

**Sr. No. 106  
IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**RSA No.3116 of 2016 (O&M)**

**Date of Decision: 26.09.2018**

Sahabuddin

... Appellant

Versus

Jan Mohd. and another

... Respondents

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

Present:- Mr. Virender Rana, Advocate,  
for the appellant.

**TEJINDER SINGH DHINDSA, J.(ORAL)**

A suit for declaration with consequential relief of permanent injunction was instituted by plaintiff Jan Mohammad pertaining to residential premises described as MIG-03-situated within Housing Board Colony, Tehsil Tauru, District Mewat and the same was partly decreed by the trial Court on 30.01.2015 and directions were issued for the defendant Sahabuddin to pay to the plaintiff an amount of Rs.7,39,405/- along with interest @ 12% per annum from the filing of the suit. Plaintiff preferred a civil appeal and which has been allowed by the Learned District Judge, Mewat vide judgment dated 11.02.2016 and in terms of which the judgment and decree dated 30.01.2015 passed by the trial Court has been modified and the suit of the plaintiff has been decreed in toto.

Defendant Sahabuddin is in second appeal before this Court assailing the judgment dated 11.02.2016 passed by the

Lower Appellate Court.

Brief facts that would require notice are that plaintiff/respondent herein, namely, Jan Mohammad instituted a suit on the pleadings that Housing Board Colony had allotted the residential flats/premises in question to Sahabuddin vide allotment letter dated 01.12.2014 on hire purchase basis for a sum of Rs.2,90,000/-. It was further asserted that Sahabuddin had sold the premises in question to the plaintiff in the year 2008 for a sale consideration amount of Rs.6,35,000/-. It was further claimed that actual physical possession of the premises already stood delivered to the plaintiff/respondent. Suit was filed and declaration was sought by claiming that against the backdrop of the total sale consideration amount having been made over to the owner/appellant herein, he is vested with a right to have the allotment/ownership changed in his name.

Suit was contested of filing separate written statements by both the defendants. Housing Board, Haryana, defendant No.2 in its written statement admitted that the premises in question had been allotted to Sahabuddin/appellant herein vide allotment letter dated 01.12.2004 and the possession thereof had been delivered to the allottee on 20.01.2005. Insofar as the sale agreement executed between the plaintiff and defendant No.1 is concerned, Housing Board stated that they were not a party to the agreement and as such had nothing to do with the same.

Defendant No.2, Sahabuddin i.e. present appellant set up a case of complete denial. It was stated that the premises in

question had never been sold to the plaintiff and as such the question of delivering actual physical possession thereof does not even arise.

Trial Court upon appreciation of evidence adduced on record returned a finding that a transaction/deal had been entered into between the parties as regards the premises in question but took a view that since Sahabuddin lacked the capacity to transfer the allotment/ownership of the premises at the time of entering into agreement dated 14.11.2008, accordingly, partly decreed the suit in the nature of money decree for return of amount of Rs.7,39,405/- along with interest.

In the appeal preferred by the plaintiff, the learned District Judge vide impugned judgment dated 11.02.2016 has modified the judgment and decree passed by the trial Court and has decreed the suit of the plaintiff in toto.

Counsel for the appellant has vehemently argued that the judgment passed by the trial Court was based on cogent and valid reasoning and the appellant is ready and willing to return the amount in question as per relief granted by the trial Court. Counsel urges that the money decree having been passed in favour of plaintiff/respondent, substantial relief had been granted and there was no justification for the Lower Appellate Court to have modified the judgment of the trial Court.

No other point was urged.

Having heard counsel for the appellant at length and having perused the case paper book, this Court is of the

considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

A finding of fact has been recorded by the trial Court as regards the sale consideration having been paid by the respondent to the appellant herein in pursuance to a sale agreement dated 14.11.2008. The relief of declaration sought for was, however, declined on the basis that the defendant Sahabuddin was not in the capacity to transfer the allotment/ownership of the premises in question.

Counsel for the appellant concedes that against the findings recorded by the trial Court, no appeal had been preferred by Sahabuddin. In other words, the findings with regard to receiving sale consideration amount in pursuant to a sale agreement dated 14.11.2008 have attained finality qua the appellant herein.

No evidence was adduced on record where from a finding could be recorded that Sahabuddin appellant herein lacked the capacity to transfer the allotment/ownership rights of the premises in question. To the contrary, the stand taken by him before the Courts below was that such transfer was not viable and possible for the reason that he had been away to a foreign land/Saudi Arabia over a period of 20 years. Such stand was in itself suggestive that but for his physical presence, transfer of ownership was possible after seeking due permission from the Housing Board.

In the present case, Lower Courts Records had been

requisitioned and were duly received. Counsel had sought and had been granted time to inspect the records.

In spite of a specific query having been put, counsel has not been able to advert to any document/evidence adduced on record to support the finding of the trial Court that Sahabuddin/appellant herein was not in the capacity to transfer the allotment/ownership of the premises in question in favour of the plaintiff/respondent or there being any clause/condition which envisaged a bar in relation thereto.

Under such circumstances, I do not find any infirmity in the view taken by the Lower Appellate Court in the impugned judgment dated 11.02.2016 and whereby suit of the plaintiff/respondent has been decreed for the main relief.

No merit.

Dismissed.

**26.09.2018**  
vandana

**(TEJINDER SINGH DHINDSA)**  
**JUDGE**

Whether speaking/reasoned  
Whether Reportable

Yes  
No