

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.1893 of 2014 (O&M)

Date of decision: 04.04.2018

Ashok Kumar Khanna and others

... Appellants

Versus

Tarsem Lal and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Nakul Sharma, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby the respondents/plaintiffs have been allowed alternative relief of recovery of Rs.20,00,000/- along with interest in a suit for possession by way of specific performance of agreement to sell dated 05.04.2005 in regard to house Nos.12-13 total measuring 17 marlas 81 sq.ft. situated in Durga Colony, Jalandhar city, detailed in head note of the plaint.

In short, case of the respondents/plaintiffs is that the defendants including the appellants entered into an agreement to sell dated 05.04.2005 in respect of suit property for a sale consideration of Rs.25,00,000/-. Rs.20,00,000/- were paid by the respondents/plaintiffs to the defendants as earnest money and balance sale consideration was to be paid at the time of execution and registration of the sale deed on or before

04.04.2006. The plaintiffs always remained ready and willing to perform their part of the contract but the defendants failed to execute the sale deed on payment of balance sale consideration.

The defendants filed the written statement and in turn, controverted all the material averments raised in the plaint. They have denied any such transaction between the parties with the plea that agreement is a forged and fabricated document as Sumit Mahna defendant No.2 was lodged in Central Jail, Jalandhar at the time of alleged execution of agreement to sell.

The trial Court framed issues reproduced in para 4 of the judgment of the trial Court and permitted the parties to adduce evidence in support of their respective claims, detailed in paras 5 to 7 of the judgment of the trial Court. After having heard counsel for the parties in the light of materials on record, the trial Court recorded its conclusion in para 16 that though signature of Sumit Mahna on the agreement has been proved but the agreement qua Sumit Mahna cannot be held legal and valid. In para 19, the Court has held that the agreement cannot be enforced specifically against Sumit Mahna and property has already been sold to Anil Kumar and his wife, not a party in the case and possession of property has already been parted with. However, the trial Court allowed alternative relief of recovery of Rs.20,00,000/- paid towards earnest money with interest @ 10% per annum from date of payment i.e. 05.04.2005 till the date of decree and future interest @ 6% per annum till actual realization of the decretal

amount. As has been noticed hereinbefore, the judgment and decree passed by the trial Court were affirmed by the first appellate Court with the observation that there is no justification to set aside or interfere in the findings given by the trial Court.

Counsel for the appellants has assailed judgments of the Courts primarily on two counts. The first submission made by counsel is that as the Courts have held that the agreement to sell dated 05.04.2005 is not legal and valid qua Sumit Mahna, defendant No.2 therein, there was no occasion for the Courts to enforce that agreement against other defendants including the appellants even by allowing alternative relief of recovery of Rs.20,00,000/- along with interest.

The second submission made by counsel is that Tarsem Lal respondent/plaintiff and Joginder Singh an attesting witness to alleged agreement to sell PW2 have made contradictory statements, if the agreement was signed by Sumit Mahna at the first instance and thereafter by other defendants or vice versa. It is argued that as per testimony of Tarsem Lal, in his cross examination, agreement was signed by the other defendants at 10:30 am but it was signed by Sumit Mahna around 11:00 am whereas Joginder Singh PW2 has deposed that signatures of Sumit Mahna were taken on the agreement around 10:30 and 11:00 am and later signatures of mother of Sumit Mahna, sister of Sumit Mahna and maternal uncle of Sumit Mahna were obtained around 1:00 pm.

I have heard counsel for the appellants, perused the paper book and the records.

Before advertng to the submissions made by counsel for the appellants, it is pertinent to mention that in the regular second appeal, it is not open for the Court to appreciate/reappreciate the evidence in order to record a finding different from what has been held by the Courts. Equally true is that second appeal can be admitted for hearing only if it gives rise to a question of law that needs determination after notice to the contesting party.

Reverting to the case at hand, the trial Court in para 16 has given reasoning for its conclusion that the agreement cannot be held legal and valid so far as its execution by Sumit Mahna is concerned. It has been held that though signatures on the agreement are of Sumit Mahna but non-production of jail records proves that simply signatures of Sumit Mahna were taken on the agreement but the same has not been executed as per due procedure as none of the witnesses had stated that it was read over and explained to Sumit Mahna nor any payment was made to him as admitted by the respondents/plaintiffs and their witnesses. As the Courts have accepted plea of the respondents/plaintiffs that the agreement was signed by Sumit Mahna when he was confined in jail and no payment was made to Sumit Mahna, the Court refused to grant the prayer for specific performance of the agreement and rightly so. But the mere fact that agreement was held to be not binding against Sumit Mahna would not

entitle the other defendants including the appellants to enrich themselves by retaining amount of Rs.20,00,000/- paid towards earnest money despite the respondents/plaintiffs having been able to prove execution of the agreement and so also payment of Rs.20,00,000/- to the executants except Sumit Mahna. In this view of the matter, contention raised by counsel for the appellants that respondents/plaintiffs were not entitled to alternative relief of recovery against remaining defendants is devoid of merit and has rightly been rejected by the Courts.

So far as inconsistency in testimonies of Tarsem Lal and Joginder Singh pointed out by counsel for the appellants, the same can neither be viewed seriously nor sufficient to record a finding that judgments passed by the Courts are not based upon correct appreciation of evidence much less suffer from perversity. I would hasten to add that the agreement to sell was executed on 05.04.2005 but cross examination of Tarsem Lal and Joginder Singh was conducted on 01.09.2008, after a gap of more than three years.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

No order as to costs.

04.04.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No