

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

**RSA No.6052 of 2015 (O&M)
Date of decision: 20.02.2018**

Ahmed Jan

...Appellant

Versus

Mehmood Khan and another

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Amit Jain, Advocate,
for the appellant.

Ritu Bahri, J.

CM No.15137-C of 2015

In view of the averments mentioned in the application, same is allowed and delay of 43 days in filing of the appeal is condoned.

RSA No.6052 of 2015

This appeal has been filed against the judgment dated 23.04.2015 passed by the Additional District Judge, Mewat, dismissing an appeal filed by plaintiff-appellant against the judgment and decree dated 04.12.2014 passed by the Civil Judge (Senior Division), Mewat, whereby suit filed by plaintiff-appellant for specific performance of agreement to sell dated 24.11.2008, has been partly decreed for refund of earnest money with interest and compensation.

Ahmed Jan-plaintiff (appellant herein) filed the aforesaid suit to the effect that vide agreement to sell dated 24.11.2008, defendant-

respondent No.1 had agreed to sell the suit land in his favour for sale

consideration of Rs.5,00,000/- per acre and had received a sum of Rs.2,00,000/- as earnest money in the presence of the witnesses. Stipulated date for execution and registration of the sale deed was fixed as 24.11.2010. However, in place of getting the sale deed registered in favour of plaintiff-appellant, defendant No.1 had alienated the said land in favour of defendant No.2 vide sale deed No.628 dated 26.05.2010. Therefore, he filed this suit seeking possession of the suit land by way of specific performance of agreement to sell dated 24.11.2008 with a further prayer to declare the sale deed dated 26.05.2010 executed by defendant No.1 in favour of defendant No.2 as illegal, null and void.

Upon notice, defendant-respondent No.1 filed written statement by taking preliminary objections with regard to maintainability of suit, cause of action, locus standi, concealment of true facts etc. It was submitted that he had never agreed to sell the suit land in favour of plaintiff-appellant. The alleged agreement to sell was the result of fraud and fabrication. It was further submitted that he had never received any earnest money from the plaintiff. In fact, he had agreed to sell the suit land in favour of Jamshed, husband of defendant No.2 vide agreement dated 28.05.2008. Thereafter, vide sale deed dated 26.05.2010, he sold the same in favour of defendant No.2. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

Defendant No.2 filed a separate written statement, wherein it has been stated that sale deed No.628 dated 26.05.2010 executed by defendant No.1 in her (defendant No.2) favour was legal and valid and the same was executed for valuable sale consideration of Rs.34,25,000/-.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to relief of possession by way of specific performance of contract as prayed for? OPP
2. Whether the plaintiff is entitled to relief of declaration as prayed for? OPP
3. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
4. Whether the plaintiff has no cause of action & locus standi to file the present suit? OPD
5. Whether the suit of the plaintiff is not maintainable? OPD
6. Whether the plaintiff has concealed true and material facts from the Court? OPD
7. Whether the plaintiff is liable to pay special costs under Section 35-A CPC? OPD
8. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit to the effect that plaintiff-appellant was entitled for recovery of Rs.2,00,000/- along with interest at the rate of 12% per annum from 24.11.2008 along with compensation of Rs.1,00,000/- till realization of the decretal amount. Appeal against the said judgment also met the same fate.

Heard.

Both the Courts have accepted the agreement to sell dated 24.11.2008 Ex.PW1/A, as this fact was duly proved by examining the attesting witness thereof namely Mubarik (PW-4).

Defendants-respondents had placed on record agreement to sell dated 28.05.2008 Ex.DW2/A and receipt dated 28.05.2008 Ex.DW2/C, which were executed by defendant-respondent No.1 in favour of husband of

defendant-respondent No.2. Vide Ex.DW2/D, time for execution of the sale

deed was extended up to 25.06.2010. Finally, defendant No.1 executed sale deed No.628 dated 26.05.2010 Ex.DW1/A in favour of defendant No.2. These documents have not been disputed by plaintiff-appellant. Vide agreement to sell dated 28.05.2008, defendant-respondent No.1 had agreed to sell the suit land in favour of husband of defendant-respondent No.2 for a total sale consideration of Rs.34,25,000/- and received a sum of Rs.20,00,000/- as earnest money. At the time of extension of time for execution of the sale deed, husband of defendant-respondent No.2 had paid another sum of Rs.10,00,000/-. Meaning thereby, a total amount of Rs.30,00,000/- was paid out of Rs.34,25,000/-. Remaining amount of Rs.4,25,000/- was paid at the time of final execution of the sale deed. Both the Courts below have considered the aforesaid documents and held the plaintiff-appellant entitled to recover earnest money of Rs.2,00,000/- along with interest at the rate of 12% per annum from 24.11.2008 and compensation of Rs.1,00,000/-. This finding was rightly given keeping in view that at the time of execution of the agreement to sell dated 24.11.2008, earnest money of Rs.2,00,000/- was paid by plaintiff-appellant to defendant-respondent No.1. On the other hand, defendant No.2 had already paid the entire sale consideration to defendant No.1 and sale deed has already been registered in her favour vide Ex.DW1/A. After registration of the sale deed, defendant No.2 was in possession of the suit land.

Since sale deed has already been registered in favour of defendant No.2 and entire sale consideration has been paid, discretion to return of earnest money along with interest and compensation has been rightly exercised by both the Courts below.

Accordingly, after going through the impugned judgments, this

Court is of the view that suit filed by plaintiff-appellant has been rightly decreed. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

(RITU BAHRI)
JUDGE

20.02.2018
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No