

RSA No. 3829 of 2019 (O&M)

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

RSA No. 3829 of 2019 (O&M)

Date of Decision: October 29, 2019

Sanjeev Kumar

..... Appellant(s)

Versus

Anil Kumar

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Vikram Preet Arora, Advocate
for the appellant.

LISA GILL, J.

Appellant-defendant is aggrieved of the judgment and decree dated 10.04.2019, passed by the learned District Judge, Bathinda as well as judgment and decree dated 24.07.2018, passed by the learned Addl. Civil Judge (Senior Division), Phul whereby suit filed by the respondent-plaintiff has been decreed.

Brief facts necessary for the adjudication of the case are that the plaintiff-respondent filed a suit for recovery of Rs.8,50,000/- with interest @ 1% per month from the date of execution of the agreement to sell executed by the defendant-appellant in favour of the plaintiff. It is pleaded that the present appellant Sanjeev Kumar along with his brothers Mangat Rai and Baljinder are owners in possession of the suit property as detailed in the plaint. Mangat Rai, the appellant's brother had given the property in question on lease to the plaintiff from 01.04.2012 to 31.03.2013, in which two grinders along with 25 HP motor, electric connection (20 KW), scale (Kanda), counter and tools were

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installed. Writing dated 15.02.2013 in this respect was executed between the plaintiff and Mangat Rai in the presence of witnesses Mohinder Singh and Faneesh Kumar for a sum of Rs.69,500/-. Amount of Rs.60,000/- thereof was received and the remaining amount of 9,500/- was to be paid on 31.03.2013 to Mangat Rai. Thereafter, the defendant-appellant Sanjeev Kumar informed the plaintiff that he had purchased the suit property from his brothers Mangat Rai and Baljinder vide an agreement and Sanjeev Kumar further agreed to sell the suit property along with grinder, motor connection, electric meter etc. to the plaintiff vide agreement dated 26.02.2013 for a total consideration of Rs.25,00,000/-, in the presence of witnesses Mohinder Singh, Sanjeev Kumar son of Hari om, Sanjiv Kumar son of Jagan Nath and Vijay Kumar. Rs.6,25,000/- was received as earnest money from the plaintiff by the appellant. It is stated that the sale deed would be executed by the defendant-appellant in the plaintiff's favour till 13.06.2013 and the possession of the suit property already with the plaintiff, would be retained by him. Date of execution of the sale deed was stated to be extended from 13.06.2013 to 12.07.2013 in the presence of witnesses Mohinder Singh and Bahal Singh. An endorsement to this effect was stated to have been made on the back side of the agreement to sell dated 26.03.2013.

However, the appellant-defendant, it is pleaded, in connivance with his wife namely Raman Arora, with a view to usurp the right of the plaintiff and with an intention to dispossess him, executed sale deed dated 25.07.2013 in favour of Raman Arora. The plaintiff claimed to have remained present before the Sub-Registrar on 13.06.2013 and 12.07.2013 for registration of the sale deed but the defendant did not come present. Plaintiff, it is stated,

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was ready to carry out his part of the contract. The defendant, however, in connivance with his brothers Mangat Rai, Baljinder Singh and his wife Raman Arora filed a false and illegal civil suit regarding the suit property before the Court of learned Additional Civil Judge (Sr. Division), Phul, in which interim order was granted. The defendant, it is stated, deliberately did not execute the sale deed in favour of the plaintiff. The original agreement is pleaded to have been lost and a DDR in this respect was lodged by the plaintiff. When the sale deed was registered in favour of Raman Arora on 25.07.2018, the civil suit was withdrawn by Mangat Rai. Neither the sale deed was registered in the plaintiff's favour nor the double of the earnest money returned in terms of the agreement despite requests. Hence, this suit was filed.

Defendant-appellant resisted the suit and various preliminary objections were taken. The suit was claimed to be hopelessly time barred and not maintainable. It is stated that the suit property was previously owned by Mangat Rai, the appellant's brother. However, possession of the plaintiff over the suit property as a mortgagee under Mangat Rai w.e.f. 01.04.2012 till 31.03.2013 is admitted. It is stated that Mangat Rai entered into an agreement to sell with the defendant and agreed to sell the suit property to him. Total amount of sale consideration was received by Mangat Rai, who agreed to get the sale deed executed and registered in favour of the defendant-appellant or any other person of his choice as and when he so desired.

Agreement to sell dated 26.02.2013 between the plaintiff and the defendant-appellant is admitted, though extension of the date of execution and registration of sale deed is denied. It is sought to be explained that it is the plaintiff who failed to arrange the balance amount of the sale consideration and

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get the sale deed executed and registered in his favour as per the terms and conditions of the settlement. Therefore, the earnest money paid by the plaintiff stood forfeited. It is in this eventuality that the defendant got the sale deed regarding the suit property executed and registered in the name of his wife Raman Arora vide sale deed No.2012 dated 25.07.2013. The total amount of sale consideration was paid to Mangat Rai in advance. Possession of the property, it is submitted, had been surrendered to Mangat Rai on 31.03.2013. Defendant claimed to be in actual physical possession of the property in question. Dismissal of the suit was thus prayed for.

Replication to the written statement was not filed by the plaintiff. Following issues were framed by the learned trial Court on the basis of the pleadings:-

1. Whether plaintiff is entitled to recover Rs.8,50,000/- along with interest as prayed for ? OPP.
2. Whether suit of the plaintiff is not maintainable? OPD
3. Whether earnest money paid by the plaintiff to the defendant stands forfeited due to breach of the agreement by the plaintiff himself ? OPD.
4. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case decreed the suit filed by the plaintiff while observing that the defendant was not found to be owner in possession of the suit property on the date of execution of the agreement to sell dated 26.02.2013. Execution of the said agreement to sell stood admitted as is the

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receipt of the earnest money of Rs.6,25,000/-. In this view of the matter, it is concluded that the plaintiff is entitled to recovery of the said amount.

Appeal preferred by the present appellant was dismissed by the the learned District Judge, Bathinda vide the impugned judgment and decree dated 10.04.2019. Aggrieved therefrom, present appeal has been filed by the appellant-defendant.

Sole ground raised by the learned counsel for the appellant is that it was open to the plaintiff to have filed a suit for recovery at an earlier stage but he did not do so even as he had earlier filed a suit for permanent injunction to protect his possession. His said suit for permanent injunction was dismissed. No suit for specific performance of agreement to sell was filed by the plaintiff, who himself failed to arrange the balance amount of sale consideration. Therefore, he is clearly estopped from seeking refund of the amount of earnest money. It is, thus, prayed that this appeal be allowed. Both the impugned judgments and decrees be set aside. Consequentially, suit filed by the plaintiff-respondent be dismissed.

I have heard learned counsel for the appellant at length and have gone through the file with his assistance. I have also perused the written statement filed on behalf of the appellant-defendant, a copy of which was produced in Court today.

Execution of the agreement to sell dated 26.02.2013 is admitted by the appellant-defendant in this case. Receipt of earnest money of Rs.6,25,000/- by the appellant-defendant from the plaintiff is also not in dispute. Learned counsel for the appellant is unable to deny that the

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appellant while testifying as DW1 has clearly admitted that he was not the owner of the suit property at the time of execution of the agreement to sell dated 26.02.2013 and neither had he become owner thereof at the time of the stipulated date for registration and execution of the sale deed. DW1 further admitted that his brother Mangat Rai had instituted a case against him regarding the suit property. Learned trial Court in this situation has rightly held that admission of the defendant-appellant in respect to the institution of the civil suit by his brother Mangat Rai shows connivance of the defendant with the other family members, specially in the wake of registration of the sale deed in favour of the defendant's wife namely Raman Arora. It is, thus, rightly held that the plaintiff is entitled to refund of the earnest money alongwith interest @ 6% per annum.

Similarly, Learned District Judge, Bathinda has rightly observed that there is no bar as per Section 22 of the Specific Relief Act to claim the refund of the earnest money paid by a party, who is not at fault for the failure of the transaction. The defendant-appellant is proved on record to be responsible in executing an agreement to sell which was clearly unenforceable. Thus, he is not entitled to retain the amount of earnest money with him.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record, which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal. There is no illegality, infirmity or perversity in the

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impugned judgment and decree dated 10.04.2019, passed by the learned District Judge, Bathinda as well as judgment and decree dated 24.07.2018, passed by the learned Addl. Civil Judge (Senior Division), Phul, which calls for any interference by this Court in second appeal.

No other argument has been raised.

Judgment and decree dated 10.04.2019, passed by the learned District Judge, Bathinda as well as judgment and decree dated 24.07.2018, passed by the learned Addl. Civil Judge (Senior Division), Phul are upheld.

Appeal is accordingly dismissed with no order as to costs.

October 29, 2019.
Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No