

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 574 of 2018

Date of decision : March 19, 2018

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Akhtar Hussain

.....Appellant (plaintiff)

Versus

Smt. Roop Wati and others

.....Respondents (defendants)

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Adarsh Jain, Advocate for the appellant.

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RITU BAHRI, J.

The appellant-plaintiff Akhtar Hussain has come up in appeal against the judgment dated 26.10.2017 passed by the Additional District Judge, Palwal, wherein appeal against the judgment dated 23.12.2015 passed by Civil Judge (Junior Division), Palwal was accepted. Vide the judgment of the trial court, suit of the plaintiff was decreed and the plaintiff was held entitled to the decree for possession by way of specific performance of the contract and the respondents-defendants (hereinafter referred to as 'the defendants') were directed to execute the requisite sale deed in terms of agreement to sell in favour of the plaintiff and to put him in actual physical possession of the suit land.

The facts not disputed by the lower appellate Court is that

Kanhiya Lal, husband of defendant no.1 and father of defendants no. 2 to 6 is said to have entered into an agreement to sell with the plaintiff regarding the agricultural land comprising in khewat/khatoni No. 46/47 rect. No. 25, killa No. 4(8-0) total measuring 8 kanals 9 marlas to the extent of ½ share situated within the revenue estate of the village Rajpura, Tehsil and District Palwal. The contract was settled at a price of Rs.1,40,000/- and out of this a sum of Rs. 1,24,000/- was already paid to the deceased Kanhiya Lal on 27.5.2003. After the death of Kanhiya Lal, the property devolved upon his legal heirs, the defendants. As per the plaint, plaintiff always remained ready and willing to perform his part of the agreement, however, despite repeated requests of plaintiff, defendants did not execute and register the sale deed in favour of plaintiff. The plaintiff also remained present throughout the day on 26.5.2004 i.e the date fixed for payment of balance sales price and registration of the sale deed in the office of Sub Registrar, Palwal but defendants did not turn up. Hence the suit was filed.

Initially none appeared on behalf of the defendants and suit was decreed ex parte vide judgment dated 24.7.2007 by the Court of Sh. Raj Kumar Yadav, the then Additional Civil Judge (Senior Division), Palwal. Thereafter, an application under Order 9 Rule 13 CPC for setting aside decree was instituted on behalf of defendants no. 1 and 2 as by that time defendant no. 2 Babita, who was daughter of deceased Kanhiya Lal also became major. This application was allowed and the ex parte decree was set aside. Written statement was filed on behalf of the defendants on 6.8.2015.

The plaintiff examined two attesting witnesses of the agreement PW-1 Mehtab and PW-2 Aasin who in their respective affidavits have deposed about the fact that agreement was executed by Kanhiya Lal in their

presence and they had witnessed the same. Plaintiff also examined Rattan Lal Sharma, deed Writer who as PW-3 deposed that agreement Ex.P-1 and receipt Ex.P-2 were drafted by him at the instance of the parties and that it was executed in his presence by the parties to the document and signed by the attesting witnesses. During the pendency of the suit, Kanhiya Lal had died and there was sufficient evidence to prove that agreement P-1 and receipt P-2 were executed between the plaintiff and the defendants. The trial Court decreed the suit of the plaintiff to the effect that plaintiff was held entitled to the decree for possession by way of specific performance and the defendants were directed to execute the requisite sale deed in terms of agreement to sell dated 27.5.2003 in favour of the plaintiff.

Aggrieved with the judgment of the trial Court, defendants filed appeal before the lower appellate Court.

The lower appellate Court has modified the judgment of the trial Court and has taken into account the crucial question of comparative hardship which the widow and the minor children would face, if the decree for specific performance of the contract was passed. From the cross examination of defendant no.1 Roopwati-DW-1, one thing is clear that her husband had entered into an agreement to sell because he needed money for sustaining his family and had no means for running his household expenditure. It was further observed by the appellate Court that plaintiff had no immediate need of the land as in spite of paying Rs.1.24 lacs out of Rs.1.40 lacs, plaintiff did not receive possession and agreed to wait for one year for getting sale deed executed. It was also observed by the appellate Court that it was not fair by the trial Court to observe that since Roopwati had spent 4-5 lacs on the marriage of her daughters, it is proved that this

property was not the only source of income they had. Rather the fact that Roopwati widow of Kanhiya Lal had spent Rs.4-5 lacs on the marriage of her two daughters could not reduce the utility of the land in future.

Keeping in view all the facts and circumstances of the case and the hardship which the family of Kanhiya Lal would face after loosing the land in question, the lower appellate Court held that the utility of the land is more for the family of deceased Kanhiya Lal than to the plaintiff. Lower appellate Court rightly modified the judgment of trial Court and granted relief to the plaintiff in the alternative in the form of repayment of Rs.1.40 Lacs along with interest @ 12% per annum since the date of agreement till the amount is paid.

Heard counsel for the parties. There is no illegality or infirmity in the judgment passed by the appellate Court. Hence, no ground is made out to interfere in this judgment. Dismissed.

March 19, 2018

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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No