

RSA No.3468 of 2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3468 of 2016 (O&M)

Date of decision: 29.05.2018

Ram Karan

...Appellant

Versus

Sanjeev Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Parveen K. Gaur, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below while dismissing suit for possession by way of specific performance of the agreement to sell.

Learned trial Court had ordered for refund of the earnest money which has been reversed by the learned First Appellate Court. Learned First Appellate Court after discussing the evidence had recorded five reasons for dismissing the suit. The reasons recorded in para No.30 of the judgment are reproduced as under: -

“30. Even otherwise it may be observed that PW1 Ram Karan has admitted in his cross examination (i) that he know defendant Sanjeev Kumar through Rajesh who is related to Sanjeev Kumar and he knows Rajesh for the last 15-20 years; (ii) that he never went to the residence of Sanjeev Kumar and was not on visiting terms with him; (iii) that he did not see the land of Sanjeev Kumar and he did not have any knowledge regarding the rasta (passage) to his land and owners of adjoining land; (iv) that he did not see revenue record of the suit land; and (v) that the deal

for purchase of land was arranged by Rajesh Kumar and he, Rajesh, Madan Lal and Sanjeev Kumar had gone to the shop of deed writer to get the agreement to sell scribed. PW3 Madan Lal attesting witness and PW4 Som Dutt Deed Writer have admitted that Rajesh was present at the time of execution of agreement to sell dated 16.12.2005. Admittedly the plaintiff did not visit the land allegedly agreed by the defendant to be sold and did not see the revenue record which conduct on the part of the plaintiff is unnatural improbable and inconsistent with the nature of the transaction in question. Further admittedly transaction was got effected by Rajesh but the plaintiff has not examined Rajesh which warrants drawing of an adverse inference against the plaintiff. The defendant has deposed to involvement of Ranjit Singh his commission agent in the transaction. Even if the compromise Ex.D1 be held to be not lawful and to be not an adjustment of the suit even then the compromise Ex.D1 implies an admission on the part of the plaintiff as to involvement of Ranjit Singh in the transaction and the agreement to sell being money transaction and not land purchase deal. The plaintiff has not examined Ranjit Singh which warrants drawing of an adverse inference against the plaintiff. It follows that in the present case the plaintiff did not disclose all material facts truly and fairly but stated them in distorted manner to mislead the court. In Zarina Siddiqui Vs. A. Ramalingam alias R. Amarnathan 2014 (3) Apex Court Judgments 580 it was held that if a party to a lis does not disclose all material facts truly and fairly but states them in distorted manner and mislead Court, Court has inherent power to exercise its jurisdiction in order to prevent abuse of the process of law. In these facts and circumstances of the case, the plaintiff must be held to have suppressed true and material facts from the Court and the plaintiff is not entitled to the relief of possession of the suit land by way of specific performance of agreement to sell or refund of earnest money and the suit is not maintainable in the present form.”

This Court has heard learned counsel for the appellant at a length and with his able assistance, gone through the judgments passed by the Courts below.

Learned counsel for the appellant time and again submitted that the defendant although pleaded that the plaintiff is his near relative, however, when he appeared in evidence, he had denied the same. He submitted that once the defendant did not take a correct stand, the suit filed by the plaintiff was liable to be decreed.

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This Court has considered his submission, but does not find any substance therein. Plaintiff has to stand at his own legs. Plaintiff in the present case is praying for a decree for possession by way of specific performance of the agreement to sell. Learned counsel for the appellant could not draw attention of the Court to any error in the five reasons recorded by the First Appellate Court, as extracted above.

In view of the aforesaid, there is no ground to interfere with the concurrent findings of the fact recorded by the Courts below.

Dismissed.

(ANIL KSHETARPAL)
JUDGE

May 29, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No