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

RSA No. 4911 of 2011 (O&M)

Date of Decision: November 15, 2019

B.R. Arora (Babu Ram Arora)

..... Appellant(s)

Versus

Deepak Aggarwal & another

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sanjay Tangri, Advocate for the appellant.

Mr. Satraj Singh Toor, Advocate for respondent no.1.

None for respondent no.2.

LISA GILL, J.

The appellant is aggrieved of judgment and decree dated 23.07.2011, passed by the learned Additional District Judge, Jalandhar whereby the appeal preferred by respondent no.1-plaintiff was partly accepted and judgment and decree dated 04.06.2010, passed by the learned trial Court dismissing the suit was set aside. Learned Additional District Judge, Jalandhar, directed recovery of the earnest money of Rs.5 lakhs with interest @ 12% per annum from the date of agreement till actual payment. Consequently, the suit filed by the respondent-plaintiff was partly decreed.

Respondent-plaintiff filed a suit for specific performance of an agreement to sell dated 03.09.2007 in respect to a plot as described in the petition. It is pleaded that defendant no.1 (present appellant) being the owner of the suit property entered into an agreement to sell dated

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03.09.2007 with the plaintiff for sale of property in dispute @ Rs.4,80,000/- per Marla. A sum of Rs.5,00,000/- was paid by the plaintiff to defendant no.1 as earnest money with the remaining amount to be paid at the time of registration and execution of the sale deed. It was decided that the sale deed would be executed on 30.09.2007 but as the same was a Sunday, the plaintiff went to the office of Sub-Registrar, Jalandhar on 01.10.2007 for execution of the sale deed but the defendant-appellant, it is stated, did not turn up. Plaintiff marked his presence in the office of Sub-Registrar and defendant no.1 was requested to execute the sale deed but he refused to execute the same while disclosing that he had already executed a registered sale deed no. 8172 dated 19.11.2007 in favour of defendant no.2 Rajinder Dhanoa, in respect to the suit property. It is pleaded that the sale deed dated 19.11.2007 executed by defendant-appellant in favour of defendant no.2 is illegal, null and void and not binding upon rights of the plaintiff. When defendant-appellant failed to perform his part of the contract, the suit was filed.

Both the defendants contested the suit. Separate written statements were filed. Defendant-appellant while taking various preliminary objections, however, admitted the execution of agreement to sell dated 03.09.2007 for the sale consideration as mentioned. However, it is denied that the plaintiff was ready and willing to perform his part of the contract. It is stated that as it was a Sunday on 30.09.2007, defendant informed the plaintiff to come present before the office of the Sub-Registrar, Jalandhar along with balance sale consideration on 01.10.2007 but it is the plaintiff

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who did not appear as he did not have the requisite balance sale consideration with him. Despite requests, the plaintiff did not come forward for execution of the sale deed. Notice dated 03.10.2007 is denied. The property ultimately was sold to defendant no.2 on 19.11.2007.

Defendant no.2 also raised various preliminary objections regarding maintainability of the suit etc. He claimed to be a *bonafide* purchaser for consideration of Rs.1,12,500/-. Defendant no.2 claimed to have raised construction thereon and installed a gate over the property. Dismissal of the suit was sought by both the defendants.

Replication to the written statement was filed by the plaintiff. Following issues were framed by the learned trial Court on the basis of the pleadings:-

1. Whether the plaintiff remained ready and willing and is still ready and willing to perform his part of contract ? OPP.
2. Whether the plaintiff is entitled to the specific performance of the agreement to sell dated 03.09.2007 ? OPP
3. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP.
4. Whether the plaintiff is entitled to recovery of Rs.10.00.000/- alongwith interest @ 18% p.a. from the date of agreement till realization, in the alternative ? OPP
5. Whether the plaintiff is stopped from filing the present suit by his own act and conduct ? OPP
6. Whether the plaintiff has no locus-standi and cause of action to file the present suit ? OPP
7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
8. Whether the defendant no.2 is bonafide purchaser of consideration without any notice? OPD
9. Relief.

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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, concluded that the agreement to sell dated 03.09.2007 stood proved. However, the learned trial Court also concluded that the plaintiff was not ready and willing to perform his part of the contract. It is further observed that in case, the Sub-Registrar had attested the affidavit of the defendant-owner, there is no question of refusal on the part of the Sub-Registrar to have entertained the application of the plaintiff for marking his presence. Moreover, the plaintiff, it is observed, did not have sufficient money to pay the consideration amount. Learned trial Court held that the plaintiff failed to prove that he had the entire balance sale consideration amount with him on 03.09.2007, therefore, it was concluded that the plaintiff was not ready and willing to perform his part of the contract, therefore, the earnest money paid by the plaintiff stood forfeited as per the terms and conditions of the agreement to sell Ex.P-1. The sale deed dated 19.11.2007, it is held, was at a very low rate but the plaintiff-appellant, it is observed, did not challenge the same and the plaintiff had failed to prove his entitlement for specific performance. Sale deed dated 19.11.2007 on the basis of which mutation No.3150 was sanctioned was held to be valid. The suit filed by the plaintiff was accordingly dismissed.

An appeal was preferred by the plaintiff, which was accepted by the learned Additional District Judge, Jalandhar to the extent of directing recovery of the earnest money with proportionate cost and interest @ 12%

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from the date of agreement till actual payment. The decree for specific performance was not awarded.

Aggrieved therefrom, present appeal has been filed by the appellant-defendant no.1 (original owner) only.

Learned counsel for the appellant submits that the learned Additional District Judge, Jalandhar has grossly erred in partly allowing the appeal filed by the respondent-plaintiff in as-much-as recovery of the earnest money i.e. Rs.5 lakhs with proportionate cost with interest @ 12% per annum from the date of agreement till actual payment has been decreed. It is argued that the learned trial Court has passed a well reasoned and logical judgment after proper appreciation of the evidence on record. It has been rightly held that the plaintiff has failed to prove his readiness and willingness to carry out his part of the agreement to sell dated 03.09.2007. The plaintiff failed to prove that he had the balance sale consideration ready with him on the stipulated date for execution of the registered sale deed, i.e. 30.09.2007/01.10.2007. The plaintiff was purportedly present on 01.10.2007 with cash in hand, but there is no such evidence on record. Furthermore, the payment could not have been made in cash. Learned trial Court has rightly held that no demand draft or cheque in favour of the appellant was produced by the plaintiff. It is, in fact, the appellant who was subjected to undue harassment when the plaintiff did not turn up with the balance sale consideration for the execution of the sale deed pursuant to agreement dated 03.09.2007. The appellant being in need of money had to sell his property at a pittance to defendant no.2 (respondent no.2 in this appeal).

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Learned counsel for the appellant seeks to raise the following substantial questions of law for consideration of this Court:-

- i. Whether learned Additional District Judge, Jalandhar has wrongly ordered recovery of earnest money of Rs.5,00,000/- once it is proved that the plaintiff was not ready and willing to execute the sale deed pursuant to agreement to sell dated 03.09.2007?
- ii. Whether there is misreading of evidence by the learned Additional District Judge, Jalandhar, which has resulted in an infirmity and perversity in the impugned judgment and decree ?

In this view of the matter, it is prayed that this appeal be allowed and impugned judgment and decree dated 23.07.2011, passed by learned Additional District Judge, Jalandhar be set aside and that of the learned trial Court be upheld.

Per contra, learned counsel for respondent no.1 submits that it is not necessary for the plaintiff to have explained the source for the balance sale consideration. It is contended that a legal notice dated 03.10.2007 Ex.P4 was issued immediately to the appellant calling upon him to perform his part of the agreement. The postal receipt, Ex.P5, is on record. However, the appellant instead of coming forward for the execution of the sale deed proceeded to sell the land in question in a *malafide* manner to defendant no.2 on 19.11.2007. The suit in question was filed immediately on 29.01.2008. Therefore, to say that the plaintiff was not ready and willing to

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perform his part of the agreement is totally incorrect. The plaintiff, it is informed, has not preferred any appeal against judgment and decree dated 23.07.2011 or filed any cross-objections in the present appeal seeking specific performance of the agreement to sell dated 03.09.2007. However, it is submitted that recovery of the earnest money along with interest @ 12% per annum has been rightly ordered. It is, thus, prayed that the appeal filed by the appellant be dismissed.

I have heard learned counsel for the parties and have gone through the file with their assistance.

Execution of the agreement to sell dated 03.09.2007 is not in dispute. In fact, the stand taken by the defendant-appellant is that the plaintiff was not ready and willing to perform his part of the contract as he did not have the requisite consideration amount and did not turn up for executing the sale deed in question. The defendant-appellant claims to have remained present in the office of Sub-Registrar on 01.10.2007 but the plaintiff did not come forward. It is in this situation, that the property in question is claimed to have been sold to defendant no.2 by the defendant-appellant for a sum of Rs.1,12,500/- vide registered sale deed dated 19.11.2007. Learned counsel for the appellant has vehemently argued that in the wake of the plaintiff not coming forward to perform his part of the contract, the direction regarding recovery of the earnest money of Rs.5,00,000/- is unjustified. The amount in question, it is contended, has to be forfeited in favour of the appellant, who had to suffer much harassment and inconvenience at the hands of the plaintiff and the defendant had to sell

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his property at a throwaway price. Learned counsel for the appellant submits that once the learned Courts below have concluded that the sale deed dated 19.11.2007 executed by the appellant in favour of defendant no.2 is genuine and not a sham transaction and that the petitioner was not ready and willing to perform his part of the contract, direction of the learned Additional District Judge, Jalandhar for recovery of the earnest money of Rs.5,00,000/-. However, I do not find any merit in this argument raised on behalf of the appellant. There is nothing on record to indicate that the defendant-appellant had rescinded the contract or had ever called upon the plaintiff to come forward for execution of the sale deed in question. As per the agreement to sell dated 03.09.2007, the sale deed was agreed to be executed on or before 30.09.2007. However, a sale deed in respect to the suit property was executed by the appellant-defendant in favour of defendant no.2 on 19.11.2007 itself i.e. within the short span from 30.09.2007. Plaintiff had agreed to purchase the property @ Rs.4,80,000/- per Marla. A sum of Rs.5,00,000/- had been paid by way of earnest money whereas the entire property was claimed to have been purchased from the defendant-appellant by defendant no.2 for a sum of Rs.1,12,500/- only. The plaintiff in this case immediately served a legal notice upon the appellant-defendant on 03.10.2007 within two days of the stipulated date itself. A copy of the said legal notice is admittedly on record as Ex.P4 and sale deed in favour of defendant no.2 was nevertheless executed by the appellant on 19.11.2007. In the given facts and circumstances of the case, learned Additional District Judge, Jalandhar has rightly passed a decree for recovery of the earnest

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money (Rs.5,00,000/-). It is a settled position of law that there can not be any undue enrichment of the owner in circumstances like the present.

However, there is merit in the argument raised by learned counsel for the appellant regarding the rate of interest of 12% awarded by the learned Additional District Judge. Keeping in view the facts and circumstances of the case, it is directed that the plaintiff is entitled to interest @ 6% instead of 12% on the amount of earnest money (Rs.5 lakhs) from the date of agreement till actual payment.

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. Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment and decree dated 23.07.2011, passed by the learned Additional District Judge, Jalandhar, which calls for any interference by this Court in second appeal. Learned counsel for the appellant is further unable to point out any ground as specified in Section 41 of the Punjab Courts Act, 1918 to interfere in the impugned judgment. It has been held by the Hon'ble Supreme Court in **Pankajakshi (Dead) through LRs and others versus Chandrika and others 2016 (2) RCR (Civil) 245** and **Kirodi (since deceased) through his LR versus Ram Parkash and others in Civil Appeal No. 4988 of 2019, SLP (C) No. 11527 of 2019** that a second appeal insofar as the State of Punjab is concerned, does not require a formulation of a substantial question of law, due to applicability of the Punjab Court Act, 1918. However, in the present case, no such question of

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law also arises for adjudication in this case. The substantial questions of law sought to be raised by learned counsel for the appellant necessarily would have to be answered against him in the given factual matrix of the case.

No other argument has been raised.

With the abovesaid modification in the rate of interest judgment and decree dated 23.07.2011, passed by the learned Additional District Judge, Jalandhar is upheld and appeal is accordingly dismissed with no order as to costs.

November 15, 2019.

Sunil

**(LISA GILL)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No