

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

RSA No.757 of 2017(O&M)

Date of decision:11.5.2018

Gajjan Singh

.....Appellant

VERSUS

Pritpal Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Tushar Sharma, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against judgment and decree dated 05.11.2016 passed by the Additional District Judge, Barnala whereby appeal filed by the appellant was partly allowed but his prayer for specific performance of agreement to sell has been dismissed .

Counsel for the appellant would argue that Teja Singh – respondent No.1 entered into an agreement to sell dated 22.02.2006 of land measuring 14 kanal 4 marlas for sale consideration of Rs.3,00,000/- per acre and received Rs.83,000/- towards earnest money. The sale deed was agreed to be executed till 15.03.2006 on receipt of balance sale consideration and possession of suit property was to be delivered at that time. Teja Singh failed to perform his part of the agreement but the appellant always remained ready and willing to perform his part of the contract. The appellant filed a suit seeking specific performance of aforesaid agreement of sale. The respondents started to pressurize the appellant with the help of police to withdraw the suit and when he refused, FIR No.112 dated 19.10.2006 was registered against him by Pritpal Singh.

The appellant was pressurized to enter into compromise dated 28.11.2006 whereby Teja Singh agreed to return the amount of Rs.83,000/- along with interest at the rate of 2% per annum after harvesting harri crop and withdraw the criminal proceedings pending against the appellant, failing which Teja Singh shall execute the sale deed in his favour. It is further argued that on the basis of said compromise, the appellant withdrew his suit in proceedings before the Lok Adalat on 20.01.2007. As Teja Singh failed to perform his commitment as per compromise dated 28.11.2006, the instant suit was filed seeking declaration that compromise dated 28.11.2006 was got effected by the defendants by playing fraud with pressure of the police and the same has no adverse affect upon rights of the plaintiff and statement suffered by the appellant on 20.01.2007 before the Lok Adalat in suit No.139 dated 21.02.2006 decided on 20.01.2007 is also result of fraud, therefore, the said statement and order is a nullity and not binding upon the plaintiff. Further the appellant claimed specific performance of agreement to sell dated 22.02.2006 with alternative relief for recovery of Rs.1,22,920/-. It is argued with vehemence that though the Court in appeal has accepted plea of the appellant that the instant suit is maintainable despite the earlier suit being dismissed as withdrawn as the present suit is based upon different cause of action but the Court committed a serious error by rejecting plea of the appellant for specific performance of the agreement and allowed only alternative relief of recovery of Rs.83,000/- but that too without payment of interest.

I have heard counsel for the appellant, perused the paper-book particularly the judgments passed by the Courts.

The trial Court dismissed suit of the appellant vide judgment and decree dated 17.01.2014. The appeal preferred by the appellant was partly allowed and decree for recovery of Rs.83,000/- paid towards earnest money was allowed.

The respondents/defendants raised an issue with regard to non-maintainability of the suit in view of the earlier suit seeking relief of specific performance of the same agreement of sale dated 22.02.2006 having been withdrawn in view of statement of the appellant recorded by the Lok Adalat on 20.01.2007.

The trial Court framed issue No.2 to the following effect:-

"2. Whether suit is maintainable? OPP"

Issue No.2 was answered against the appellant with the observations that when the suit has been decided as per compromise, as per Section 23 of the Code of Civil Procedure, 1908 separate suit cannot be filed and application can be moved before competent authority. However, the Court in appeal, in para 17 of the judgment has held that present suit is based upon a different cause of action from the previous suit which was dismissed as withdrawn on 20.01.2007, hence the bar created by Order 23 Rule 3A CPC is not applicable in the present case.

Counsel for the appellant was directed to address the question of maintainability of the second suit in the circumstances that the earlier suit was dismissed as withdrawn on the basis of statement made by counsel for the appellant before the Lok Adalat to the effect that in view of compromise, he does not want to proceed with the suit.

Order 23 Rule 1 of CPC deals with withdrawal of suit or abandonment of part of claim. A relevant extract from Order 23 Rule 1(4) reads as follows:-

"(4) Where the plaintiff,—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.”

As the appellant allowed the suit to be withdrawn without seeking permission of the Court to file a fresh suit on the same cause of action, second suit based upon the same agreement of sale is barred in law. The appellant, at best, could file an appropriate application before the Lok Adalat to withdraw from his statement recorded on 20.01.2007. To be fair to the appellant, counsel has made an argument in futility that by the present suit, the appellant has sought enforcement of agreement/compromise dated 28.11.2006, therefore, the instant suit is based upon a different cause of action, as has been so held by the Appellate Court. This contention of the appellant is highly misconceived and liable to be rejected. Perusal of pleadings in the plaint, reproduced briefly in judgment of the trial Court as well as that of the Appellate Court, leaves no manner of doubt that the appellant has actually challenged the compromise deed dated 28.11.2006 by claiming declaration that the same is the result of fraud, fabrication and police coercion, therefore, is null and void and not binding upon rights of the appellant. It has further been averred that

statement dated 20.01.2007 was obtained by fraud and misrepresentation and the order dated 20.01.2007 vide which suit No.139 dated 21.02.2006 was dismissed as withdrawn is liable to be set aside and resultantly, specific performance of agreement dated 22.02.2006 should be allowed. Under the circumstances, it is difficult to accept that the second suit is based upon a different cause of action and the same is maintainable, as has been held by the Appellate Court. In this view of the matter, the appellant cannot press for grant of any relief over and above what has been allowed by the Appellate Court. As the judgment and decree passed by the Court in appeal has not been challenged by the respondent/defendant, this Court will not examine its correctness allowing recovery of Rs.83,000/- in favour of the appellant.

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

MAY 11, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no