

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-1284-2016 (O&M)
Date of Decision: 08.10.2018

Amarjit Singh

--Appellant

Versus

Balvir Singh & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Namit Gautam, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

A suit for specific performance instituted by the plaintiff Amarjit Singh as regards agreement to sell dated 17.8.2005 stated to have been executed with defendant no.1 Balvir Singh in respect of land measuring 9 kanals 12 marlas 6 sarsahis was partly decreed and alternative relief of recovery of Rs.2,60,000/- along with interest @ 9% from the date of filing of the suit and future interest @ 6% per annum from the date of decree till actual realization of the decretal amount, was granted. Judgement of the Trial Court was passed on 31.1.2012. Civil Appeal preferred by the plaintiff has been dismissed by the learned Additional District Judge, Ferozepur vide judgement dated 7.9.2015 and thereby affirming the judgement and decree of the Trial Court.

Against such backdrop plaintiff-appellant is in second appeal before this Court.

Counsel for the appellant has argued that the Trial Court returned a finding as regards agreement to sell in question dated 17.8.2005 having been duly executed between the plaintiff-appellant and defendant/respondent and such finding having not been challenged, the main relief of specific performance of the agreement ought to have been

granted. Further argued that the courts below have erred in holding that the agreement to sell dated 17.8.2005 was not in real terms a sale agreement but it was only a case of loan transaction between the parties. It is urged that such finding is not based on due appreciation of evidence adduced on record. Counsel has further argued that the plaintiff-appellant was always ready and willing to perform his part of the contract and under such situation the suit for specific performance ought to have been decreed in toto.

Counsel for the appellant has been heard at length and the pleadings on record have been perused.

It would be noticed that the concurrent view taken by the courts below while denying to the plaintiff-appellant the main relief of specific performance of the contract/agreement to sell and granting instead the alternative relief of recovery of an amount of Rs.2,60,000/- along with interest is based on the following reasoning:-

(i) As per sale agreement Ex.P-1 dated 17.8.2005, there was a clear recital that possession of the land in question already stood delivered to the vendee. However, such recital did not find any corroboration from the revenue record.

(ii) The appellant in his deposition before the Trial Court had admitted that he had entered into an agreement with the defendant/respondent with regard to a share of the land holding and not with respect to any specific khasra number. Accordingly, an opinion was formed that since the land in the joint holding was yet to be partitioned, the recital in the sale agreement Ex.P-1 with regard to delivery of possession of a particular parcel cannot be believed to be true.

(iii) The courts below have even found the stand of the appellant with regard to payment of Rs.2,60,000/- on the date of agreement i.e. 17.8.2005 to be doubtful. In this regard it had been noticed that the plaintiff-appellant in cross-examination had admitted that he had earlier paid money to the brother of the defendant-respondent and such amount had also been adjusted while entering into agreement for the parcel of land in question. Plaintiff-appellant had deposed such amount to be Rs.60,000/- whereas the sale agreement dated 11.5.2005 with the brother of the defendant-respondent reflected the earnest money to be Rs.82,000/-.

The plaintiff-appellant had furthermore admitted that the price of the suit land was five times higher than what was contracted into between the parties as per agreement to sell dated 17.8.2005 (Ex.P-1).

The circumstances afore-noticed cannot be stated to be irrelevant to the lis.

In the suit for specific performance of the agreement to sell dated 17.8.2005 instituted by the plaintiff-appellant, there was a specific prayer made in the alternative towards recovery of Rs.3,60,250/- so as to include the refund of earnest money and damages and compensation for breach of the agreement to sell.

The discretion exercised by the Trial Court and affirmed by the Lower Appellate Court as regards denying the main relief for specific performance of contract to the plaintiff-appellant and on the other hand granting alternative relief of recovery of Rs.2,60,000/- along with interest is based on cogent reasoning as has been noticed and culled out herein above.

No interference in the same is warranted at the hands of this Court in second appeal.

The appeal does not raise any question of law.

Appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

08.10.2018

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No