

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4380 of 2016

Date of Decision:13.9.2018

Ajit Singh

---Appellant

vs.

Joginder Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjit Singh, Advocate
for the appellant

Rekha Mittal, J.

Challenge in the present appeal has been directed against consistent findings recorded by the Courts whereby suit for joint possession by way of specific performance of agreement to sell dated 23.5.2000 in respect of land measuring 37 kanal 15 marlas, detailed in head note of the plaint and in the alternative, for recovery of Rs. 6 lakhs being 3 lakhs as earnest money and Rs. 3 lakhs as damages with interest @ 12% per annum has been partly decreed for alternative relief of recovery of Rs. 3 lakhs with proportionate costs with interest @ 9% per annum from the date of payment till the date of decree and 6% per annum from the date of decree till realization of the decretal amount by the trial court vide judgment and decree dated 6.2.2013. The appeal preferred by the plaintiff-appellant and

cross objections by the respondents were decided by common judgment and decree dated 29.2.2016 passed by the Additional District Judge, Hoshiarpur whereby appeal preferred by the appellant-plaintiff was dismissed, cross objections filed by Jasbir Singh and others were accepted and the judgment and decree passed by the trial court are modified to the effect that defendants No. 3 to 5 are not liable to pay the decretal amount and it is only Joginder Kaur defendant No. 1 who is liable to pay the decretal amount to the plaintiff. The remaining findings of the trial court were affirmed.

The sole submission made by counsel for the appellant is that as the courts have consistently accepted plea of the appellant with regard to agreement of sale dated 23.5.2000 having been executed by Joginder Kaur and the appellant has been able to substantiate his plea that he always remained ready and willing to perform his part of the agreement, there was no reason for the Courts to deny the principal relief of specific performance of agreement of sale more particularly in the circumstances that respondent-defendant No. 1 has not make out a case that falls within the purview of Section 20 of the Specific Relief Act.

I have heard counsel for the appellant, perused the paper book particularly the judgments impugned.

Before advertng to the submissions made by counsel for the appellant, it is pertinent to mention that specific performance is a relief to be allowed by the Court in exercise of its discretionary jurisdiction and specific performance is not to be allowed by the court merely because it is lawful to do so. In the case at hand, Courts have accepted plea of the appellant that agreement to sell dated 23.5.2000 was executed by

respondent No. 1 and she received an amount of Rs. 3 lakhs towards earnest money at the time of agreement. The Courts have not negated plea of the appellant that he remained willing to perform his part of the agreement but there was a question mark with regard to his readiness to pay balance sale consideration. The trial court in para 16 of the judgment has held that balance sale consideration was approximately Rs. 16 lakhs. The appellant placed on record receipts with regard to sale of crop of sugarcane Exs. P5 to P17 and the total amount is Rs. 1,30,000/-. The said receipts pertain to the period from the year 2000 to 2005 and out of this amount, the appellant must have incurred expenditure on his day-to-day living. The appellant has failed to substantiate his plea that either he had remaining sale consideration available with him or he had the resources to collect the money for discharging his obligation with regard to payment of balance sale consideration plus expenses for registration etc.

Counsel for the appellant has failed to point out any materials on record to substantiate his plea that these factual findings recorded by the Courts suffer from misreading of evidence or failure to take into consideration any material which has a bearing on the question of readiness of the appellant to perform his part of the agreement. In this view of the matter, the appellant has failed to make out that findings of the courts negating plea of the appellant with regard to readiness to perform his part of the agreement suffer from an error much less perversity, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly

dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

13.9.2018
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Whether speaking/reasoned: Yes
Whether reportable : Yes/No