

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.162 of 2014 (O&M)

Date of Decision: February 05, 2018

Pardeep Rana

...Appellant

Versus

Haryana Urban Development Authority, Faridabad & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Gaurav Sharma, Advocate for
Mr.R.K.Sharma, Advocate,
for the appellant.

Mr.Deepak Manchanda, Advocate,
for respondent No.1.

Mr.C.S.Singhal, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is in Regular Second Appeal against the concurrent findings, whereby the trial Court decreed the suit by directing the respondent-defendants to pay back the price of the reduced area, i.e., 1cm x 23 cm as per the original price reflected in the allotment letter along with interest @ 18% per annum from the date of original payment to the respondent-defendants till realisation with further amount of ₹50,000/- as damages. In appeals filed by both HUDA and the appellant-plaintiff, the appeal of the HUDA was dismissed and the amount of damages was increased from ₹50,000/- to ₹1,00,000/-.

Mr.Gaurav Sharma appearing on behalf of Mr.R.K.Sharma,
learned counsel for the appellant-plaintiff submits that the appellant-

plaintiff had purchased a plot bearing No.1723-P, area measuring 299 sq.meters. Possession certificate, permission for construction and DPC certificate were also granted. The original allotment was made to one Raj Kumar on 17.1.1996. Possession certificate was issued on 24.3.2003 in favour of G.S.Asiwal, GPA of Raj Kumar. The aforementioned plot was sold to one Mahinder Kumar, who was none else but the son of G.S.Asiwal. Re-allotment in the name of Mahinder Kumar was done on 4.6.2004. On 30.10.2003, G.S.Asiwal, being GPA of Raj Kumar original allottee, wrote a letter (Ex.D5) to the HUDA, whereby he was informed that the area shown was 13 x 23 metres, whereas in the Map of Sector 55, the area shown was 12 m x 23 m and requested for necessary correction. Having failed to do so, the suit aforementioned was filed.

He further submits that the HUDA contested the suit on the premise that as per the standard demarcation plan of the 14 Marla category, the dimensions of the plot are 12 m x 23 m=276 square metres, but inadvertently the possession certificate was issued for the dimensions 13 m x 23 m and in this way, extra land, i.e., 1 m x 23 m=23 square metre was wrongly mentioned in the possession certificate. Plaintiff raised the construction without complying with the condition of one week notice prior to the commencement of the work. A notice was served upon the plaintiff and the said dimension was rectified as the demarcation plan of the plot number 1738 was effected. The Courts below ought to have cancelled the notice, whereby the dimension of the area was re-called. The Courts below have abdicated in not only granting the compensation, but in fact, the notice was also required to be recalled as there was no fault on the part of the plaintiff in the allotment of excess area by the defendants.

He also submits that the possession certificate also showed the possession of area 13 m x 23 m. The excess allotment of area was brought to the notice of the original allottee on 30.10.2003. There was no occasion for the HUDA to decrease the area on the ground that the owner of the adjoining plot had made a complaint that his site plan was disturbed due to the excess area allotted to the plaintiff. The defendants did not produce any evidence which could prove the allotment of excess area. The construction had already been raised upto the roof level and spent more than ₹12.00 lacs, but the Courts below have erred in law that there was a contract between the parties and the plaintiff cannot be penalised for the mistake committed by the HUDA. All these facts have not been taken into consideration by the Courts below and, thus, urges this Court for modification of the judgments and decrees under challenge.

On the other hand, Mr.C.S.Singhal, learned counsel appearing on behalf of respondent No.2 submits that there is no illegality and perversity in the judgments under challenge as no cross appeal has been filed by the HUDA against enhancement of the damages. The Plot No.1723, which originally was allotted to Raj Kumar by the HUDA, was sold further, therefore, no cause of action survives to maintain the appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no illegality or perversity in the judgments and decrees under challenge as the defendant-HUDA had admitted its fault of allotment of excess area, i.e., 13 m x 23 m, whereas as per the standard demarcation plan, its dimension was 12 m x 23 m, i.e., 276 square metres, thus, there was an excess area of 1 m x 23 m. It is for that lapse, damages have been given.

The entire controversy surfaced on account of the complaint made by the owner of the adjoining Plot No.1738, but the fact of the matter has not been controverted by the learned counsel for the appellant-plaintiff that the said plot has been sold. In my view, no cause of action further survives to the plaintiff, yet the compensation which has been enhanced by the Lower Appellate Court is perfectly legal and justified.

For the reasons stated above, no ground for interference is made out. No substantial question of law arises for determination. Resultantly, the appeal is dismissed.

February 05, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No