IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 10.09.2018

1. RSA No.6282 of 2017

Pawan Jindal ...... **Appellant**

Versus

Gopi Chand (since deceased) through LRs and others ...... **Respondents**

2. RSA No.6285 of 2017

Mohinder Pal Kumra ...... **Appellant**

Versus

Gopi Chand (since deceased) through LRs and others ...... **Respondents**

3. RSA No.6294 of 2017

Dimple Kumra ...... **Appellant**

Versus

Alka Jindal ...... **Respondent**

4. RSA No.6295 of 2017

Mohinder Pal Kumra ...... **Appellant**

Versus

Alka Jindal ...... **Respondent**

5. RSA No.6296 of 2017

Dimple Kumra ...... **Appellant**

Versus

Alka Jindal ...... **Respondent**

6. RSA No.6297 of 2017

Mohinder Pal Kumra ...... **Appellant**

Versus

Alka Jindal ...... **Respondent**

7. RSA No.84 of 2018

Mohinder Pal Kumra **...... Appellant**

Versus

Gopi Chand (since deceased) through LRs **...... Respondent**

8. RSA No.4867 of 2017

Pawan Jindal **...... Appellant**

Versus

Gopi Chand (deceased) and others **...... Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sunil Chadha, Sr. Advocate with
Mr. Chetan Bansal, Advocate
for the appellant (in all cases).

Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate
for the respondents.

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ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of eight regular second appeals bearing RSA No.6282, 6285, 6294, 6295, 6296, 6297 of 2017, RSA No.84 of 2018 and RSA No.4867 of 2017 which are connected.

In all these eight appeals, common issue arise between the parties who are inter-related. Counsel for the parties are also agrees that all these 8 appeals can be disposed of by a common judgment.

No doubt, RSA No.4867 of 2017 and RSA No.6282 of 2017 filed by the appellants are not related to Mohinder Pal Kumra or his family, however, the agreement to sell, the land in dispute, the pleadings in the suit and the counsel for the appellant all are common.

Four suits were filed seeking specific performance of the oral agreement to sell dated 15.03.2000 through which the entire sale consideration was paid by way of cheques and in all these cases, the sale deed has been drafted signed by one or more party but not registered.

On the other hand, defendants-respondents have pleaded that there was a previous agreement to sell between the family of Gopi Chand and 4 colonizers namely Pushp Vihar Housing and Construction Company through Mohinder Pal Kumra, Kumra Housing and Construction, Dharampal Kumra and Rajesh Kumra and sons. It is the case of the defendant that as per agreement to sell dated 06.04.1995, land measuring 53 kanals and 2 marlas was agreed to be sold @ Rs.17,705/- per marla. Pursuant to the aforesaid agreement to sell, various sale deeds were executed as and when required by the purchasers which are not in dispute. The last sale deed was executed on 06.09.1999.

It is also not in dispute that the land subject matter of these 4 civil suits, subject matter of 8 appeals, was also part of land measuring 53 kanals and 2 marlas agreed to be sold vide agreement to sell dated 06.04.1995. The defendants have pleaded that the plaintiffs had in fact become dishonest and wanted to deprive the Government of proper revenue i.e. stamp duty and therefore, the alleged oral agreement to sell is said to have been arrived at for sale of the same land @ Rs.5,000/- per marla. It is pleaded case of the defendants that since the plaintiffs refused to pay the rate settled as per the agreement to sell dated on 06.04.1995, therefore, they refused to get the sale deed registered.

Learned trial Court dismissed the suit for specific performance, however, granted alternative relief of refund whereas the learned First Appellate Court has not only dismissed the suit for specific performance but has also declined to grant any relief of refund of the amount paid.

Learned counsel for the appellants submitted that the draft sale deed which is signed by some of the parties can be treated as agreement to sell. He submitted that once the draft sale deed is treated as agreement to sell, the suit ought to have been decreed. He further submitted that it is for the defendants to explain why they/he/she signed the draft sale deed but thereafter, refused to register the sale deed. Learned counsel further submitted that since as per the draft sale deed, the amount received is not being disputed, therefore, the relief of specific performance of the agreement to sell should have been granted. He further submitted that oral evidence beyond the written document is not permitted and therefore, the evidence of previous agreement to sell dated 06.04.1995 cannot be accepted. Learned counsel for the appellant further argued that in the alternative, refund of the amount received by the defendants should have been ordered as receipt thereof is not being disputed.

On the other hand, learned counsel for the respondent has pointed out that although counsel for the appellant had made a statement in the Court that there was no agreement to sell dated 06.04.1995, however, both the Courts have found as a matter of fact that there was an agreement to sell dated 06.04.1995 which fact is not being disputed by learned counsel for the appellants in all these 8 appeals. He submitted that in fact the entire effort of the plaintiffs was to deprive the Government of the stamp duty and since, the plaintiff apart from hood winking the Government of its revenue, also refused to pay the amount at the same rate as agreed to in the agreement to sell dated 06.04.1995, therefore, the sale deeds were not got registered.

This Court has examined the arguments of learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below.

"Some facts which are common are required to be noticed. In all these appeals, oral agreement to sell is dated 15.03.2000. In all these appeals, the dispute is with regard to the property which was subject matter of agreement to sell dated 06.04.1995. The scribe of all these draft sale deeds is Kamlesh Kumar, deed writer who has not made any entry in his deed register. The draft sale deeds do not bear the signatures or stamp of the scribe Kamlesh Kumar. In all these draft sale deeds, Sham Lal and Satish Thapar are stated to be marginal witnesses. The plaintiffs in none of the cases got their presence marked on 21.08.2000 before the Sub-Registrar. No affidavit has been sworn in by the plaintiffs in the respective cases in order to prove their presence on 21.08.2000. Similar is the position on 31.08.2000. The plaintiffs in all these cases allege that they met defendants in the company of Sham Lal and Satish Thapar on 07.01.2001 and 04.02.2001. As per the agreement to sell dated 06.04.1995, Satish Thapar and Sham Lal were the property brokers involved on behalf of Mohinder Pal Kumra and they were to be paid 1% commission by the purchasers. Mohinder Pal Kumra had been selling plots in the colony developed by him through Satish Thapar and Sham Lal. Mohinder Pal Kumra when appeared in the evidence admitted agreement to sell dated 06.04.1995 although, counsel for the plaintiff had made a statement to the contrary on 25.08.2008. It is surprising that in all the appeals, stamp paper for execution and registration of the sale deeds, were purchased prior to the date of oral agreement to sell i.e. 15.03.2000. The alleged notices issued on behalf of the plaintiff in all the suits were on one and the same date i.e. 30.12.2000 and that also through the same counsel Sh. Hari Mittal Sharma."

Learned counsel for the appellants in support of his first argument has submitted that the draft sale deed can be taken as an agreement to sell. He has relied upon the judgment passed by the Hon'ble Supreme Court in the case of *S. Kala Devi Vs. V.R. Somasundaram and others, (2010) 5 SCC 401*. On careful examination of this judgment, it will be noted that an unregistered sale deed was not admitted in evidence by the trial Court against the aforesaid order matter had came before the Hon'ble Supreme Court. Hon'ble Supreme Court in Para 16 only examined the admissibility of the unregistered sale deed. Para 16 of the judgment is extracted as under:-

> *"The issue before us is only with regard to the admissibility of unregistered sale deed dated 27.2.2006 in evidence and, therefore, it is neither appropriate nor necessary for us to consider the contention raised by learned counsel for the respondents about the maintainability of suit as framed by the plaintiff or the circumstances in which the sale deed was executed. If any issue in that regard has been struck by the trial court, obviously, such issue would be decided in accordance with law. Suffice, however, to say that looking to the nature of the suit, which happens to be a suit for specific performance, the trial court was not justified in refusing to admit the unregistered sale deed dated 27.2.2006 tendered by the plaintiff in evidence."*

Still further, it will be noted that the present suit filed by the plaintiffs is not for enforcement of the draft sale deed. The facts in the judgment referred are entirely different and even the question, answered is entirely different. In the present case, there is a previous agreement to sell dated 06.04.1995 between the parties pursuant whereof 53 kanals and 2 marlas land was agreed to be sold and certain sale deeds have been executed by the defendants namely Gopi Chand and his family members honouring the agreement to sell dated 06.04.1995. The defendants have not refused to honour the agreement to sell dated 06.04.1995. The present case, however, is based upon an oral agreement to sell dated 15.03.2000 in each case. In each of the case as noted above, the land agreed to be sold is part of 53 kanals and 2 marlas and the rate at which the draft sale deed has been prepared is @ Rs.5,000/- per marla.

In these circumstances, the findings of both the Courts below that the plaintiff has not filed the suit for specific performance of the agreement to sell with clean hands and in fact there was no oral agreement to sell are correct.

With respect to second argument of learned counsel for the appellant, it will be noted that the defendants have already explained as to why they refused to get the sale deed registered. It has been explained that since the plaintiffs refused to pay the same rate which was agreed to as per the agreement to sell dated 06.04.1995, therefore, they refused to register the sale deed. The explanation submitted is justified and plausible.

Next argument of learned counsel is that oral evidence cannot be considered by the Court in view of the written agreement, is also to be noticed and rejected. Section 92 of the Evidence Act provide that terms of such contract required by law to be reduced in form of a document, no evidence of any oral agreement shall be admitted. In the present case, law does not require that the agreement to sell is to be in writing. Still further, the previous agreement to sell dated 06.04.1995 is not being disputed before this Court by learned counsel for the appellant. It is further not disputed that as per the aforesaid agreement to sell, rate at which the land was agreed to be sold is Rs.17,705/- per marla. It is not understandable as to why after a period of 5 years, the rate of the land at which the land was agreed to be sold has been reduced to less than $1/3^{rd}$ of the rate at which the land was agreed to be sold. In such circumstance, it is not the oral evidence which has been considered by the Court beyond the written contract. Still further, the plaintiff is seeking specific performance of the oral agreement to sell, therefore, there is no written agreement to sell to attract Section 92.

Next argument of learned counsel for the appellant is to the effect that once the payment of the sale consideration is admitted through cheques dated 15.03.2000, it was the duty of the defendant to explain why this amount was received. It will be noted that the aforesaid explanation has already been given and noted in the previous part of the judgment. In any case, at the cost of repetition, the defendants have explained that the plaintiffs had promised to pay at the same rate which was agreed to be as per the agreement to sell dated 06.04.1995. Since the plaintiff has refused to pay the amount at the same rate, therefore, the sale deeds were not got registered.

Last argument of learned counsel for the appellant is that once the receipt of amount is not disputed, the learned First Appellate Court has erred in refusing to return the amount paid. It will be noted that in the present case, the Court has found that the plaintiff had made an attempt to under value the sale deed so as to deprive the Government of the proper stamp duty. Still further, there was earlier agreement to sell between the parties on 06.04.1995 for the land measuring 53 kanals and 2 marlas, out of which various sale deeds have been registered but the aforesaid agreement is not complete. Further in appropriate cases, no doubt, the Courts order refund of the earnest money, however, keeping in view the fact as noted above, the learned First Appellate Court has rightly refused to grant relief of refund of the earnest money.

In view thereof, there is no ground to interfere with the orders passed by the Courts below.

All the pending miscellaneous applications, if any, shall stand disposed of accordingly.

All the appeals are dismissed.

(ANIL KSHETARPAL)
JUDGE

10.09.2018
Dinesh Bansal

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No