

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-3352-2016 (O&M)

Date of Decision: 17.5.2018

Ram Kanwar and others

....Appellants.

Versus

Samer Singh and another

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

PRESENT: Mr. Ashwani Bakshi, Advocate for the appellants.

AJAY KUMAR MITTAL, ACJ.

1. This regular second appeal filed by the defendants arises from the judgment and decree dated 21.12.2015 passed by the Additional District Judge, Rohtak, affirming that of the Civil Judge (Junior Division), Rohtak dated 15.5.2012 vide which the suit of the plaintiffs for possession by way of specific performance of agreement to sell dated 3.12.2007, was decreed.

2. Adumbrated, the facts necessary for the disposal of the present appeal are that the plaintiffs filed a suit for possession by way of specific performance of agreement to sell dated 3.12.2007 in respect of 9 kanal 9 marlas of the agricultural land situated within the revenue estate of village Nonand, Tehsil Sampla, District Rohtak. The defendants were owners in possession of the land in dispute and they had entered into an agreement to sell dated 3.12.2007 with the plaintiffs for the sale consideration of

money against proper receipt. The last date of execution and registration of sale deed was fixed as 7.1.2008 and the defendants were bound to clear the loan taken by them from the State Bank of India, Bhalout and to obtain Clearance Certificate from the bank. It was agreed that in case the defendants had failed to execute and register the sale deed regarding the land in question in favour of the plaintiffs by 7.1.2008 after obtaining Clearance Certificate from the bank, the plaintiffs would be entitled to get the sale deed executed and registered in their favour regarding double of the land of the defendants agreed to be sold. On the said date, i.e. 7.1.2008, the plaintiffs remained present in the office of Sub Registrar, Sampla along with the remaining amount of sale consideration and other misc. charges, but the defendants failed to turn up and the presence of the plaintiffs was duly marked by the Sub Registrar/Executive Magistrate, Sampla by way of attestation of their affidavit by 7.1.2008. The plaintiffs had also served a legal notice dated 9.1.2008 upon the defendants to come present in the office of Sub Registrar, Sampla on 4.2.2008 for executing and getting the sale deed registered and to receive the balance amount of sale consideration. Plaintiff No.1 remained present in the office of Sub Registrar, Sampla on 4.2.2008 and 5.2.2008 along with the remaining amount of sale consideration but the defendants failed to appear and the presence of plaintiff No.1 was duly marked by the Sub Registrar by way of attesting the affidavit on 5.2.2008. The plaintiffs were ready and willing to perform their part of agreement and they were still ready to perform their part of contract but the defendants had eluded the same which gave rise to the filing of the suit. The said suit was contested by the defendants by filing a joint written statement and raising various preliminary objections therein.

The execution of the agreement and receipt of the earnest money was denied by the defendants. It was pleaded that the defendants were not bound to register the suit land in favour of the plaintiffs as no alleged agreement had ever been executed between the parties. The other averments made in the plaint were denied and a prayer for dismissal of the suit was made. The plaintiffs filed replication controverting the averments made in the written statement and reiterated that of the averments made in the plaint.

3. From the pleadings of the parties, the trial Court framed the following issues including the additional issues:-

1. Whether the defendants executed agreement to sell dated 3.12.2007 and agreed to sell the suit property in total sale consideration of ₹ 12,40,000/- per acre and received earnest money of ₹ 12,00,000/-? OPP
2. Whether the plaintiffs are also willing to perform the part of Contract? OPD
3. If issues No.1 and 2 are proved, whether the plaintiffs are entitled for the possession of the suit property by way of specific performance of the contract? OPP
4. Whether the plaintiffs have filed false and frivolous suit? OPD
5. Whether the suit of the plaintiffs is not maintainable? OPD
6. Relief.

4. The trial court on appreciation of the oral as well as the documentary evidence led by the parties held that the plaintiffs had duly

proved the execution of the agreement to sell, Ex.P1 and receipt, Ex.P2 and that they were ready and willing to perform their part of the contract. Accordingly, the trial Court vide judgment and decree dated 15.5.2012 decreed the suit of the plaintiffs and directed the defendants to get the sale deed executed in favour of the plaintiffs after receiving the balance amount of sale consideration. Feeling aggrieved, the defendants filed an appeal and the lower appellate Court vide judgment and decree dated 21.12.2015 affirmed the findings recorded by the trial Court and dismissed the appeal holding that the agreement to sell, Ex.P1 and the receipt, Ex.P2 had proved that the agreement to sell of land was entered into for sale consideration and the balance sale consideration was to be paid on the date of execution of sale deed. Hence, the present appeal by the appellants-defendants claiming the following substantial questions of law:-

- “i) Whether, the finding of the ld. Courts below that the execution of agreement to sell dated 03.12.2007 was proved is liable to be set aside being totally perverse?
- ii) Whether, admission of a relevant and material fact by a party to the suit in his cross-examination can be ignored by the Civil Court on the ground that the same was regarding a fact that was not pleaded?
- iii) Whether, the civil suit filed by the respondents-plaintiffs without impleading LRs of appellants-defendants' fourth brother Ramesh Kumar, who was party to the agreement to sell Ex.D-1 and

recipient of the whole of the earnest money, and who have interest in the land that is the subject matter of the suit, could be held to be legally maintainable?

- iv) Whether, the impugned judgments and decrees passed by the ld. Courts below qua land measuring 18 Kanals 18 Marlas when the land agreed to be sold even as per the alleged agreement to sell Ex.P1 was only 09 Kanals 09 Marlas are bad in law in view of provisions of Section 20 of the Specific Relief Act, 1963?
- v) Whether, the impugned judgments and decrees dated 21.12.2015 and dated 15.05.2012 passed by the Court of Ld. Additional District Judge, Rohtak and ld. Civil Judge (Jr. Division), Rohtak are liable to be set aside in view of the facts and circumstances of the case as well as evidence available on the record of the ld. Courts below?"

5. I have heard learned counsel for the appellants and have gone through the judgments and decrees with his assistance.

6. Learned counsel for the appellants submitted that the sale of double the land in terms of the agreement to sell dated 3.12.2007 had to be executed in case of default as per the agreement which was unjustified and specific performance should not have been ordered.

7. The courts below have concurrently held that the plaintiffs had succeeded to prove the due execution of the agreement to sell dated

3.12.2007, Ex.P1 and receipt, Ex.P2 regarding the suit property. Still further, the courts below had recorded a finding that the plaintiffs were still ready and willing to perform their part of the contract but the defendants did not want to perform their part of contract. Learned counsel for the appellants made efforts to persuade this Court to come to a different conclusion than that of the courts below but could not show any material on the basis of which it could be held that the concurrent findings recorded by the courts below suffer from any misreading or misappreciation of evidence which may warrant interference by this court in the regular second appeal.

8. Further, the trial Court while adjudicating issue no.1 had categorically concluded that agreement to sell dated 3.12.2007 (Ex.P1) and receipt (Ex.P2) were not result of any fraud by the plaintiffs, who had succeeded in establishing the due execution thereof. The relevant findings read thus:-

“28. From the oral as well as documentary evidence on the case file, I am of the considered view that the defendants have miserably failed to prove on the record that Ex. P1 and Ex. P2 have been prepared fraudulently by the plaintiffs, on the other hand, the plaintiffs have succeeded to prove due execution of the agreement to sell Ex. P1 and receipt Ex. P2 by examining himself as PW-4 and attesting witnesses Narender Lambardar as PW-5 and Baljeet PW-2 and Deed Writer Subhash Chander as PW-5. Resultantly, the due execution of agreement to sell regarding the suit property Ex. P1 and receipt ex. P2 by the defendants

and receiving of Rs. 12,00,000/- as earnest money by the defendants from the plaintiff stand proved on record. So, issue no.1 is decided in favour of the plaintiffs and against the defendants.”

9. The lower appellate court had affirmed the aforesaid conclusion with the following observations:-

“20. The agreement to sell Ex. P-2 and the receipt of amount that is Rs. 12,00,000/- Ex. P-3 have proved that the agreement to sell of land was entered into for sale consideration and the balance of sale consideration was to be paid on the date of execution of sale deed. It is one of the settled proposition of law that in cases of law of immovable property the buyer cannot be compensated in terms of money. So once the defendants had made the breach of terms of the agreement to sell, they have to be abide by the terms and conditions of the agreement. The argument of the appellant that his signatures were obtained on some blank papers or there are other earlier agreement prior to entering into this agreement have no merit because the same defense have not been taken in their written statement and they have come only after though and beyond pleadings which is not permissible. Therefore, I find that learned lower Court has rightly decreed the suit of the plaintiffs. Therefore, I hold that the impugned judgment and decree passed by the learned

Lower Court does not need any interference. I accordingly dismissed the present appeal with costs.

Decree sheet be prepared accordingly.”

10. The concurrent finding of fact recorded by both the Courts below thus disentitle the attempt of the defendants to wriggle out of the terms of the agreement to sell dated 3.12.2007 and the same cannot be held to be unreasonable or unjustified in any manner. Rather, it appears to be a deterrent for the defendants, so as to ensure honouring the commitment in terms thereof.

11. No question of law, much less a substantial question of law arises in this appeal for consideration of this Court.

12. In view of the above, there is no merit in this appeal and the same is hereby dismissed. There shall, however, be no order as to costs.

May 17, 2018
gbs

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

Speaking/Reasoned

Yes

Whether Reportable

Yes