

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

RSA No. 382 of 2017 (O&M)

Date of decision : October 12, 2018

Avtar Singh

.....Appellant

Versus

Som Nath and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ish Puneet Singh, Advocate
for the appellant.

LISA GILL, J.

C.M.-15927-C-2018

The present appeal stands adjourned to 15.03.2019. Photocopy of the records have been called for.

Prayer in the application is for preponement of the date of hearing of the appeal from 15.03.2019 as the applicant's property has been attached and sale thereof has been directed for 15.10.2018. Learned counsel for the applicant submits that he has a photocopy of the entire record available with him. It is, thus, prayed that hearing of the appeal be preponed.

Keeping in view the averments in the application and arguments addressed, application is allowed. Hearing of the appeal is preponed from 15.03.2019 for today itself. Photocopy of the record furnished in Court today is taken on record subject to just exceptions.

RSA No. 382 of 2017

Appellant – defendant is aggrieved of concurrent findings rendered against him by the learned Additional Civil Judge (Junior

Division), Amloh vide judgment and decree dated 09.10.2015 as well as by the learned Additional District Judge, Fatehgarh Sahib vide judgment and decree dated 22.04.2016 vide which suit filed by the respondents-plaintiffs was decreed and the appeal filed by the appellant – defendant has been dismissed.

Brief facts necessary for adjudication of the case are that the suit for recovery of Rs. 12 lakhs as principal amount alongwith Rs. 3,06,000/- as interest at the rate of 9% per annum w.e.f. 03.09.2009 to 16.07.2012 alongwith future interest was filed by the plaintiffs – respondents. It was pleaded that the plaintiffs were approached by the defendant – appellant for sale of land. Plaintiffs – respondents agreed to purchase the same. Agreement to sell dated 03.12.2008 was drawn up for the purchase of two parcels of land, one measuring 58 kanal 2 marlas situated at village Kalar, Teshil Balachaur, District Saheed Bhagat Singh Nagar as fully detailed in the plaint, of which present appellant – defendant stated to be the owner in possession and another measuring 56 kanals out of total land measuring 242 kanal 3 marlas which the defendant claimed to have purchased from its original owner, thus, having full proprietary rights to sell the land. Total land agreed to be purchased by the plaintiff from the appellant – defendant was 114 kanal 2 marlas at the rate of Rs.3,50,000/- per acre. Rs.10 lakhs was paid by the plaintiffs to the appellant – defendant as earnest money on 03.12.2008 in the presence of witnesses. Another sum of Rs.2 lakhs was paid by the plaintiffs to the appellant – defendant on 10.06.2009 in the presence of witnesses. Rs. 12 lakhs was, thus, paid as earnest money by the plaintiffs to the appellant. Final date of execution of the sale deed was agreed as 10.06.2009. The same was mutually extended

twice to 10.07.2009 and to 31.07.2009. It was claimed by the plaintiffs that they are rustic villagers, who could not understand mala fide intention of the defendant who induced them to purchase 56 kanals of land while purporting to have purchased the land from its original owners whereas the appellant – defendant had not purchased the said land from its original owners and had no right to enter in an agreement to sell the said land. Defendant had merely entered in an agreement to purchase the said land from its original owner. Moreover, the appellant – defendant, it was alleged, showed the land which was different from the one intended to be sold. The land shown to the plaintiffs was situated near the main road, was agricultural and fully cultivable land. However, at the time of execution of the agreement, the defendant with mala fide intention got revenue numbers of land incorporated which was hilly and not cultivable completely. The plaintiffs repeatedly asked the defendant to show his proprietary rights in respect to land measuring 56 kanals. Inquiry was made by the plaintiffs regarding the ownership of the defendant in regard to 58 kanal 2 marlas and they came to know that the said land was situated in hilly area, was not cultivable whereas the defendant had shown land near the main road and projected the said land as the property to be sold. The plaintiffs on realising that they had been defrauded by the defendant who induced them to pay Rs.12 lakhs as earnest money confronted the defendant, who is alleged to have admitted his mistake and agreed to return the plaintiffs' money within 4-5 months alongwith interest. However, the plaintiffs received legal notice dated 24.08.2009 wherein they were asked by the defendant to come forward for getting the sale deed executed in their favour. Defendant admitted the receipt of Rs. 12 lakhs as earnest money pursuant to agreement

to sell dated 03.12.2008 in the said legal notice. Reply dated 03.09.2009 was sent by the plaintiffs stating that there was no question of getting the sale deed executed as the defendant had cheated and induced them to enter the agreement to sell with regard to land measuring 56 kanal of which the defendant was not the owner and of land measuring 58 kanal 2 marlas, which was non-cultivable and situated in the hilly area. The plaintiffs, thus, never appeared before the Sub Registrar, Balachaur. The plaintiffs then contacted the defendant and told him that an FIR would be lodged against him for cheating them. The defendant, however, requested not to do the same and agreed to return the entire money but did not return the same. Hence, the the suit was filed.

Appellant – defendant resisted the suit. Various preliminary objections were taken in the written statement. Averments on merits were controverted. It was stated that it was the plaintiffs who had approached the defendant to purchase his land. The defendant agreed to sell land measuring 114 kanal 2 marlas to the plaintiffs for a consideration of Rs. 3,50,000/- per acre. It is admitted that earnest money was received. Appellant – defendant claimed that he was ready and willing to perform his part of the contract but the plaintiffs themselves did not have the funds and never got the sale deed executed. All averments regarding any kind of misrepresentation were denied. It was stated that it is up to the buyer to make necessary inquiries regarding the ownership of the prospective vendor. Legal notice dated 24.08.2009 was issued to the plaintiffs regarding execution of the sale deed but they still did not come forward. Dismissal of the suit was prayed for.

Replication was filed.

Following issues were framed by the learned trial Court on the

basis of the pleading:-

- i) Whether plaintiffs are entitled for recovery of Rs. 12,00,000/- ?OPP.
- ii) Whether suit is not maintainable in the present form? OPD.
- iii) Whether plaintiffs have no locus standi and cause of action to file the present suit? OPD.
- iv) Whether plaintiffs have not come to the court with clean hands?OPD
- v) Relief.

Evidence was led by both the parties to substantiate their respective claims.

Learned trial Court concluded that the appellant – defendant was indeed not the owner in possession of 56 kanals of land at the time of execution of the agreement to sell, therefore, he had no right to enter in an agreement to sell qua the said property with the plaintiffs, therefore, the suit filed by the plaintiffs – respondents was decreed. The plaintiffs were held entitled to recovery of Rs. 12 lakhs alongwith interest at the rate of 6% per annum from the date of filing of the suit till realisation. Appeal filed by the appellant was also dismissed by the learned District Judge, Fatehgarh Sahib vide judgment dated 22.04.2016 Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant – defendant vehemently argues that both the learned courts below have erred in decreeing the suit filed by the plaintiffs – respondents for recovery of Rs. 12 lakhs alongwith 6%. It is submitted that as per agreement to sell dated 03.12.2008, it is specifically mentioned that the present appellant is not the owner of 56 kanals of land. Appellant at that time had, however, entered into an agreement to purchase the said 56 kanals of land from the original owners.

There is a recital in the agreement to the effect that the appellant – defendant would be bound to have the sale deed executed from the original owners in favour of the respondents – plaintiffs. In this situation, stand taken by the respondent – plaintiffs that there has been any misrepresentation on the part of the appellant – defendant is incorrect and not tenable. Moreover, once the respondent – plaintiffs have themselves taken a stand that the said 56 kanals of land was subsequently sold by the appellant – defendant, it clearly shows that the appellant – defendant was the owner of the suit property. While referring to the cross examination of PW1 Kishan Lal, PW2 Baljit Singh and PW3 Som Nath, it is submitted that all of them have admitted that they came to know that the present appellant – defendant is not the owner in possession of 56 kanals after the execution of the agreement to sell dated 03.12.2008. Therefore, there is no explanation as to why they never took any action immediately thereafter. It is only after the present appellant issued a legal notice dated 24.08.2009 that a reply dated 03.09.2009 was submitted by the respondent – plaintiffs taking up the various pleas as mentioned in the plaint. Moreover, it is submitted that the suit for recovery simplicitor was not maintainable as the respondent – plaintiffs should have sought their remedy under the Specific Relief Act, 1963 (for short – 'the Act'). Reference is made to Section 27 of the Act specifically. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 09.10.2015 passed by the learned Additional Civil Judge (Senior Division), Amloh as well as judgment and decree dated 22.04.2016 passed by the learned District Judge, Fatehgarh Sahib be set aside and suit filed by the plaintiff – respondents be dismissed.

I have heard learned counsel for the appellant and have gone

through the photocopy of the record, which was furnished by learned counsel in Court today.

I have perused agreement to sell dated 03.12.2008. There is no dispute that agreement dated 03.12.2008 (Ex.P1) was entered into between the parties in respect to two parcels of land, one measuring 58 kanals 2 marlas and another of 56 kanals at the rate of Rs.3,50,000/- per acre. A sum of Rs.10 lakhs was received by the appellant as earnest money on 03.12.2008 and another sum of Rs.2 lakhs on 28.01.2009. Stipulated date for execution of the sale deed was 10.06.2009. It is not denied that 56 kanals of land was purchased subsequently by the appellant – defendant. Four sale deeds have been placed on record. Ex. D2 pertains to 17 kanals, one marla and 3 sirsai in village Kaler out of khata No. 49/52. The said sale deed is dated 23.07.2007. Ex. D3 is sale deed dated 06.06.2007 in respect to 58 kanal 2 marlas of land, which the defendant claims to have agreed to be sold to the plaintiffs. The plaintiffs have pleaded that some other land in lieu of the same was shown to them. Sale deed dated 19.02.2009 in respect to 4 kanal 2 marlas of land is exhibited as Ex.D4 out of khata No. 70/74. Ex. D5 is sale deed dated 30.06.2009 is in respect to 20 kanal 3 marlas (*Pahaar*) out of khata No. 76/78 in village Kaler. Be that as it may, it is not denied that 56 kanal of land mentioned in agreement dated 03.12.2008 in khata No. 83/92 khasra No. 32 in village Kaler was purchased by the appellant – defendant Avtar Singh from its original owner much subsequent to agreement dated 03.12.2008.

Perusal of the agreement dated 03.12.2008 (Ex.P1) reveals that the recital in respect to 56 kanal of land when translated reads as :

'56 kanals Khata No. 83/92 out of total land measuring 242

kanal and 3 marlas has been purchased by the first party (appellant – defendant Avtar Singh) from its original owner'.

There is no recital to the effect that it is only an agreement to sell which has been entered into by the defendant – Avtar Singh in respect to 56 kanals of land with its original owners and that he is entitled to enter into the said agreement in favour of the plaintiffs. Therefore, the argument that the defendant was in the process of purchasing the land in question and he had a right to execute the sale deed in favour of any other person is of no avail to the appellant. This fact in itself does not find mention in Ex. P1. Admittedly, the said land has been purchased by the appellant – defendant subsequently. The appellant was clearly not the owner of the property in question on 03.12.2008.

Learned counsel for the appellant vehemently argues that the plaintiffs themselves raised a plea that land measuring 56 kanal was subsequently sold as reflected in mutations dated 14.09.2010 and 20.10.2011 i.e. before the expiry of limitation of three years of date fixed for execution of registration of the sale deed. Therefore, it has been urged that the plaintiffs are not entitled to take the plea of the defendants not being the owners of the land in question.

It is relevant to note at this stage that the plea taken by the plaintiffs was that the appellant – defendant was not the owner of the land in question at the time of execution of agreement to sell dated 03.12.2008 (Ex. P1) whereas he projected himself to be the owner thereof at that stage. This plea is duly substantiated by the evidence on record. Recital in the agreement to sell dated 03.12.2008 does not in any manner indicate that the plaintiffs were made aware of any agreement to sell which may have been

entered in by the appellant – defendant with the original owners of land measuring 56 kanals and that the sale deed would be executed by the original owners in the plaintiffs' favour. This plea clearly appears to be an afterthought and is not substantiated by the evidence on record. Issuance of notice dated 24.08.2009 (Ex. D6) by the appellant – defendant calling upon the plaintiff to execute the sale deeds, in the facts and circumstances of the case, is clearly irrelevant. To say that by sending the said notice when the appellant – defendant clearly had no title to the entire suit land, cannot persuade the Court to conclude that the earnest money admittedly received by the appellant – defendant stood forfeited on the ground that the plaintiffs were not coming forward for executing the sale deed in question. Therefore, there is no perversity or infirmity in the findings returned by the learned trial Court as well as learned First Appellate court. Furthermore, there is no merit in the argument raised by learned counsel for the appellant that the present suit for recovery simplicitor was not maintainable and the plaintiffs – respondents should have sought remedy available under the Act. This is so for the reason that the stand taken by the appellant – defendant itself negates this argument. It does not lie with the appellant – defendant to claim that after issuance of legal notice dated 24.08.2009 the plaintiff did not come forward for execution of the sale deed, therefore, his readiness and willingness is not proved. Even on the date of issuance of the said legal notice the appellant, it is admitted, was not the owner of the property measuring 56 kanal in khata No. 82/92 in village Kalar. The plaintiffs have, thus, proved on record that the appellant – defendant received a sum of Rs. 12 lakhs as earnest money on the basis of agreement to sell dated 03.12.2008 (Ex. P1). The defendant did not have a clear title to the said land

at the relevant time. Legal notice dated 24.08.2006 (Ex.D6) was duly replied to by the plaintiffs clarifying that the defendant did not have a clear title over the property. Similarly, the fact that the defendant – appellant has subsequently sold the land in question after having purchased the land cannot be a ground to deny relief to the plaintiff – respondents.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 90.10.2015 passed by the learned Additional Civil Judge (Senior Division), Amloh as well as judgment and decree dated 22.04.2016 passed by the learned District Judge, Fatehgarh Sahib which calls for any interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

October 12, 2018
rts

(Lisa Gill)
Judge

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