

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

RSA No.5361 of 2015 (O&M)

Date of decision:04.05.2018

M/s Lord Krishna Property and Home Developer
and others

... Appellants

Vs.

Devender Kumar Garg and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Johan Kumar, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-defendants are in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit claiming declaration with consequential relief of permanent injunction in respect of agreement to sell dated 16.11.2004, has been decreed by both the Courts below.

Respondent No.1/plaintiff instituted the suit aforementioned on the premise that appellant-defendants had entered into agreement to sell, ibid for selling the plot bearing No.2599 located at Green Field, Faridabad for a total sale consideration of ₹5222170/-. The original agreement was lost but since defendants did not seek permission from M/s Urban Improvement Company Private Limited, the plot had not been transferred in the name of the plaintiff, therefore, necessity arose to file the suit.

The appellant-defendants contested the suit by raising various preliminary objections qua maintainability under Order 7 Rule 11 CPC.

They came out with a story that a compromise was effected between the parties before the Police on 17.08.2006.

Since the parties were at variance, the trial Court framed as many as 6 issues including the issue of Relief. Respondent No.1/plaintiff examined four witnesses and brought on record documentary evidence, i.e., Ex.PW1 to Ex.PW14, Ex.P2/A to D, Ex.P4/1, Ex.P4/2 to 16 and Ex.P4/17 to 32. On the other hand, appellant-defendants examined three witnesses and brought on record the documentary evidence i.e., Ex.D1, Ex.DW2/A, Ex.DW/A to 13, Ex.DW2/14 to 21 and Ex.DW2/22.

On the basis of preponderance of evidence, the trial Court, vide judgment and decree dated 28.02.2014 granted the alternative relief of recovery of ₹20.00 lacs. The aforementioned judgment was reiterated/affirmed by the Lower Appellate Court.

Mr. Johan Kumar, learned counsel appearing on behalf of the appellant-defendants submits that on plain and simple language of the plaint, no alternative relief qua possession by way of specific performance was sought. The compromise arrived at between the parties was sacrosanct. The appellant-defendants had agreed to pay a sum of ₹35.00 lacs and amount of ₹15 lacs was paid. Despite issuance of legal notice, the plaintiff did not come forward. A legal notice was sent for payment of ₹20 lacs, though same was later on withdrawn. The Court below could not have granted the alternative relief of recovery of ₹20 lacs and thus, urges this Court for setting aside the findings of the Courts below as there is illegality

and perversity.

I have heard the learned counsel for the appellant-defendants, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Johan.

For the sake of brevity, prayer clause reads as under:-

“It is, therefore, prayed that a decree of declaration to the effect that the plaintiff is the owners in possession of the residential plot in question fully detailed and described in para no.1 of the plaint and in the alternative decree for possession by way of Specific Performance (although the possession is already with the plaintiff), be passed in favour of the plaintiff and against defendants No.1 to 4 with costs and as consequential relief, the defendant be restrained from transferring, alienating or creating any third party rights qua the plot in question in favour of the plaintiff and against the defendants.

Any other relief which this Hon'ble Court deems fit and proper may also be given to the plaintiff and against the defendants.”

On plain and simple language of the prayer in the plaint, respondent-plaintiff had not only sought relief of declaration but had sought the alternative relief. The argument of Mr. Johan Kumar that though plaintiff had not sought the relief of compensation, alternative relief of possession by way of specific performance, the Court below could not have granted the compensation is wholly devoid of merit, for, prayer clause reproduced supra

leaves no manner of doubt that the plaintiff had sought the relief. In **P.D'Souza Vs. Shondrillo Naidu 2004(3) RCR (Civil) 668**, the Hon'ble Supreme Court had an occasion to observe that even if the agreement to sell does not envisage any right to the vendee to seek specific performance of agreement and is limited only to the liquidated damages, relief of specific performance is inherent. The relief of compensation is also inherent. Time was not essence of agreement, for, in view of fact that parties had arrived at compromise on 17.08.2006, whereas, the suit was filed on 2.6.2009.

In view of the fact that the Court had no other option but to grant the alternative relief of recovery of ₹20 lacs for which appellant-defendants had agreed to pay a sum of ₹35 lacs but concededly paid a sum of ₹15.00 lacs.

In view of the aforementioned observations, I do not find any illegality and perversity in the judgments and decrees of both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 04, 2018

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No