

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

**RSA-4992-2018 (O&M)
Date of Decision:04.10.2018**

Bijender Singh @ Baljinder Singh

... Appellant

Versus

Pawan Kumar & another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

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

...

TEJINDER SINGH DHINDSA, J. (ORAL).

CM-13624-C-2018:

In view of the averments made in the application duly supported by an affidavit, the delay of 9 days that has occurred in re-filing the accompanying appeal is condoned.

2. Application is disposed of.

Main case:

A suit for recovery of Rs.3,12,000/- along with interest @ 8% per annum w.e.f. 23.08.2012 till institution of the suit along with future interest filed by the plaintiff-Pawan Kumar against defendant-Bijender Singh @ Baljinder Singh was decreed by the trial Court on 10.04.2017. Civil appeal preferred by the defendant has been dismissed vide judgment dated 14.05.2018 passed by the learned District Judge, Fatehabad. Resultantly, defendant/appellant is in second appeal before this Court.

2. Brief facts of the case are that the suit for recovery was instituted on the averments that defendant-Bijender Singh @ Baljinder Singh

had executed an agreement to sell dated 23.08.2012 in favour of the defendant as also Raj Kumar in respect of the suit plot. The total earnest money paid was Rs.5,20,0000/- and out of which 60% share was advanced by the plaintiff i.e. Rs.3,12,000/- . Defendant had claimed himself to be the prospective vendee of the suit plot on the basis of an agreement to sell executed in his favour by one Manoj Kumar. Plaintiff asserted that on 15.11.2012, he along with Raj Kumar went to the office of Sub Registrar, Fatehabad but defendant-Bijender Singh @ Baljinder Singh did not come present. Thereafter, when plaintiff approached Manoj Kumar to find out the reasons as to why sale deed was not executed on 15.11.2012, it was disclosed to him that even Manoj Kumar was not the owner of the suit plot rather the real owner is some other lady by the name of Suman. Plaintiff thereafter served a legal notice upon the defendant on 27.07.2013 but no positive response having come forth, the suit for recovery of Rs.3,12,000/- along with interest @ 18% per annum w.e.f. the date of agreement to sell dated 23.08.2012 was instituted.

3. Suit was contested by defendant-Bijender Singh @ Baljinder Singh by filing a written statement admitting that agreement to sell dated 23.08.2012 had been entered into on the strength of a previous agreement dated 13.08.2012 that had been executed in his favour by one Manoj Kumar. It was further admitted that the real owner of the suit plot was Smt. Suman and who had entered into an agreement with Manoj Kumar in respect of the plot in question. Stand was taken that the defendant had been ready and willing to perform his part of the contract whereas it was the plaintiff, who had not come present in the office of the Sub Registrar concerned.

4. As has been noticed herein above, suit of the plaintiff for recovery of Rs.3,12,000/- was decreed and such judgment of the trial Court has been affirmed by the lower Appellate Court.

5. Counsel for the defendant/appellant has argued that the suit for recovery filed by the plaintiff/respondent itself was not maintainable as a suit for specific performance ought to have been filed with regard to the agreement to sell dated 23.08.2012. Further contended that the Courts below have overlooked the aspect with regard to readiness and willingness on the part of the plaintiff/respondent to have the sale deed executed and thereby have erred in directing recovery of Rs.3,12,000/- from the appellant.

6. Having heard counsel for the appellant at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

7. The execution of agreement to sell dated 23.08.2012 in favour of the plaintiff/respondent as also Raj Kumar at the hands of the present appellant is admitted. It is also admitted that as on the date of agreement to sell, appellant was not the owner of the suit plot. Rather appellant in his written statement had clearly stated that the real owner of the suit plot on the date of execution of the agreement to sell dated 23.08.2012 was Smt. Suman. Mere execution of an agreement to sell does not confer ownership of property. The Courts below have rightfully taken a view that the defendant/appellant had no right to execute the agreement to sell dated 23.08.2012 in favour of the plaintiff/respondent as also Raj Kumar.

8. The argument as regards only a suit for specific performance being maintainable is without any substance. The appellant himself having

conceded that he was not the real owner of the suit plot and having no right as such to execute the agreement to sell dated 23.08.2012, it was not mandatory for the plaintiff/respondent to have filed a suit for specific performance. For the same very reasoning even the argument as regards readiness and willingness to perform contractual obligations out of agreement to sell dated 23.08.2012 cannot sustain. In the facts and circumstances of the case wherein earnest money of Rs.3,12,000/- had admittedly been entrusted to the appellant and the appellant not being owner of the plot in question and thereby lacking competence to enter into the agreement to sell dated 23.08.2012, it was certainly open for the plaintiff/respondent to have sought a decree for recovery of such amount.

9. The concurrent view taken by the Courts below while granting relief of recovery in favour of the plaintiff/respondent is based on cogent and valid reasoning.

10 The appeal does not raise any question of law.

11. No merit.

12. Dismissed.

04.10.2018

harjeet

(TEJINDER SINGH DHINDSA)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No