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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5431 of 2016 (O&M)
Date of decision:15.01.2018

Kulesh Kumar

.... Appellant

V/S.

Vijay Kumar & Others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. A.D.S. Sukhija, Advocate
for the appellant.

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Ramendra Jain, J.(Oral)

The appellant-defendant through this Second Regular Appeal has laid challenge to the judgment and decree dated 19.05.2016 of the First Appellate Court, reversing the judgment and decree dated 24.07.2013 of the trial Court, whereby suit of the plaintiff-respondent No.1 was dismissed.

2. Put-pithily, a plot measuring 4 biswas along with building and machinery (herein short as the suit property) was put to auction by respondent No.3-Punjab Financial Corporation, Chandigarh, (defendant No.2 & 3 in the suit) (for short, 'respondent-Corporation') which was purchased on behalf of respondent-plaintiff No.2 M/s. Daulat Enterprises for a sum of ₹2,67,000/-. As per the terms and conditions of sale

agreement in between the respondent-Corporation and M/s. Daulat Enterprises (respondent-plaintiff No.2), a sum of ₹66,750/- out of total consideration of ₹2,67,000/-, was to be paid at the time of agreement to sell and the remaining ₹2,00,250/- in twelve quarterly installments in three years.

3. Respondent No.1-plaintiff claiming himself to be the sole proprietor of respondent-plaintiff No.2, instituted a suit for possession by way of specific performance on the basis of two agreements to sell dated 10.03.2000 and dated 29.11.2003 allegedly executed by the appellant-defendant No.1 pleading that the appellant-defendant No.1 was employee of M/s. Daulat Enterprises and had some acquittance with the officials of the respondent-Corporation. Therefore, taking advantage of his relation, he got executed agreement to sell from the respondent-Corporation in his favour, illegally, instead in favour of Firm M/s Daulat Enterprises aforesaid. On coming to know of this fact, when respondent-plaintiff No.1 asked the appellant-defendant No.1 to get executed the sale agreement in favour of M/s. Daulat Enterprises through him by replacing his name, from the respondent -Corporation, the appellant-defendant No.1 executed an agreement on 29-11-2013 in favour of respondent No.1-plaintiff, whereby the appellant-defendant agreed to transfer the suit property in favour of

respondent No.1-plaintiff on payment of the entire sale consideration to the respondent-Corporation.

4. Pursuant thereto, the respondent-plaintiff No.1 paid the entire sale consideration to the respondent corporation and asked the appellant-defendant to submit his affidavit to the Corporation to transfer the suit property in the name of respondent-plaintiff with no objection in his favour, so as to enable the respondent No.1-plaintiff to get transferred the suit property in his name from the respondent-Corporation, whereupon, he assured to respondent No.1-plaintiff that he had already submitted affidavit dated 25.10.2004, raising no objection, in case, the suit property was transferred in favour of respondent No.1-plaintiff.

5. However when respondent No.1-plaintiff approached respondent-Corporation for transfer of the suit property in his name, he came to know that appellant had not submitted any such affidavit and therefore the respondent-Corporation refused to transfer the suit property in his favour.

6. The trail Court after trial, dismissed the suit.

7. Being aggrieved the respondent No.1-plaintiff preferred an appeal which was accepted. Resultantly the suit for possession

by way of specific performance to agreement to sell dated 29.11.2003 was decreed in toto with costs by setting aside the judgment and decree of the trial Court.

8. Learned counsel for the appellant contends that the entire payment was not made by the respondent No.1-plaintiff, to the respondent-Corporation, therefore the agreement to sell in between the parties dated 29.11.2003 stood automatically cancelled. The well reasoned finding of the trial Court based on evidence were not liable to be disturbed by the First Appellant Court which has failed to appreciate that the respondent No.1-plaintiff himself had admitted before the trail Court that due to some financial losses, he could not make payment in time to the appellant or the respondent-Corporation. DW-1 Mr. N.K. Madkan, official of the respondent-Corporation, had categorically stated that all the five installments were paid late and, therefore, the contract in between the parties could not have been implemented in its letter and spirit

9. Having given thoughtful consideration to the submissions made by Ld. counsel for the appellant, the instant regular second appeal deserves dismissal for the reasons to follow:

10. In the written statement, it is specifically admitted by the appellant-defendant, about execution of agreement to sell dated 29-11-

2003 Ex. P-16 in favour of the respondent No.1-plaintiff.

11. The appellant-defendant pursuant to the aforesaid agreement dated 29.11.2003 Ex.P16 has also admitted to have received ₹56,000/- from the respondent-plaintiff for purchase of the suit property and to deposit of the same with the respondent corporation. That apart, the appellant had also received a sum of ₹ 2,00,250/- from respondent-plaintiff No.2 M/s. Daulat Enterprises by way of three demand drafts amounting to ₹1,65,000/-, besides three cheques for ₹65,000/- each in favour of the respondent-Corporation.

12. PW1 Baldev Krishan Gupta, Branch Manager of Sangrur central Cooperative Bank Ltd., PW2 Manjit Singh, Record Keeper, OBC Rajpura, PW5 Parveen Kumar, Clerk, SBOP. P8 Ram Charan, Clerk, Bank of Baroda have have testified about debit of various amounts in the account of respondent No.1-plaintiff for onwards payment of the same to the respondent-Corporation.

13. Finally, a sum of ₹1365/- was deposited by the respondent No.1-plaintiff with the respondent-Corporation against receipt Ex-P30 dated 17.09.2004, clearing all the dues and that being so, the respondent-Corporation in its written statement categorically admitted that nothing was due to be paid towards the suit property.

14. The sole argument raised by the appellant is that since

respondent-plaintiff No.1 did not make payment in time, therefore the agreement to sell dated 29.11.2003 in between them stood automatically cancelled has no legs to stand inasmuch as in his cross-examination appellant had shown his ignorance about the manner of making payment to the respondent-Corporation.

15. More so, non-production of any proof by the appellant-defendant qua deposit of entire payment to the respondent-Corporation by him requires to draw an inference that the entire payment qua the sale consideration of the suit property was paid by the respondent No.1-plaintiff either to respondent-Corporation or to the appellant-defendant, more particularly when there is ample evidence on the record on behalf of the respondent No.1-plaintiff to this effect.

16. I have gone through the impugned judgment of the First Appellate Court and find no illegality or perversity in the same.

17. In view of discussion above, the appeal fails and dismissed.

15.01.2018 **(Ramendra Jain)**
tarun **Judge**

Whether speaking/non-speaking? Yes/No
Whether reportable? Yes/No