

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: November 19, 2018

1. RSA No.4797 of 2016 (O&M)

Gopal Chaudhary

...Appellant

Versus

Inder Kumar & others

...Respondents

2. RSA No.5390 of 2016 (O&M)

Bhimpal & another

...Appellants

Versus

Inder Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Vikram Singh, Advocate &
Mr.Abhinav Sood, Advocate,
for the appellant in RSA No.4797 of 2016.

Mr. Parminder Singh, Advocate for
Mr. Rajbir Singh, Advocate,
for the appellants in RSA No.5390 of 2016.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing No.4797 and 5390 of 2016 as common question of law and fact is involved.

RSA No.4797 of 2016 is at the instance of the appellant-defendant No.1-A Gopal Chaudhary son of Bhagwan Dass vendor, whereas RSA No.5390 of 2016 on behalf of defendant Nos.2 and 3.

Civil Suit No.12 of 2011 at the instance of Inder Kumar and Manan Singh, plaintiffs, was filed against Bhagwan Dass (since deceased) being represented by Gopal Chaudhary arraying Bhim Pal and Rishal Singh as defendant Nos.2 and 3 (appellants in RSA No.5390 of 2016) claiming specific performance of the agreement to sell dated 08.06.2007 in respect of land bearing rect. and killa No.10//25 measuring 7 kanals 7 marlas, Khewat No.225, Khatoni No.340, situated within the revenue estate of Village Nangal Chaudhary and alternative relief for refund of ₹ 36.00 lacs, agreed to be sold @ ₹ 6.00 lacs per kanal against the payment of ₹ 1.00 lac as earnest money.

It was stated that as per the terms of the agreement, there was a dispute in respect of land measuring 5 kanals 18 marlas owing to the promulgation of the notification and the sale deed could be executed after two years of the decision of Civil Writ Petition No.5299 of 2002 stated to be pending in this Court. However, sale deed of balance area, i.e., 1 kanal 7 marlas was executed in favour of Sunita Devi on 15.05.2009. Later on, on three occasions, i.e., 26.03.2011, 07.07.2011 and 15.04.2011, defendant No.1 stated to have received ₹ 5.00, ₹ 4.00 and ₹ 2.00 lacs on account of the fact that he would make efforts to get the writ petition decided, but defendant No.1 Bhagwan Dass entered into another agreement dated 20.02.2013 and, thus, cause of action accrued to file the suit on 12.03.2013.

Bhagwan Dass before filing the written statement died and Gopal Chaudhary- defendant No.1A opposed the suit on various grounds. It was alleged that the agreement came to an end on 15.05.2009 when the plaintiffs got the sale deed of 1 kanal 7 marlas. The situation existed in 2009 did not change as the writ petition was still pending. The receipt of ₹

1,18,500/- and another amount of ₹ 11.00 lacs was also denied.

Plaintiffs in support of the aforementioned averments, examined PW-1 Naresh Kumar, PW-2 Ramanand Sharma, PW-3 Hazari Lal, PW-4 Lakhmi Ram Yadav Advocate, PW-5 Shakunt Kumar Registration Clerk, PW-6 Tara Chand Advocate, PW-7 Pawan Kumar, PW-8 Naresh Kumar, PW-9 Shamsher Singh Malik, Handwriting Expert, PW-10 Ranbir Singh and plaintiff No.1 entered into witness box as PW-11 and brought on record documents Ex.P1 to Ex.P8, Ex.PW9/B, Ex.PW9/C-1 to Ex.PW9/C-9.

On the other hand, defendants examined DW-1 Satyavir, DW-1 Prabhati Lal, DW-2 Mahender Kumar Registration Clerk, DW-3 Roshan Lal, DW-4 Satyavir, DW-5 Kamaljeet Addl.Ahlmad, DW-6 Laxmi Narain, DW-7 Bhimpal, DW-9 Syed Faizal Huda and Gopal Chaudhary himself appeared as DW-8 and also brought on record documents Ex.D1 to Ex.D4, Ex.DW6/B, Ex.DW9/B, Ex.DW9/1 to Ex.DW9/15.

In rebuttal, plaintiffs brought on record documents Ex.P9 to Ex.P16.

On the preponderance of the evidence, the trial court did not grant the specific performance of the agreement to sell, but ordered for refund of ₹ 12,18,500/- along with interest @ 12% per annum and also directed defendant No.1 to refund ₹ 10.00 lacs to defendants No.2 and 3.

Appeals filed by the respective parties had been dismissed and, therefore, the two appeals.

Mr. Vikram Singh, learned counsel for the appellant- defendant No.1A in RSA No.4797 of 2016 submitted that the trial court should not have moulded the relief by cancelling the agreement dated 20.02.2013 entered by defendant No.1 Bhagwan Dass (since deceased) with defendant

Nos.2 and 3 and in the absence of any counter claim and ordered for refund of amount of ₹ 10.00 lacs received in lieu of the agreement. Plaintiff miserably failed to pay the payment of ₹ 5.00, ₹ 4.00 and ₹ 2.00 lacs, as noticed above. In this regard, learned counsel drew the attention of this court to the agreement and acknowledgments. Report Ex.DW9/B of Forensic Expert has erroneously been brushed aside which was found to be cogent and consistent, but despite that report of the plaintiffs has been relied. The plaintiffs failed to discharge the onus with regard to the payment of ₹ 1.00 lac owing to non-disclosure of the source of the aforementioned amount. In such circumstances, the decree at the best could have been confined to earnest money of ₹ 1.00 lacs, which was paid at the time of execution of original agreement dated 08.06.2007.

It was next contended that even the terms and conditions of agreement dated 08.06.2007 had come to an end after the execution of the sale deed dated 15.05.2009 in respect of land measuring 1 kanal 7 marlas.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-defendant.

It is strange that a person whose land measuring 5 kanals 18 marlas was under acquisition has entered into another agreement with defendant Nos. 2 and 3. The payment of ₹ 11.00 lacs, made on different dates, as noticed above, has been proved through the testimony of the attesting witness. It is common practice that the experts toe to the lines of the parties who engage them. DW-9 Syed Faizal Huda in cross-examined admitted as under:-

“It is correct that the retouching is present in some admitted

signatures while some admitted signatures do not show retouching in letters “Bha”.

It is in these circumstances, the courts below discarded the aforementioned statement of the expert examined by the plaintiffs. The trial court had no other option but to deal with the subsequent agreement which was entered during the subsistence of the agreement dated 08.06.2007. The court can always mould the relief subject to any conditions if feel necessary. The present case is of such nature where in equity the court directed defendant No.1 in RSA No.4797 of 2016 to refund amount of ₹ 10.00 lacs admitted to have been received in lieu of the agreement dated 20.02.2013.

For the reasons stated above, no fault can be found with the concurrent findings, much less any illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly the appeals are dismissed.

November 19, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No