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

RSA No.2369 of 2013 (O&M)
Date of decision : 19.03.2018

Avinashi Lal Bhandari

...Appellant

Versus

Tara Devi (deceased) through her LRs and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.**

Present: Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Amit Kohar, Advocate for the appellant.

Mr. Vikas Bahl, Sr. Advocate with
Ms. Balpreet Sidhu, Advocate and
Mr. Shivam, Advocate for the respondents.

****

**ANIL KSHETARPAL, J.**

Defendant No.2-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for possession by way of specific performance of the agreement to sell dated 03.02.1989.

Late Sh. Ram Tirath-defendant No.1 was allotted a plot as local displaced person on 24.02.1984 at the rate of ₹120/- per square yard, total ₹12,000/-.

It is the case of the plaintiff that on account of non-payment of the entire sale consideration, the plot was resumed and at that time, Ram Tirath, entered into an agreement to sell the plot with the plaintiff-

Pawan Kumar
2018.03.21 14:35
I attest to the accuracy and
authenticity of this document

respondent on 03.02.1989 in writing. As per the agreement to sell, ₹10,000/- was paid to Late Sh. Ram Tirath and the plaintiff was to deposit the entire balance sale consideration due against the aforesaid plot with the authority which allotted the plot i.e. Ludhiana Improvement Trust. It is further the case of the plaintiff that he deposited the entire dues on 20.10.1989 in the name of Late Sh. Ram Tirath but original receipt is with him. The plaintiff also asserts that Late Sh. Ram Tirath transferred the plot in favour of defendant No.2(appellant) on 04.01.1991.

The suit was contested by defendant No.1 through his LRs. They denied the execution of any agreement to sell, however, signatures of Late Sh. Ram Tirath were said to have been obtained on the blank papers on the directions of Avinashi Lal Bhandari-defendant No.1 i.e. appellant. Thereafter, legal heirs of defendant No.1 did not appear and were proceeded ex parte. Defendant No.2-appellant pleaded that in fact the plaintiff was only a property Broker and defendant No.2-appellant had handed over a cheque of ₹1,000/- as a commission. Defendant No.2-appellant claimed that there was an oral agreement to sell. He paid ₹2,000/- in cash and ₹3,000/- by way of cheque on 16.01.1989. He further submitted that another amount of ₹5,000/- was paid on 03.02.1989. Defendant No.2-appellant further pleaded that he paid ₹13,480/- to the Ludhiana Improvement Trust through defendant No.1. Defendant No.2-appellant further claimed that he further paid ₹25,000/- to the Ludhiana Improvement Trust on 17.12.1990 and the plot was transferred in his favour on 04.01.1991.

After appreciating the evidence available on the file, both the Courts have decreed the suit filed by the plaintiff and set aside the transfer

Pawan Kumar
2018.03.21 14:35
I attest to the accuracy and
authenticity of this document

of the plot in favour of the defendantNo.2-appellant.

I have heard the learned Senior Counsels for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel for the appellant has submitted that in the pleadings, the plaintiff denies that he is a property Broker whereas in evidence, he has admitted that fact. He has further submitted that his client is a bona fide purchaser. He has further submitted that the plaintiff was not ready and willing. He has further drawn the attention of the Court to the daily orders passed by the Court, wherein the suit is recorded to have been dismissed whereas as per the detailed judgment, it is allowed. He has further submitted that the suit property was not transferable as per the terms and conditions of the allotment letter.

On the other hand, learned counsel for the respondent(s) has submitted that the son of the appellant is also a Property Broker and appellant is assisting him. He has submitted that the plaintiff has produced on file the original letter of allotment, original receipt of ₹3,000/- dated 09.03.1984, original receipt of payment of ₹500/- dated 22.06.1985 and original receipt dated 20.10.1989 Ex.PZ for amount of ₹13,480/-. He has further brought to the notice of the Court that the alleged payment of ₹3,000/- is in favour of son of defendant No.1 i.e. Ravinder Marwa and legal heirs of defendant No.1 have specifically stated in the written statement that the appellant-Avinashi Lal Bhandari was on visiting terms with the legal heirs of defendant No.1-Late Sh. Ram Tirath.

This Court has considered the submissions. Taking into

Pawan Kumar
2018.03.21 14:35
I attest to the accuracy and
authenticity of this document

consideration the evidence led by the parties, this Court does not find any error in the judgments passed by both the Courts below. The reasons are as under:-

1. It is admitted fact that the defendant No.2-appellant is not having any written agreement to sell. His case is based on oral agreement to sell.
2. The defendant No.2-appellant has not produced the receipts of ₹2,000/-, ₹3,000/- or ₹5,000/- as stated to have been paid to Late Sh. Ram Tirath.
3. ₹1,000/-, which was said to have been given to the plaintiff through cheque has never been encashed.
4. Hardial Chand, who is appeared as a witness on behalf of the defendant-appellant has admitted that son of Avinashi Lal Bhandari-appellant is working as a property Broker/dealer. The appellant is assisting him.
5. Original letter of allotment, original receipts proving the deposit of payment to the Improvement Trust, have been produced by the plaintiff.

***NOW THE STAGE IS SET TO DEAL WITH THE ARGUMENTS OF THE LEARNED COUNSEL FOR THE APPELLANT:-***

Learned counsel has pointed out that in the pleadings, the plaintiff denies that he is into the business of Property Broker, however, in evidence, he has admitted that he is receiving the income as Commission from the property dealing. In the considered opinion of this Court, this itself cannot be taken as a ground to deny the relief of specific performance particularly when the appellant and his son are also in the same business.

Pawan Kumar
2018.03.21 14:35
I attest to the accuracy and
authenticity of this document

With regard to the bona fide purchaser, it may be noticed that the legal heirs of defendant No.1 have pleaded that the appellant was having the visiting terms with one son of Late Sh. Ram Tirath i.e. Ravinder Kumar. If Avinashi Lal Bhandari-appellant was personally knowing the son of the owner, it is expected that the son of the owner would not disclose the correct facts particularly when the plaintiff is a total stranger.

Next argument of the learned counsel is that the plaintiff is not proved to be ready and willing. In this regard, it may be noticed that the agreement to sell is dated 03.02.1989. The entire payment which was payable to Late Sh. Ram Tirath was paid on the date of the agreement to sell, itself. Thereafter the plaintiff deposited the amount of ₹13,480/- with the Improvement Trust. As per the agreement to sell, there was no target date for execution of the sale deed. The suit was filed on 06.08.1992. The plaintiff has pleaded that he is always ready and willing to perform his part of the contract. The plaintiff while appearing in the evidence has also reiterated the same thing. No further payment was payable to Late Sh. Ram Tirath, the owner. Hence, both the Courts have rightly held that the plaintiff was ready and willing.

Learned counsel for the appellant has also tried to raise an argument that as per the allotment letter, the plot was non-transferable. It is admitted by the learned counsel that before the Courts below, no such objection was ever taken. Counsel cannot be permitted to raise an argument for the first time in this Court. In any case, the defendant No.2-appellant is also claiming that he has transferred the plot vide letter dated 04.01.1991. Once the plot has been transferred in favour of the appellant then at least he

Pawan Kumar
2018.03.21 14:35
I attest to the accuracy and
authenticity of this document

cannot defend the suit for specific performance on the ground that the plot is non-transferable.

Learned counsel was called upon to show that there was any restriction on the sale of the property under the Act or the Rules. No such provision of the Act or Rules was brought to the notice of this Court. The condition of non-transfer would be deemed to have been waived particularly when the plot was transferred in favour of the appellant on 04.01.1991.

Last argument of the learned counsel is that as per the daily orders, the suit was dismissed, whereas the detailed judgment shows that the suit has been decreed. It may be noticed that the detailed judgment and decree is signed by the Presiding Judge of the trial Court. Although in the appeal, the appellant had pleaded this ground, however, a careful reading of the judgment passed by the First Appellate Court does not show that this argument was ever raised before the First Appellate Court.

In view of the aforesaid discussions, this Court does not find any error in the judgments passed by both the Courts below.

Hence, the Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**19.03.2018** **(ANIL KSHETARPAL)**
*Pawan* **JUDGE**

**Whether speaking/reasoned:-** **Yes/No**

**Whether reportable:-** **Yes/No**

Pawan Kumar
2018.03.21 14:35
I attest to the accuracy and
authenticity of this document