

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA No. 3545 of 2016 (O&M)
Date of Order:25.10.2018

Gurdeep Singh ..Appellant

Versus

Gursewak Singh and another ..Respondents

(2) RSA No. 6131 of 2015 (O&M)

Lakhwinder Singh ..Appellant

Versus

Gurdeep Singh and another ..Respondents

(3) RSA No. 6132 of 2015 (O&M)

Gursewak Singh ..Appellant

Versus

Gurdeep Singh and another ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.K.Garg, Advocate,
for the appellant (in RSA No.3545 of 2016)

Mr. Joban Singh, Advocate,
for the appellant (in RSA No.6131 & 6132 of 2015)

ANIL KSHETARPAL, J(Oral)

By this judgment, 3 appeals i.e. Regular Second Appeal Nos.3545 of 2016, 6131and 6132 of 2015 filed against common judgment passed by the learned trial court as well as by the learned first appellate court shall stand disposed of. Two appeals have been filed by 2 plaintiffs separately, whereas 3rd appeal has been filed by the defendant.

A suit for possession by way of specific performance of the agreement to sell dated 22.12.2004, was filed by 2 plaintiffs jointly claiming that 67 kanals of land was agreed to be sold for Rs.29,93,750/- and earnest money of Rs.8,00,000/- has been paid. As per the agreement to sell, sale deed was to be executed and registered on 30.11.2006. It is the case of the plaintiffs that they were always ready and willing to perform their part of the contract and they were even present on the target date in the office of Sub-Registrar for execution and registration of the sale deed along with balance sale consideration.

Defendant contested the suit and pleaded that the agreement to sell is forged. In fact, he had borrowed a sum of Rs.8,00,000/- as loan with promise to re-pay the amount with 1.5% interest per month and pursuant thereto 3 pronotes were executed and some blank papers were got signed which have later been converted into an agreement to sell. Defendant also pleaded that out of Rs.8,00,000/-, Rs. 5,09,000/- has been returned and the balance amount is payable.

Both the courts on appreciation of evidence, have found that there was no intention to sell the property and it is admitted between the parties that they used to have money transactions. The court have also found that the genuineness of the agreement to sell is also doubtful because after the execution of the agreement to sell, the target date for execution and registration of the sale deed has been fixed almost after a period of 2 years which is not normal.

Learned counsel for the defendant (appellant in RSA No.3545 of 2016) has submitted that since on the day the agreement to sell was alleged to have been executed i.e. 22.12.2004, he was not in India being in

abroad, therefore, even refund could not be ordered.

On the other hand, learned counsel for the plaintiffs in 2 appeals, has submitted that once the execution of the agreement to sell has been proved, decree for specific performance ought to have been granted.

This court has carefully considered the arguments of both the learned counsels and with their able assistance gone through the judgments passed by both the courts below.

As per Section 20 of the Specific Relief Act, 1963, the relief of specific performance of the agreement to sell is discretionary. Both the courts after taking into consideration the evidence led by the parties, have exercised their discretion, which is neither found to be perverse nor from any error. This court while hearing the second appeal cannot interfere in the discretion unless such exercise of discretion is found to be perverse.

As regards argument of learned counsel for the plaintiffs that the application for additional evidence moved before the learned first appellate court has wrongly been dismissed, this court is of the opinion that by way of additional evidence, plaintiffs were only seeking to produce on file the register of the scribe which would not improve the case of the plaintiffs. Plaintiffs had sufficient opportunity to prove their case before the trial court.

Still further during the cross-examination, Darshan Singh, witness appearing for the plaintiffs, has admitted that Lakhwinder Singh is son of his real uncle and Gursewak Singh is son of his aunt. They are having cordial relations with defendant Gurdeep Singh and are on visiting terms with each other at the time of marriages. He has admitted that they used to remain money transactions between them. Still further, he has

denied for want of knowledge that out of Rs.8,00,000/- pertaining to the present suit, Rs. 3,00,000/- was paid to Gurdeep Singh at the house of Lakhwinder Singh, whereas the amount of Rs.3,00,000/- was paid at Chandigarh and the remaining amount of Rs.2,00,000/- was paid to Gurdeep Singh at his house at village Baghelewala.

In these circumstances, the courts have rightly concluded that had there been any genuine agreement to sell, Rs.8,00,000/- would have been paid on 22.12.2004, but not proved on the file. Hence, the discretion exercised by the courts in refusing to grant the decree for specific performance is found to be in accordance with law and need no interference.

As regards argument of learned counsel for the defendant that since the payment of Rs.8,00,000/- on 22.12.2004 has not been proved, therefore, the decree for recovery could not be passed is also required to be noticed and rejected particularly when it is the defendant who has taken a stand in the written statement that he had borrowed a sum of Rs.8,00,000/- from plaintiff no.2, repayable with interest @ 1.5% per month. Although, defendant has taken a stand that he has paid Rs.5,09,000/-, however, no reliable evidence to that effect has been led. Therefore, the courts have rightly ordered refund of Rs.8,00,000/- along with interest.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeals are dismissed.

October 25, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No