

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

RSA No.1782 of 2015 (O&M)

Date of Decision: 04.04.2018

Mangal Dass

---Appellant

Versus

Aruna Suri

---Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Vikram Singh, Advocate for the appellant.

HARINDER SINGH SIDHU, J.

The plaintiff has filed this regular second appeal against the judgments of the Courts below.

The plaintiff had filed a suit for recovery of Rs. 6 lakhs along with interest @ 12% per annum against the defendant. The case of the plaintiff was that the defendant had executed an agreement dated 24.4.2009 to sell a plot measuring 200 sq yards comprised in khasra no.4980-4981-4987//4445 situated in village Bichpari, Teshil and District Panipat. The property was to be sold to the plaintiff at the rate of Rs.4000/- per sq. yard. The defendant had received a sum of Rs.3 lacs as earnest money. The sale deed was to be executed on 24.5.2009. 24.5.2009 was a holiday. The plaintiff went to the office of Sub- Registrar Panipat on 25.5.2009 along with the balance sale consideration and other misc. expenses but the defendant did not turn up. Later, the plaintiff learnt that the suit property was in fact not owned by the defendant but was owned by Giani Ram and Pale Ram. The plaintiff served a legal notice on the defendant on 19.6.2009 calling upon him to pay him Rs.6 lacs. The defendant having failed to pay the said amount, the suit was filed for recovery of Rs.6 lacs being double of

the earnest money along with interest at the rate of 12% per annum.

The defendant admitted the execution of the agreement dated 24.4.2009 for total sale consideration of Rs.8 lacs. She also admitted receipt of Rs.3 lacs as earnest money. She however pleaded that she was the owner and in possession of the suit property vide sale deeds 2278 and 2279 dated 30.07.1984 and the plaintiff was fully aware of this. It was her case that she was always ready and willing to perform her part of the contract and that it was the plaintiff who had defaulted in performing his part of the contract without any reason. Hence it was prayed that the suit be dismissed.

On the basis of the evidence the Learned Trial Court concluded that the plea of the plaintiff that the defendant was not the owner of the suit property was not sustainable. It was held that the ownership of the defendant was proved by the sale deed No. 2278 dated 30.7.1984 Ex.D1 and sale deed No. 2279 dated 30.7.1984 Ex. D2. Moreover, the plaintiff while appearing as PW1 had himself admitted in cross examination that the suit property had been sold to the defendant by Giani Ram and Pale Ram, the original owners thereof. He had also admitted that he was in possession of land measuring 165 sq.yards out of the suit property. The son of the plaintiff appearing as PW2 had also admitted in cross examination that the suit property was in the name of the defendant and that the plaintiff had checked the registered sale deeds at the time of execution of agreement to sell. The Trial Court thereby concluded that the plea of the plaintiff that he was ever ready and willing to perform his part of the contract and that the sale deed could not be executed due to the defective title of the defendant was not sustainable. Further, it was held that as the plaintiff was in possession of the suit property no

refund of earnest money could be granted to him as he was not ready to surrender possession of the suit property. Moreover he had not even disclosed in the suit that he was in possession of 165 sq. yards out of the suit property and was thereby guilty of suppression of material facts further disentitling him to relief. The sale deeds Ex.P-4 & P5 which were executed by Pale Ram and Giani Ram in favour of one Tirlok Chand qua the suit property were dated 25.11.2008 i.e. much after the sale deed executed in favour of the defendant and as such would not be binding on the rights of the plaintiff. Accordingly, it was concluded that as the plaintiff himself had failed to comply with the terms of the agreement he was not entitled to recover any amount from the defendant. The suit was dismissed.

The plaintiff preferred an appeal against that judgment.

The learned lower appellate Court concluded that the defendant had no transferable title with regard to the plot subject matter of the agreement to sell on the date of the execution of the agreement. It was held that the sale deeds No.2278 and 2279 dated 30.7.1984 relied on by the defendant pertained to plots measuring 100 sq. yards each having dimensions East-Ram Parkash/Pale Ram (29 feet), West-Giani Ram (29 feet) South-Diwan Chand (31 feet 3 inch) North-gali (31 feet 3 inch). No khasra number of the plots had been mentioned in the sale deeds. The defendant had failed to show that the plots purchased by her vide the sale deeds dated 30.7.1984 Ex.D1 and Ex.D2 comprised of khasra nos.4980, 4981, 4987//44-45. As per the agreement Ex. P7, the defendant had agreed to sell plot measuring 200 sq. yards having boundaries/dimensions East-house of Maiya Ram, West-open place, North-house of Murli, South-Gali.

The boundaries/dimensions of the plot agreed to be sold vide agreement dated 24.4.2009 Ex. P7 did not tally with the boundaries/dimensions of the plots purchased by the defendant vide sale deeds dated 30.7.1984. The jamabandi for the year 2003-2004 recorded Giani Ram son of Jug Lal to be owner in possession of the plot comprising of khasra no.4980, 4981, 4987//44 and Pale Ram son of Giani Ram to be owner in possession of the plot comprising of khasra nos. 4980, 4981, 4987//45. As per the sale deeds dated 25.11.2008 Ex. P4 and Ex.P5/Ex.D3 and Ex.D4 Giani Ram had sold plot comprising of khasra nos.4980, 4981, 4987//44 and Pale Ram had sold plot comprising of khasra no.4980, 4981, 4987//45 measuring two biswas i.e. 100 sq. yards each to Tirlok Chand son of Bharat Ram son of Lakhi Ram resident of Israna. The revenue record also depicted Tirlok Chand son of Bharat Ram as owner of the plot in question comprising khasra Nos.4980, 4981, 4987//44-45. The agreement was executed on 24.4.2009 i.e. after the execution of the sale deeds dated 25.11.2008 in favour of Tirlok Chand. Thus the defendant had not been able to establish that she was the owner of plot measuring 200 sq. yards comprising khasra Nos. 4980, 4981, 4987//44-45 at the time of the execution of the agreement to sell. It was also noticed that the defendant had filed a civil suit challenging the sale deed 25.11.2008 executed by Giani Ram and Pale Ram in favour of Tirlok Chand which suit was pending. It was thus concluded that as the defendant did not have a legal title to the plot in question either the time of execution of the agreement or even at the time fixed for registration of the sale deed the agreement could not have been got enforced by the plaintiff. Hence, he had no option but to file a suit for recovery of double the amount paid by him as

earnest money.

The finding of the Trial court to the effect that the sale deeds dated 31.7.1984 Ex.D1 and D2 proved the ownership of the defendant were reversed. As admittedly, the plaintiff was in possession of the plot measuring 165 sq. yards it was directed that he would become entitled to refund of the earnest money only on surrender of possession of the plot to the defendant. A conditional decree with proportionate costs for recovery of Rs.3 lacs along with interest thereon at the rate of 10% per annum from the date of execution of the agreement till realization was passed in favour of the plaintiff. He was directed to hand over vacant possession of the plot measuring 165 sq. yards in his possession to the defendant within a period of three months failing which the appeal would be deemed to be dismissed with costs.

Learned counsel for the plaintiff- appellant is aggrieved of the order of the Ld. lower appellate court insofar as it has not decreed the suit for recovery of Rs.6 lacs in toto. He is also aggrieved with the direction to hand over possession of 165 sq. yards to the defendant. The said direction is in consonance with the decision of this Court in **Phool Singh Vs. Ram Rattan 2013 (2) Latest Judicial Reports 14** as per which refund of earnest money can be directed only after surrender of possession of the suit property where such possession was delivered pursuant to the agreement to sell. There is no illegality in the aforesaid direction.

Dismissed.

April 04, 2018

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No