

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

RSA No.4897 of 2017 (O&M)

Date of decision:19.11.2018

St. Soldier Properties and Industries Limited ... Appellant

Vs.

Ranbir Kaur and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Tarun Sharma, Advocate for
Mr. R.S.Bajaj, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant has not been successful in defending the suit for specific performance of the oral agreement to sell dated 16.10.1997 regarding the plot number 175 measuring 31'x75' (11 marlas 43 square ft.) situated at Jalandhar Vihar at village Wariana Basti Bawa Khel, Jalandhar-Kapurthala.

It was alleged that defendant no.1 had been issued a license to set up a residential colony and respondent-plaintiff had booked a plot no.175 at the rate of ₹25,000/- per marla in place of ₹11,500/- and paid a sum of ₹2,26,631/- and in lieu thereof, defendant issued the receipt for a sum of ₹75,000/- as advance booking amount.

The aforementioned amount of ₹75,000/- was paid through cheque and another receipt no.1062 dated 25.10.1997 in this regard was issued. The plaintiff had always been ready and willing to perform his part

of contract but the defendant did not come forward and vide sale deed dated 06.01.1998 had sold it to defendant no.2.

The defendant no.1 admitted the issuance of license for development and deposit of ₹75,000/- as earnest money, much less receipt but stated that plaintiff did not pay the balance amount within a period of 10 days and therefore, previous amount of ₹ 75,000/- was treated as trust money and after expiry of six months, defendant no.1 had executed the sale deed in favour of defendant no.2.

During the pendency of suit, plaintiff had sought the amendment of the plaint to incorporate the price of plot as ₹25,000/- per marla, for a total sale consideration of ₹2,80,797/- as defendant in lieu thereof, received a sum of ₹2,26,631/- and the balance was ₹54,166/-.

The defendant admitted the rate of plot as ₹25,000/- per marla but stated that for the plots facing park, it was ₹27,500/- per marla. Defendant no.2 opposed the suit of having become the owner by way of sale deed aforementioned and claimed to be a bonafide purchaser.

The plaintiff in support of the assertion in the plaint, examined himself as PW1, Kamaljit Kaur as PW2 and Balwant Singh as PW3, who proved the execution of the agreement to sell and brought on record the documentary evidence. The defendant also examined two witnesses.

On preponderance of the evidence, the suit was decreed and the appellant-defendant was directed to execute the sale deed in favour of the plaintiff in respect of plot no.175 and the appeal taken before the Lower

Appellate Court was also dismissed.

Learned counsel appearing on behalf of the appellant-defendant submitted that there was no written agreement to sell. The same had not been proved on record. The issuance of receipt of ₹75,000/- did not constitute the contract but was to be treated as trust money. The plaintiff herself admitted that there was no contract, therefore, provisions of Section 23 of Contract Act, were applicable. In these circumstances, the discretionary relief under Section 20 of Specific Relief Act, 1963 should not have been granted.

I have heard the learned counsel for the appellant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr.Sharma, for, issuance of receipt and oral agreement have been proved through the testimony of witnesses. In para 4 of the written statement, defendant admitted that market price of plot was ₹25,000/- per marla and in respect of plot facing park and two sides open or facing 40' wide road was fixed as ₹27,500/- per marla. The amount was accepted by Sunil Chopra, employee of defendant no.1. The defendant failed to produce on record account books showing receipt of actual amount received by the plaintiff. As per the terms and conditions contained in Ex.P1, sale deed was to be executed within a period of six months from the date of agreement. The defendant had already received a sum of ₹2,26,631/- and the balance amount of ₹54,166/- was to be paid at the time of execution of the sale deed.

All these factors weighed in the mind of the Courts below to decree the suit. I am of the view that findings of facts and law arrived at by the Courts below do not call for any interference. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 19, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No