

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.5287 of 2016 (O&M)

Date of decision: 02.02.2018

Anil Kumar Shukla

..... Appellant

Versus

Parhlad Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Animesh Sharma, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-13718-C-2016

Delay in re-filing the appeal is condoned and the application is allowed.

Main Case

Defendant-appellant is in regular second appeal against the concurrent finding of fact arrived at by the Courts below decreeing a suit for recovery of Rs.1,00,000/- paid by the plaintiff to the defendant-appellant under an agreement to sell.

Plaintiff had filed a suit asserting that he had entered into an agreement and paid Rs.1,00,000/- as earnest money. However, before the date fixed for registration, he received a notice from Food Corporation of India stating that the property is disputed and certain persons have been trying to sell the property. It was further stated that if the plaintiff purchases the property, he will be liable to be prosecuted. Relevant paras

of the notice are extracted as under:-

“2. That plot Shukla is also situated within the area of FCI, therefore, Anil Kumar Shukla should demarcate his plot to ascertain the proper location of his plot.

3. That the FCI has further come to know that Anil Kumar Shukla has entered into an agreement with you, when he came to know about the said illegal possession therefore if Anil Kumar wants to sell his plot, to you therefore before purchase of the plot, you should get verification of the plot of the said plot in case you purchased the plot without the proper verification and proper demarcation then, you will also be held liable to the prosecuted for the said matter being connived with Mr. Shukla as the matter referred above is already in his knowledge.”

After receipt of notice, the plaintiff demanded refund of the earnest money which the defendant refused and forcing the plaintiff to file a suit for recovery. The defendant did not dispute agreement to sell and receipt of the earnest money. However, the defendant pleaded that the property belongs to him and it has never been acquired by the Food Corporation of India.

Both the Courts after appreciating the evidence available on the file ordered refund of the amount after recorded a finding that after the receipt of notice dated 24.09.2012, the plaintiff was justified in asking for the refund as he never wanted to purchase any disputed property.

Learned counsel for the appellant has pleaded that the land has not been acquired and in the notice, it is not the case of the Food Corporation of India that the land belongs to it. In the considered opinion of this Court, the argument is incorrect as para 2 which has been extracted above clearly says that the plot in question is situated within the area of

Food Corporation of India. In any case, once the plaintiff who was intending to purchase the property came to know that there is some dispute about the property, he was justified in opting out of the deal and seek refund.

Next argument of learned counsel is that the Food Corporation of India was not party to the agreement to sell and therefore, it is not explained as to how Food Corporation of India came to know about this agreement. This Court has considered the agreement. The question to be decided is not how the Food Corporation of India came to know of this fact. Question is whether the Food Corporation of India issued notice dated 24.09.2012 on the plaintiff or not. The Food Corporation of India was defendant in the suit. The Food Corporation of India does not dispute that the notice was issued.

In these circumstances, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

02.02.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No