

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

RSA No.2058 of 1988 (O&M)

Date of decision:29.3.2019

Ram Sarup (since deceased) through LRs ... Appellant

Vs.

Sudhan

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Mani Ram, Advocate
for the appellant.

Mr. P.S.Chauhan, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the judgment and decree of the Lower Appellate Court whereby in a suit for possession, appellant-plaintiff has been directed to execute the sale deed in favour of the defendant within a period of one month.

The appellant-plaintiff filed the civil suit for possession of land measuring 8 kanals on the premise that he was owner of land measuring 7 marlas and constructed one kacha kotha but about 1 ½ years back in 1982, defendants had forcibly taken the possession. When defendants refused to hand over the vacant possession, thus, suit was filed.

The defendant opposed the suit and stated that plaintiff did not come to the Court with clean hands wherein he had already entered into an agreement for consideration against the receipt dated 15.6.1978 against the

payment of Rs.700/- as earnest money and thereafter, the defendant raised the construction of one baithak and one room in the property in dispute and thus, taken the objection of estoppel.

Since the parties were at variance, the trial Court framed 11 issues including the issue of Relief. The trial Court on the basis of evidence brought on record by the respective parties dismissed the suit by holding that plaintiff miserably failed to prove that he was owner of the land in dispute as he had sold the plot to the defendant and did not perform his part of the contract. The Lower Appellate Court modified the decree as noticed above.

Mr. Mani Ram, learned counsel appearing on behalf of the appellant-plaintiff submitted that the defendant did not seek specific performance, if Ex.D1 is treated to be an agreement, though it was simply a receipt and did not pay the balance amount which was required to be paid on the agreed date i.e. 28.6.1978. In such circumstances, sought the compensation of the land as the ownership was not denied. The Appellate Court could not have ordered for specific performance in the absence of any counter claim, thus, judgment and decree of the Lower Appellate Court is not sustainable in the eyes of law.

Mr. P.S.Chauhan, learned counsel appearing on behalf of the respondent submitted that plaintiff had concealed the factum of receipt in the plaint. A person who does not come to the Court with clean hands, should have been thrown out at any stage. The finding of the Lower Appellate Court has to strike equity which was appropriate course and thus,

urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decree of the Courts below and of the view that following substantial question of law arises for adjudication of the present appeal:-

- “1. Whether in a suit for possession, the Lower Appellate Court can order the relief of specific performance directing the plaintiff to execute the sale deed in favour of the defendant on receipt of balance sale consideration?
2. Whether the respondent-defendant had lost the right of specific performance by law of limitation?”

Ex.D1 reveals that both the parties had set their hands together for selling the plot for a sum of Rs.2200/-. However a sum of Rs.700/- and Rs.900/- i.e. total Rs.1600/- had been paid but not balance amount. The defendant did not assert the right for a period of three years. In such circumstances, the plaintiff sought the possession as agreement to sell does not confer any title.

The trial Court, in my view, did not appreciate the aforementioned fact and ought to have confined the decree by directing the plaintiff to refund the money alongwith interest to strike out the equities.

The Lower Appellate Court, in my view, has exceeded the jurisdiction in ordering specific performance without knowing the fact that limitation had already expired and it had grossly exceeded the jurisdiction by expanding the scope of provisions of Order 7 Rule 7 CPC.

For the reasons aforementioned, the judgment and decree of the Lower Appellate Court is hereby set aside. The suit of the appellant-plaintiff is decreed. The defendant is directed to hand over the possession provided the plaintiff to return the amount of Rs.1600/- alongwith interest @ 8% per annum from the date of receipt till its realization failing which the parties were at liberty to seek execution of the decree. On receipt of the aforementioned amount, the defendant shall hand over the possession of the premises. Decree sheet be prepared accordingly. The substantial questions of law, above are answered in favour of the appellant and against the respondent.

The appeal is allowed.

(AMIT RAWAL)
JUDGE

March 29, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No