

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA-303-2003(O&M)
Date of Order: 20.02.2019

BALWANT

..Appellant

Versus

PHOOL SINGH AND ORS.

..Respondents

(2) RSA-4346-2003(O&M)

BALWANT

..Appellant

Versus

PHOOL SINGH AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shish Pal Laler, Advocate,
for the appellant (in RSA No.303 of 2003).

None for the appellant (in RSA No.4346 of 2003)

Mr. Zorawar Singh, Advocate,
for the respondents

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

Both the appeals are between the same parties arising from a suit for possession by way of specific performance of the agreement to sell dated 11.05.1987. However, the only difference is that in Civil Suit No.124 of 1995 the agreement to sell was with Balwant, defendant-appellant, whereas in the second Civil Suit No.146, dated 28.2.1995, the agreement to sell is with Smt. Mukandi, mother of Balwant Singh, defendant-appellant.

The date of agreement to sell is same in both the suits.

At the time of admission of the appeals, following substantial questions of law were framed:-

RSA No.303 of 2003

- “(1) *Whether the suit of the plaintiff-respondents was premature and was liable to be dismissed on this score alone?*
- (2) *Whether proper issues were not framed in the civil suit, so the suit was liable to be dismissed and appeal is liable to succeed?*
- (3) *Whether the courts below have committed error in failing to consider to grant the relief of alternative relief of payment of alleged earnest money, hence, the judgments are liable to be set aside?*
- (4) *Whether the Courts below have failed to weigh all pros and cons before passing judgment/decree of specific performance for sale of the only landed property of the defendant/appellant?*

RSA No.4346 of 2003

- “(1) *Whether the suit of the plaintiff-respondents was premature and was liable to be dismissed on this score alone?*
- (2) *Whether appropriate issues were not framed in the civil suit, so the suit was liable to be dismissed and appeal was entitled to be accepted?*
- (3) *Whether the courts below have committed error in*

failing to consider to grant the relief of alternative relief of payment of alleged earnest money. Hence, the judgments and decrees are liable to be set aside?

- (4) Whether both the Courts below failed to preserve judicial discretion as to decreeing the suit for specific performance?*
- (5) Whether both the Courts below failed to exercise discretion in a reasonable and sound manner guided by judicial principles?*
- (6) Whether by decreeing the suit and dismissing the appeal, Courts below have not instrument of oppression to have an unfair advantage in favour of respondent-plaintiff?*

Execution of the agreement to sell, payment of earnest money and plaintiffs being ready and willing to perform their part of the contract have been concurrently found by both the courts below. It may be noted that the defendant had denied execution of the agreement to sell in both the suits.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel appearing for the appellant in RSA No.303 of 2003 has submitted that as per the agreement to sell the sale deed was to be executed within 1 month from the date of decision of the litigation pending between defendant and some other persons. He submitted that the aforesaid litigation came to an end in November, 1994, whereas the suit was filed on 28.02.1995. He further submitted that in fact the agreement to sell was

intended to be agreement of mortgage and therefore, relief of specific performance of the agreement to sell could not be granted. He further submitted that the suit filed by the plaintiffs was pre-mature as the notice calling upon the defendant to come and execute the sale deed was issued on 20.02.1995, whereas the suit came to be filed on 28.02.1995.

This court has considered the submissions, however find no substance therein.

In the agreement to sell, it was specifically stipulated that the sale deed would be registered within 1 month from the date the possession is taken after decision of the pending litigation. In the present case, no evidence has been produced to prove the date of delivery of possession. Still further, the previous litigation was between the defendant and 3rd party. Plaintiffs were not party to the aforesaid litigation. There is no evidence as to when the defendant intimated the result of the litigation to the plaintiffs. Still further, it has come on record that against the judgment passed by the learned trial court in the previous litigation, an appeal was filed which was pending and came to be decided on 28.03.1997, thus, the suit filed by the plaintiffs cannot be said to be belated.

As regard second submission, it may be noted that both the courts have concurrently found that the agreement to sell was executed and not agreement of mortgage. From a reading of the agreement to sell it is apparent that it is an agreement to sell and not the agreement of mortgage. The heading of the document itself refers to as the agreement to sell and not agreement of mortgage.

As regards next argument, the same is only to be noticed and rejected because the suit filed by the plaintiffs cannot be said pre-mature

under any circumstances. The suit was filed by the plaintiffs after waiting for a period of 3 months from the date the trial court decided the previous litigation which was pending involving the defendant-appellant.

In view of the discussion made above, question no.1 stands answered in favour of the respondents-plaintiffs and against the appellant.

As regards question no.2, it may be noted that the learned counsel for the appellant could not point out that which appropriate issue was not framed by the court.

As regards question no.3, it may be noted that no doubt the relief of specific performance of the agreement to sell is discretionary, however, such discretion has to be exercised in accordance with well settled principles of law and not in an arbitrary manner. Learned counsel for the appellant except submitting that a long period has elapsed could not point out how and in what manner the discretion exercised by the courts is erroneous.

At the stage of second appeal, the court can interfere in the judgment only on the grounds that the judgment passed by the courts below suffer from any substantive error. This court cannot assume the jurisdiction of the trial court and start deciding the suit itself. Therefore, in absence of any error in the exercise of discretion, it is not open to this court to interfere with the discretion exercised.

Accordingly, question no.3 is answered against the appellant. Question no.4 is also answered accordingly in view of the discussion made while discussing question no.3.

In both the Regular Second Appeals, questions no.1 to 4 are common. Question no.5 is same as question no.4. With respect to question

no.6, learned counsel could not point out as to how the plaintiff-respondent had taken unfair advantage.

In view thereof, there is no good ground to interfere. However, keeping in view the fact that the amount of Rs.13,000/- each has remained with the plaintiffs in both the suits, therefore, the decree passed by the learned trial court is modified and direction is issued to the plaintiffs to deposit the balance amount, if already not deposited, along with interest @ 12% per annum from the date of institution of the suits till deposit. If the amount has already been deposited and it was invested by the learned trial court, the appellant shall be entitled to accrue amount from that deposit or balance amount along with 12% per annum interest whichever is higher.

In view of what has been recorded hereinabove, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the courts below.

Both the regular second appeals are dismissed.

February 20, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No