

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-3980-2019 (O&M)

Date of decision: 26.08.2019

Bajinder

..... Appellant

Versus

Sushil Sharma and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. RS Kundu, Advocate for the appellant.

RAMENDRA JAIN, J. (ORAL)

Through this regular second appeal, defendant-appellant has laid challenge to judgment and decree of the lower Appellate Court dated 01.05.2019, affirming judgment and decree of the trial Court dated 15.01.2015, whereby suit for specific performance of agreement to sell dated 29.12.2011, of respondent-plaintiffs was decreed.

Briefly, respondent-plaintiffs filed a suit for specific performance of agreement to sell dated 29.12.2011, executed by appellant-defendant qua 24 kanals of land (hereinafter referred to as-'the suit land') equivalent to 1/6th share out of the total land measuring 221 kanals and 4 marlas, situated in village Jeetgarh, Tehsil and District Jind, fully detained in first para of judgment of trial Court, pleading that appellant, pursuant to the aforesaid agreement had agreed to sell his 1/6th share for a sale consideration of ₹53,00,000/-. ₹50,00,000/- was paid as

earnest money. Balance sale consideration of ₹3,00,000/- was to be paid at the time of execution and registration of the sale deed on 30.03.2012. During this period, appellant was to redeem the suit land and obtain clearance certificate from State Bank of Patiala, Main Branch, Jind, from where he had taken loan of ₹7,00,000/-, mortgaging the suit land. Though, the respondent-plaintiffs were always ready and willing to perform their part of contract, but the appellant-defendant failed to fulfill his legal obligation, forcing them to file suit.

Upon notice, the suit was contested tooth and nail by the appellant. After holding trial, the trial Court decreed the suit vide judgment and decree dated 15.01.2015.

Being aggrieved, appellant approached the lower Appellate Court, but remained un-successful as his appeal too was dismissed, vide impugned judgment and decree dated 01.05.2019.

Learned counsel for the appellant *inter alia* contends that evidence led by the respondent-plaintiffs during trial was contrary to their pleadings, inasmuch as, in cross-examination, respondent No. 1-Sushil Kumar as PW-6, testified that he paid ₹1,00,000/- in advance and ₹49,00,000/-, on the date of execution of agreement to sell on 29.12.2011. Contrary to it, the respondent-plaintiffs pleaded that entire money of ₹50,00,000/- was paid by them at the time of execution of agreement to sell Ex. PW-3/A. The Notary, namely; Kailash Chand Gupta, Advocate, from whom the agreement was got attested as PW-3 falsified pleadings of the respondents, deposing that no earnest money of ₹50,00,000/- was ever paid in his presence. Both the Courts below have

failed to appreciate that respondent-plaintiffs were having only 1 acre of land and, thus, they could not have been paid such a heavy amount of ₹50,00,000/- as earnest money. No evidence was led as to from where, respondent-plaintiffs arranged such a huge amount for onward payment to the appellant. Both the Courts below have also failed to appreciate that no issue was framed regarding readiness and willingness of the respondent-plaintiffs to perform their part of contract. In support of his contentions, learned counsel for the appellant has relied upon judgments in (i) **Mohan Madan Vs. Smt. Sheel Gulati**, 2015(32) RCR (Civil) 751; (ii) **R.Ramasubbu Vs. T. Pirashanna and another**, AIR 2017 Madras 222; (iii) **Manohar Pamandas Janl Vs. Madhukar Trimbak Waychal and another**, 2017(2) LJR 499; (iv) **Naranjit Makanji Vs. Bhagwanji Makanji Patel and another**, 1995 A AIHC 212 and (v) **Mugla (since deceased) through LRs and others Vs. Ram Narain son of Shri Shivdhan and another**, 2014(Suppl.) Civil Court Cases 277 (P&H).

Having given thoughtful consideration to the submissions of learned counsel for the appellant, this Court finds the instant regular second appeal, merits dismissal, for the reasons to follow:

For ready reference, issue No. 2 framed by the trial Court is reproduced hereunder:

“2. Whether the plaintiffs are entitled for decree of specific performance of contract as per terms of agreement dated 29.12.2011, free from all encumbrances after getting redeemed the mortgage

land ? OPP

Readiness and willingness of respondent-plaintiffs is covered under the above issue. Thus, there was no necessity to frame any separate issue as argued by learned counsel for the appellant.

Readiness and willingness of the respondent-plaintiffs is also proved from the fact that they appeared before the Sub Registrar, with balance sale consideration of ₹3,00,000/- on the date fixed i.e. 30.03.2012 and got marked their presence by way of affidavit before the Sub Registrar. Thus, this Court is of the considered view that nothing more was required by the respondent-plaintiffs to prove that they were always ready and willing to perform their part of contract.

Respondent No. 1-plaintiff-Sushil Kumar (PW-6), was cross-examined at length on behalf of the appellant. He specifically clarified the source from where he had arranged the amount of ₹50,00,000/-, paid to the appellant-defendant as earnest money. No contrary evidence was led by appellant-defendant to rebut the evidence led by respondent-plaintiffs. Therefore, both the Courts below, believing respondent-plaintiffs that they were throughout ready and willing to perform their part of contract, have rightly decreed their suit.

It is well settled proposition of law that statement of a witness has to be read as a whole and not in isolation. Both the Courts below, after going through the evidence led by respondent-plaintiffs, have recorded concurrent findings in their favour, about payment of ₹50,00,000/- as earnest money by them, at the time of execution of agreement to sell Ex. PW-3/A. Therefore, deposition of PW-6 Sushil

Kumar that ₹1,00,000/- was paid in advance and ₹49,00,000/- was paid at the time of execution of said agreement to sell, is only a clarification which strengthens the case of respondent-plaintiffs and thus, has rightly been relied upon by both the Courts below.

No question of law much less substantial has been raised in the instant regular second appeal. Hence, the same is held not maintainable.

The facts and circumstances of the judgments relied upon by learned counsel for the appellant are quite distinguishable from the facts of instant case. Therefore, no benefit of the same, whatsoever, can be given to the appellant.

I have carefully gone through the the judgments of both the Courts below and find no illegality or perversity in the same.

Dismissed.

August 26, 2019

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No