

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 4753 of 2018(O&M)

Date of Decision: 18.8.2018

Tejpal Rana

---Appellant

versus

Sunil Jakhar

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ravinder Rana, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit for recovery filed by the respondent-plaintiff on the basis of agreement of sale was decreed by the trial court vide judgment and decree dated 30.7.2015 passed by the Civil Judge (Junior Division), Gurgaon and the appeal preferred by unsuccessful appellant-defendant did not find favour with the District Judge, Gurgaon.

As per case set up by the respondent-plaintiff, in 2008, plaintiff contacted defendant for selling his plot bearing No. R-134 measuring 276.5 square yards, situated in village Chauma, New Palam Vihar, Gurgaon for a sale consideration of Rs. 22,20,250/- out of which he paid a sum of Rs. 5,00,000/- as earnest money to the defendant and balance amount of Rs. 17,20,250/- was agreed to be paid at the time of execution of sale deed on 17.12.2018. On 17.12.2018, plaintiff went to the office of Sub

Registrar, Gurgaon for getting the sale deed registered but the appellant-defendant did not turn up and the plaintiff got marked his presence in the office of Sub Divisional Magistrate. Later, it came to knowledge of the plaintiff that said property has already been sold vide registered sale deed dated 23.10.2018 by general power of attorney holder namely Bijender Rana to Smt. Sneh Lata wife of Sh. Rajesh. It was found that a fraud has been played upon the plaintiff and FIR bearing No. 130 of 2009 under Sections 420/406 and 419 of the Indian Penal Code was registered against the defendant in Police Station, Palam Vihar, Gurugram. Hence the suit.

Counsel for the appellant would urge that criminal proceedings initiated by the respondent-plaintiff on the basis of FIR No. 130 registered in Police Station, Palam Vihar, Gurgaon culminated in discharge of appellant by the revisional court. It is argued that as the respondent-plaintiff did not file suit seeking specific performance of agreement of sale, it can safely be construed that the respondent-plaintiff was not ready and willing to perform his part of the agreement, therefore, in case the decrees passed by the courts are affirmed, it would amount to putting premium on the wrong committed by the respondent-plaintiff.

I have heard counsel for the appellant and perused the paper book particularly the judgments impugned.

Be that as it may, discharge of the appellant from criminal proceedings would be of no consequence for decision of civil liability, to be determined on the basis of balance of probabilities viz-a-viz proof beyond shadow of reasonable doubt required in the criminal case. So far as the plea that the respondent-plaintiff was required to file a suit for specific performance of agreement of sale, the same is highly misconceived for the

reason that the appellant is not owner of the property, therefore, no title can be transferred by the appellant in favour of the respondent, thus, his claim for specific performance of agreement would have been an exercise in futility. In this view of the matter, I do not find an error much less perversity in the consistent findings recorded by the courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

18.8.2018

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No