The only question to be pondered upon by this Court is whether the findings of the Court below in not believing payment of ₹66,600/- would entail cancellation of the agreement and deprive the respondent-plaintiff from return of the amount of ₹3,00,000/-, the answer would be 'No', for, Dalip Singh had not denied the receipt of ₹3,00,000/-. The only dispute which was subsisting between the parties for filing of the suit and during the pendency of the suit was in respect of ₹66,600/-, which, according to the plaintiff had been paid, but the fact of the matter is that the receipt was acknowledged by defendant No.2 Sohan Singh, who is not signatory to the agreement. The findings of the Lower Appellate Court, being the last Court of fact and law, in ordering for refund of ₹3,00,000/-, which has not been disputed, is fair and just as many factors probably prevailed and one was referred to in the argument of Mr.Jain as over a period of time, the value of the vehicle had depreciated.

For the reasons stated above, I do not find any illegality or perversity in the findings of the Lower Appellate Court in partly decreeing the suit, much less awarding of the interest @ 6% per annum. No ground for interference is made out.

Appeal stands dismissed.

April 23, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No