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

XOBJC-23-C of 2018 (O&M) in/and
RSA No.292 of 2018 (O&M)
Date of decision : 10.09.2018

Kirpa Ram @ Kishan

...Appellant

Versus

Ishwar Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Naresh Kumar, Advocate for the appellant.

Mr. Rajesh Bansal, Advocate
for the respondent/Cross Objector.

****

**ANIL KSHETARPAL, J. (ORAL)**

**CM No.14003-C of 2018**

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of appellant-Kirpa Ram @ Kishan as mentioned in para 2 of the application are ordered to be brought on record for the purpose of prosecuting the main appeal.

Application is allowed.

**Main case**

By this judgment, appeal as well as the cross-objections shall stand disposed of.

Both the Courts have granted the alternative relief of refund of the earnest money to the plaintiff who is Advocate, declining the relief of specific performance.

The plaintiff-Cross Objector filed a suit for possession by way of specific performance of the agreement to sell dated 10.01.2001 pleading that land measuring 16 kanals and 15 marlas was agreed to be sold at the rate of ₹1,82,000/- per acre and ₹80,000/- was paid as earnest money. The target date for execution and registration of the sale deed was agreed upto 10.12.2001 after receiving the balance sale consideration from the plaintiff. The defendant further received additional payment of ₹60,000/- on 01.08.2001 against receipt. Thereafter, the date for execution and registration of the sale deed was extended upto 10.11.2002 vide writing dated 05.01.2002 after receiving another payment of ₹50,000/-. The supplementary agreement to sell was executed on 25.09.2002 after receiving another payment of ₹70,000/- and the date was extended to 28.02.2003.

It is claimed that the property is under mortgage with possession in favour of Rani Devi wife of Raj Kumar for an amount of ₹1,17,000/-. It was agreed that the mortgage money for the suit land comes to ₹81,656.25 and the defendant would pay the mortgage money and then execute the sale deed in favour of the plaintiff. The date of execution and registration of the sale deed was also further extended to 10.10.2003. The plaintiff claimed that he was always ready and willing to perform his part of the contract.

The defendant contested the suit and pleaded that in fact the agreement to sell was executed as a security for repayment of the loan.

There was never an intention to sell the land. The execution of the supplementary agreement was disputed. The defendant was under severe financial crisis and the plaintiff and one Randhir are the Financiers. The defendant approached them and asked for a loan on interest and they agreed to advance loan at the rate of 12% p.a. on installments.

The defendant further pleaded that he had been paying the installment of the loan to the plaintiff against the receipt. The plaintiff thereafter called upon the defendant to come with the original receipts of the payments so as to settle the deal. On 01.03.2003, the defendant handed over the receipts to the plaintiff but one photocopy of the receipt of an amount of ₹3450/- was left with the defendant but thereafter the plaintiff refused to cancel the agreement to sell.

Both the Courts after examining the evidence, have concurrently found that the agreement to sell was in fact a loan transaction and, therefore, the plaintiff is only entitled to refund the total amount paid i.e. ₹2,60,000/- alongwith interest.

This Court has heard the learned counsel for the parties at length.

Both the learned counsels although made a sincere attempt, however, could not point out any perversity or error in the judgment passed by both the Courts below.

In the facts and circumstances of the present case, both the Courts have exercised their discretion as per Section 20 of the Specific Relief Act. Such exercise of the discretion is neither shown to be perverse nor suffering from any error. Still further, it has rightly been noticed by the learned Appellate Court in para 66 that the plaintiff after 10.10.2003 i.e. the final date for execution and registration of the sale deed, did not even issue a notice to the defendant for a period of almost 6 months calling upon him to come and execute the sale deed. First notice was issued on 23.04.2004 when the defendant was called upon to execute the sale deed within 15 days but even thereafter the plaintiff did not file the suit for a period of 7 ½ months.

Keeping in view the aforesaid facts, this Court does not find any ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Hence, main appeal as well as cross-objections are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**10.09.2018** **(ANIL KSHETARPAL)**
*Pawan* **JUDGE**

**Whether speaking/reasoned:-** **Yes/No**

**Whether reportable:-** **Yes/No**