

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

**RSA No.2941 of 2015
Date of decision:05.04.2018**

Janeshwar (since deceased) through his LRs

.....Appellant

Versus

Jangsher Singh @ Jansher Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vikas Singh, Advocate,
for the appellant(s)

Ritu Bahri, J.

This appeal has been filed against the judgment dated 15.11.2014 passed by the Additional District Judge, Kaithal, dismissing an appeal filed by plaintiff-appellant against the judgment and decree dated 24.12.2010 passed by the Additional Civil Judge (Senior Division), Kaithal, vide which relief of specific performance was declined and suit qua the alternative relief of recovery of Rs.1,00,000/- was decreed against defendant-respondent Nos. 1 and 2.

Janeshwar-plaintiff (appellant herein) filed a suit for possession by way of specific performance of agreement to sell dated 29.05.2002. It was pleaded that defendant-respondent Nos. 1 and 2 had agreed to sell the suit land in favour of the plaintiff for a sale consideration of Rs.2,20,000/- per acre. Therefore, they entered into an agreement to sell dated 29.05.2002 with the plaintiff and received a sum of Rs.1,00,000/- as earnest money.

Balance sale consideration was to be paid before the Joint Registrar, Kaithal

at the time of registration of the sale deed. Possession of the suit land was

delivered at the time of execution of agreement to sell. Stipulated date for execution and registration of the sale deed was fixed 28.05.2003. It was further pleaded that plaintiff was ready and willing to get the sale deed executed, but the defendants were not ready to do so. Rather, they had executed another agreement to sell dated 20.12.2002 in favour of defendant No.3 qua the suit land. Hence, the suit.

Upon notice, defendant Nos.1 and 2 (respondent Nos.1 and 2) filed written statement taking preliminary objection with regard to the concealment of material facts. On merits, it was stated that the plaintiff (appellant) was a money lender and used to advance loan to the people with interest after execution of agreement to sell from the debtors in his favour. It was settled that when they would repay the loan amount, the agreement to sell would be returned to them. On earlier occasion also i.e. 27.04.2001, defendant Nos.1 and 2 had taken a loan of Rs.50,000/- on interest from the plaintiff and when they had repaid the said loan to plaintiff, he had returned the agreement to sell. On 29.05.2002 also, defendant Nos. 1 and 2 had taken a loan of Rs.1,00,000/- from the plaintiff and in lieu thereof, they executed the agreement to sell in question in his favour. Later on, they had returned the said amount along with interest to the plaintiff in the presence of Pala, Ved and Jagpal, but the plaintiff refused to return the agreement to sell dated 29.05.2002 to them. Thereafter, they filed a criminal complaint against the plaintiff, which was pending before the Court. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

In a separate written statement filed by defendant No.3, it was stated that plaintiff and defendant Nos.1 and 2, in collusion with each other,

had earlier entered into the agreement to sell dated 27.04.2001, which was cancelled and thereafter, they again executed agreement to sell dated 29.05.2002 in order to frustrate the agreement to sell registered on 20.12.2002 in favour of defendant No.3.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether defendant Nos. 1 and 2 had executed an agreement to sell on 29.05.2002 in favour of the plaintiff qua the land as detailed in para No.1 of the plaint? OPP
2. Whether the defendant Nos. 1 and 2 had received a sum of Rs.1,00,000/- as earnest money on 29.05.2002 and had issued a receipt in view thereof? OPP
3. Whether defendant Nos. 1 and 2 had delivered the actual and physical possession of the suit land out of the specific Killa Nos.12/2, 13/2 and 20 of rect. No.155 to the plaintiff in part performance? OPP
4. Whether the plaintiff is ready and willing to perform his part of the contract? OPP
5. Whether the agreement to sell dated 20.12.2002 executed by defendant Nos. 1 and 2 in collusion with defendant NO.3 is a paper transaction, if so, its effect on the agreement to sell dated 29.05.2002? OPP
6. Whether the plaintiff is entitled to decree for possession by way of specific performance of the agreement to sell dated 29.05.2002? OPP
7. If plaintiff is not found entitled for a decree for possession, whether he is entitled to alienate relief for the recovery of Rs.2,00,000/- as alleged? OPP
8. Whether the plaintiff has not come to the Court with clean hands, if so, its effect? OPD
9. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD
10. Whether the suit is time barred? OPD

11. Whether the plaintiff is estopped by his own act and conduct to file this suit? OPD

12. Relief.

Trial Court, after going through the evidence led by the parties, declined to grant the relief of specific performance in respect of the agreement to sell in question. However, the suit has been decreed qua the alternative relief claimed by the plaintiff for recovery of Rs.1,00,000/- along with interest at the rate of 10% per annum from the date of execution of the agreement to sell till realization of the amount. Finding returned by the trial Court has been affirmed by the first Appellate Court in appeal.

Heard. Both the Courts below have returned a finding that prior to the execution of agreement to sell dated 29.05.2002, there was transaction dated 09.04.2001 (Ex.P5 & Ex.P6) between the parties, which was a loan transaction. Later on, defendant-respondent Nos. 1 and 2 had repaid the said loan to plaintiff (appellant) and in that regard, a receipt had been given by the plaintiff to them.

In the present case, the agreement to sell was executed on 29.05.2002 and the sale deed was to be executed on 28.05.2003. There was a gap of one year between execution of the agreement to sell and the stipulated date for registration of the sale deed. This was sufficient to say that this was, in fact, a loan transaction between the parties. Further, Rakesh Kumar Dhiman, Draftsman (DW-8) had proved on record the valuation report of the property in dispute as Ex.DW-8/A and Ex.DW-8/D. As per report Ex.DW-8/A, value of the property measuring 0 kanal 07 marlas has been assessed as Rs.9,07,500/-. Valuation report Ex.DW-8/D shows that value of the constructed portion in the land measuring 0 kanal 12

Ex.P8 i.e. agreement to sell dated 29.05.2002, has been prescribed as Rs.2,20,000/- per acre only and in Ex.DW-3/A at the rate of Rs.2,30,000/- per acre. Hence, there was sufficient difference between the price of the property settled between the parties and in the market price of the property. Even the difference in sale price also leads to a conclusion that the agreement to sell dated 29.05.2002 was a loan transaction. With these observations, both the Courts below have dismissed the suit of plaintiff-appellant with regard to the relief of specific performance. The suit has been partly decreed for recovery of Rs.1,00,000/- i.e. loan amount.

After going through the impugned judgments and documents relied upon by the parties, no illegality, much less perversity, has been found therein, warranting interference by this Court. The suit has been rightly decided by the Courts below. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

05.04.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No